GURDEV SINGH, J.—I agree. I would, however, like to make it clear that as the case out of which this reference has arisen relates to a Hindu institution our opinion covers only such institutions and not others.

P. C. JAIN, J.—I agree.

K. S. K.

FULL BENCH

Before D. K. Mahajan, P. C. Pandit and R. S. Narula, JJ.

IQBAL SINGH,—*Petitioner.*

versus

GURDAS SINGH BADAL AND OTHERS,—*Respondents.*

Civil Miscellaneous No. 25-E of 1971
Civil Miscellaneous No. 26-E of 1971
in
Election Petition No. 1 of 1971.

November 3, 1971.

Representation of the People Act (*XLII of* 1951)—*Sections* 81, 82, 86, 87 *and* 99— *Person not a candidate in an election but allegations of corrupt practices made against him in an election petition—Whether can be made a party in such petition—Allegations of illegality or mala-fide in the conduct of election made against Returning Officer—Such Returning Officer—Whether a necessary or proper party in an election petition—Section 99—Notice under—Likely to be issued to a person—Such Person—Whether becomes party to the election petition—Section—Whether gives a right to the party to the election petition to have somebody named as guilty of corrupt practices—Settled preparations of law relating to election disputes—Stated.*

Held, (per majority, Mahajan and Narula, JJ., Pandit, J. Contra.) that the scheme of the Representation of the People Act, 1951, is that only those persons can be made parties in an election petition, who are expressly mentioned in the Act. Sections 81 and 82 of the Act read together specify the parties to an election petition and wherever the legislature thought fit to make a departure it specifically provided for it in clear terms. In fact the entire field is an occupied field so far as election petition is concerned and it is not open to the Court to resort to section 87(1) and under its cover hold that anyone besides those mentioned in the Act can be impleaded as parties to the election petition. The notion of 'necessary and proper parties' is not germane to the election dispute. The dispute is between the petitioner on

one hand and the respondents on the other. In terms of section 87, the provisions of the Code of Civil Procedure, are excluded on matters for which provision has been made in the Act itself. So far as the array of parties is concerned, a specific provision has been made and it is idle to suggest that anyone other than those who are mentioned in the Act can be made parties in an election petition. The only parties who are really necessary or proper for the trial of an election petition are those mentioned in the Act itself. Hence a person who is not a candidate in an election but allegations of corrupt practices are made against him in an election petition cannot be impleaded as a party to the election petition. The Returning Officer against whom allegations of illegality or malafide or both in the conduct of the election are made is also neither necessary nor a proper party in an election petition. (Paras 14, 16, 17 and 19)

Held (per Mahajan, J.) that section 99 of the Act is a provision which does not give a right to the party to an election petition to have some body named as guilty or corrupt practices. It is the duty cast on the Court to name a person guilty of corrupt practices if during the trial the Court comes to a tentative conclusion that he is guilty of such a corrupt practice. But before naming him the Court itself gives him notice and hearing so that he is not condemned unheard unless he is a party to the election petition. When steps are taken under section 99 in the matter of naming persons guilty of corrupt practices, those who are not parties to the election petition can also be proceeded against if a notice to them has been issued. This does not mean that they become parties to the election petition. What section 99 contemplates is not relief. It is a penal provision for bringing to book persons who are guilty of corrupt practices. (Para 18)

Held (per Pandit, J. Contra.) that section 82 of the Act specifies 'necessary parties' to an election petition and nothing more. The section is not exhaustive and it does not in terms prohibit the addition of other persons as respondents in an election petition. There is indisputably a distinction between 'necessary' and 'proper' parties. Section 82 does not creat a bar in the impleading of 'proper parties' in an election petition nor does it say that the names of the parties, who have already been impleaded, should be deleted, because they are only 'proper' and not 'necessary parties'. There is no other provision in the Act or the Rules framed thereunder which debars the impleading of any other person to an election petition except those mentioned in section 82. Consequently the provisions of Order 1 Rule 10(2) of the Code will be applicable to an election petition and proper parties can be impleaded to such a petition. The use of word 'parties' in section 83 of the Act is not without reason. It means that any person, who is alleged to have committed a corrupt practice has to be made a party to the petition and if not made so, the particulars of the corrupt practice alleged will not be full. So if such a person is not made a party to the petition, the petitioner runs the risk of the corrupt practice being scored out or not tried on the ground that the person against whom the allegation has been made, is not a party to the petition. (Paras 35 and 37)

Held, (per Pandit, J. Contra.) that by virtue of section 99 of the Act, the Court trying the election petition has to pass an order naming any

person, who has been proved at the trial to have been guilty of any corrupt practice, as a part of the order under section 98. So naming of a party guilty of a corrupt practice is one of the matters involved in the election petition. It is not indicated in the section as to the stage at which such a person should be joined as a party to the proceedings. The power of joining him as a party to the proceedings in an election petition for this purpose can be exercised by the Court at any time during the trial under Order 1, rule 10(2) of the Code of Civil Procedure. Such a power does not come into conflict with either section 82 or section 99 of the Act. On the other hand, the exercise of such a power at an early stage of the trial of an election petition will be more desirable in the interests of the expeditious disposal of an election petition, which has now been highlighted in the Act as an essential object to be achieved. If the Court waits till the end of the trial to make him a party by issuing a notice to him, the election petition *qua* that corrupt practice shall have to be tried afresh, which will consume a good deal of time. (Para 55).

Held, (per Narula, J.) that the following are the settled propositions of law relating to the election disputes :—

(i) statutory requirements of election law must be strictly observed ;

(ii) an election contest is not an action at law or a suit in equity. It is purely a statutory proceeding unknown to the common law ;

(iii) a Court deciding an election petition does not possess any common law power, but has to proceed in accordance with the provisions of the relevant statute. If the statute itself requires the election Court to proceed with the trial of a petition in accordance with certain prescribed procedure, the same must be followed as far as possible. (Para 80).

Held, (per Narula, J.) that the only necessary parties to an election petition are those enumerated in section 82, the non-impleading of anyone of whom results in the summary dismissal of petition itself under section 86(1) of the Act. The Act is self contained code. The procedural field covered by the Act does not admit of any intrusion by the provisions of general law like the Code of Civil Procedure. The principles contained in Order 1, rule 10(2) of the Civil Procedure Code do not as such have any application to the trial of election petitions. These provisions cannot be invoked for impleading anyone as a respondent who is not shown in the Act to be either a necessary or a proper party, i.e., either a party required to be impleaded (Section 82) or a party permitted to be impleaded [Section 86(4) and Section 116] as a respondent. There is implied bar in the Act to the impleading of persons not mentioned in the Act as respondents. This bar has been created by making a specific provision about the persons who can be impleaded as respondents. (Paras 81 and 108).

Held, (per Narula, J.) that a person who is alleged to have committed a corrupt practice is not a proper party to an election petition unless he is a candidate because his presence is not necessary for a final decision on the

question involved in the proceedings. Questions involved in the trial of an election petition are concerned with only such reliefs which can be claimed by an election petitioner, i.e., for setting aside an election or declaring it void. A person to whom a notice under section 99 of the Act can be issued or may even ultimately be issued does not become a party to the election petition. He is really not effected by the declaration that may be given under section 98 of the Act and is not expected to have any interest in the election contest itself. Liability to be named under section 99 is not a question involved in the proceeding for setting aside of an election.

(Para 114).

Case referred by the Hon'ble Mr. Justice D. K. Mahajan,—vide his Lordship's order dated 20th August, 1971 to a larger Bench for deciding an important question of law. The Full Bench consisting of Hon'ble Mr. Justice D. K. Mahajan, the Hon'ble Mr. Justice Prem Chand Pandit and Hon'ble Mr. Justice R. S. Narula decided the case finally on 3rd November, 1971.

C.M. 25-*E*/1971.—*Application under sections 82 and 87 of the Representation of People Act, 1951 read with section 151 C.P.C. on behalf of S. Parkash Singh Badal, respondent No. 8 praying that his name be struck off from the array of parties and costs be allowed for unnecessarily dragging him to this Hon'ble Court.*

C.M. 26-*E*/1971.—*Application under Sections 82 and 87 of the Representation of People Act, 1951, read with section 151 C.P.C. on behalf of Shri A. S. Pooni, Deputy Commissioner, Ferozepur, respondent No. 9 praying that his name be struck off from the array of parties and costs be allowed for unnecessarily dragging him to this Hon'ble Court.*

M. L. SETHI, SENIOR ADVOCATE, G. R. MAJITHIA, RAJESH CHOWDHURY AND SATYA BHUSHAN LAL GUPTA, ADVOCATES WITH HIM), for the petitioner.

H. L. SIBAL, SENIOR ADVOCATE (MEJA SINGH SANDHU AND S. C. SIBAL, ADVOCATES WITH HIM), for the respondents.

REFERRING ORDER

D. K. MAHAJAN, J.—In this petition, the defeated candidate has called in question the election of respondent No. 1, Gurdas Singh Badal, from Fazilka Parliamentary constituency. The other respondents are Harnuman Das, Thandu Ram, Doonger, Pirthi Raj, Bhagrawat and Yog Raj, who were the other candidates in the election. The last two are S. Parkash Singh Badal, the then Chief Minister of Punjab, and Shri A. S. Pooni, I.A.S., Deputy Commissioner, Ferozepore, who was the returning officer. A reply has been filed on behalf of respondent No. 1 and to that reply, replication has been filed on behalf of the petitioner. No reply has been filed on behalf of Shri Parkash Singh Badal and Shri A. S. Pooni. On the other

hand, they have preferred two applications, Civil Miscellaneous Nos. 25-E and 26-E of 1971, praying that they cannot be impleaded as respondents in the election petition.

(2) The case was fixed for today to determine the preliminary objections raised by respondent No. 1, Gurdas Singh Badal. These preliminary objections are as follows:—

(1) That the petition, along with the enclosures is not verified in accordance with law.

(2) That the allegations in the petition regarding illegal and corrupt practices alleged to have been committed during the election are wholly vague, and, therefore, liable to be struck down.

(3) That the petitioner has not set out the material particulars which legally entitled him to have an inspection of the ballot boxes and other papers connected with the election or to claim a recount of the votes polled at the election.

(4) The petition is bad for misjoinder of respondents 8 and 9, Shri Parkash Singh Badal and Shri A. S. Pooni.

(3) The first contention that has been raised by the learned counsel for the respondent is about the impleading of respondents 8 and 9, Shri Parkash Singh Badal and Shri A. S. Pooni. In this connection, reliance has been placed on the scheme of the Act and the contention is that as no relief is claimed and can be claimed against these persons, they are neither necessary nor proper parties. It is also maintained that in an election dispute the candidates to the election are necessary and proper parties because the relief that an Election Court can give is regarding the validity of the election; in other words (1) as to whether the election is valid or void and (2) whether the defeated candidate should be declared as the returned candidate. On the other hand, there are authorities which have taken the view that the returning officer is a proper party to an election petition. Reference need be made to *Gidwani Choithram Partabrai* v. *Agnani Thakurdas Chuharmal* (1), *Dwijendra Lal Sen Gupta* v. *Harekrishna Konar* (2), *H. R. Gokhale* v. *Bharucha Noshir C. and*

(1) 1 E.L.R. 194.
(2) A.I.R. 1963 Cal. 218.

others (3), and *K. T. Kosalram* v. *Dr. Santhosham and others* (4). On the question of the impleading of Shri Parkash Singh Badal, the only reported decision is of the Assam High Court in *Amjad Ali* v. *B. C. Barua*, (5). The question as to whether persons, who are not candidates should be permitted to be impleaded as proper parties is a fundamental question and as there is no decision of this Court, it is proper that this matter is considered thoroughly, particularly when there are certain observations of the Supreme Court in *Ram Sewak Yadav* v. *Hussain Kamil Kidwai* (6), which have to be considered.

(4) The learned counsel for the parties are agreed that the other preliminary objections should be settled after the preliminary objection referred to above, has been determined by a large Bench.

(5) I, therefore, direct that the papers be laid before my Lord the Chief Justice for constituting a Full Bench to decide the fourth objection.

ORDER OF THE FULL BENCH

D. K. MAHAJAN, J.—(6) I have gone through the judgements prepared by my learned brothers Pandit and Narula, JJ. With utmost respect and with due deference to my learned brother Pandit J., I have not been able to persuade myself to agree with his opinion. However, I do agree with the opinion of my learned brother Narula J.

(7) The questions that have been canvassed before us are fundamental and are of considerable importance. They are :—

(1) Can any person, who is not a candidate and against whom allegations of corrupt practice have been made be impleaded as a party in an election petition ?

(2) Can a returning officer against whom allegations of illegality or *mala fides* or both in the conduct of the election are made be impleaded a party to an election petition ?

In fact, the answer to the first question will more or less conclude the answer to the second question. Unlike the English law, the Indian

(3) A.I.R. 1969 Bom. 177.
(4) A.I.R. 1969 Mad. 116.
(5) A.I.R. 1958 Assam 17=13 E.L.R. 285.
(6) A.I.R. 1964, S.C. 1249.

law does not deem the returning officer as a party to an election dispute. However, there being a conflict of judicial opinion on the second question, both the questions will be dealt with separately.

(8) My learned brethren in their opinion have dealt with these points and the case law cited before us very exhaustively. I have, therefore, refrained from dealing with the case law in detail. I merely propose to deal with the two questions on first principles.

(9) For a proper determination of the questions it will be profitable to keep in view certain settled propositions of law: —

(1) "The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity, but is a purely statutory proceeding unknown to the common law and that the court possesses no common law power." [See *Jagan Nath* v. *Jaswant Singh* (7)].

(2) "One of the essentials of the election law is also to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices. In cases where the election law does not prescribe the consequence or does not lay down penalty for non-compliance with certain procedural requirements of that law, the jurisdiction of the Tribunal entrusted with the trial of the case is not affected." [*See Jagan Nath's case* (7), supra].

(3) "The right to elect is statutory and so are all the processes connected with the election. There is no element of any common law right in the process of election. The trial of an election petition is not the same thing as the trial of a suit." [*See K. V. Rao* v. *B. N. Reddi* (8)].

(4) "Public interests equally demand 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." [See *Harish Chandra* v. *Triloki Singh* (9), and section 86(7) of the Representation of the People Act, 1951].

(7) A.I.R. 1954, S.C. 210.
(8) A.I.R. 1969, S.C. 872.
(9) A.I.R. 1957, S.C. 444.

(5) "The true scope of the limitation enacted in section 90(2) [now section 87(1)] on the application of the procedure under the Civil Procedure Code is that when the same subject matter is covered both by a provision of the Act or the rules and also of the Civil Procedure Code, and there is a conflict between them, the former is to prevail over the latter. This limitation cannot operate, when the subject-matter of the two provisions is not the same." [see *Harish Chandra's case* (9), (supra)]. In other words, where the field is occupied by the Representation of the People Act, the provisions of the Code of Civil Procedure covering that field will not operate and will yield to the provisions of the Representation of the People Act.

(10) A close examination of the scheme of the Representation of the People Act, 1951 (hereinafter to be referred to as the Act) shows:—

(a) The only forum in which an election dispute can be settled is the one provided by the Act and the rules made thereunder, i.e., the High Court (section 80-A) within the local limits of whose jurisdiction the election, to which an election petition relates, has been held [section 79(e)] is to try an election petition.

(b) The only method by which the election of a returned candidate can be challenged is by an election petition. Part VI is headed "disputes regarding elections". Section 80 in Chapter II of this Part provides:—

"No election shall be called in question except by an election petition presented in accordance with the provisions of this Part."

(c) The grounds on which the election petition can be presented are specified in sections 100 and 101.

(d) The persons who can present such a petition and the limitation within which it can be presented are set out in section 81.

(e) Who can be impleaded as respondents to such a petition are mentioned in section 82 which is headed "parties to the petition" and is in the following terms: —

"82. A petitioner shall join as respondents to his petition—

"(a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such declaration is claimed, all the returned candidates ; and

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

(f) Section 83 lays down what a petition must contain and reads thus : —

"83. (1) An election petition—

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

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings :

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the practice, the petition shall also be accompanied by an allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition."

(g) Section 84 provides for the relief that can be granted in an election petition and is in the following terms :—

"84. A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected."

(h) Section 86 provides for what orders the High Court can pass during the course of the trial of an election petition and is in the following terms :—

"86. (1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

Explanation.—An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.

(2) As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of section 80-A.

(3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.

(4) Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.

Explanation.—For the purposes of this sub-section and of section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to

appear before the High Court and answer the claim or claims made in the petition.

(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 and 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.

(6) The trial of an election petition shall, so far as is practicable consistently with the interest of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial."

(i) Section 87 provides the procedure to be followed in the trial of the election petition and runs thus:—

"87. (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.

(j) Sections 98 and 99 provide for the final orders in an election petition and are in the following terms :—

"98. At the conclusion of the trial of an election petition the High Court shall make an order —

(a) dismissing the election petition; or

(b) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

99. (1) At the time of making an order under section 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

(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) fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid ;

Provided that a person, who is not a party to the petition shall not be named in the order under sub-clause (ii) of clause (a) unless—

(a) he has been given notice to appear before the High Court and to show cause why he should not be so named; and

(b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness

who has already been examined by the High Court and has given evidence against him, of calling evidence in his defence and of being heard.

(2) In this section and in section 100, the expression 'agent' has the same meaning as in section 123."

(k) Sections 109, 110, 112 and 116 including section 86(4) provide for the addition of respondents and for the substitution of petitioners. In other words these provisions provide for the addition and substitution of a party to an election petition. These sections are set out below excepting section 86(4) which has already been reproduced :—

109. (1) An election petition may be withdrawn only by leave of the High Court.

(2) Where an application for withdrawal is made under sub-section (1), notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the Official Gazette.

110. (1) If there are more petitioners than one, no application to withdraw an election petition shall be made except with the consent of all the petitioners.

(2) No application for withdrawal shall be granted if, in the opinion of the High Court, such application has been induced by any bargain or consideration which ought not to be allowed.

(3) If the application is granted—

(a) the petitioner shall be ordered to pay the costs of the respondents thereto-fore incurred or such portion thereof as the High Court may think fit ;

(b) the High Court shall direct that the notice of withdrawal shall be published in the Official Gazette and in such other manner as it may specify and thereupon the notice shall be published accordingly;

(c) a person, who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner in place of the party withdrawing, and upon compliance with the conditions, if any, as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the High Court may deem fit.

112. (1) An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners.

(2) Where an election petition abates under sub-section (1), the High Court shall cause the fact to be published in such manner as it may deem fit.

(3) Any person, who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner and upon compliance with the conditions, if any, as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the High Court may deem fit.

116. If before the conclusion of the trial of an election petition the sole respondent dies or gives notice that he does not intend to oppose the petition or any of the respondents dies or gives such notice and there is no other respondent, who is opposing the petition, the High Court shall cause notice of such event to be published in the Official Gazette, and thereupon any person, who might have been a petitioner may, within fourteen days of such publication, apply to be substituted in place of such respondent to oppose the petition, and shall be entitled to continue the proceedings upon such terms as the High Court may think fit."

(11) The only other provision which has a bearing on the present controversy is section 123. Only a part of it is being reproduced as it suffices to illustrate the point. It 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 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) an elector to vote or refrain from voting at an election or as a reward to—

(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting.

(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) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature.

Explanation.—For the purposes of this clause the term 'gratification' is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses *bona fide* incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78."

It will appear from the scheme of these provisions that in the matter of the setting aside of an election of a returned candidate, a complete machinery in every detail has been provided.

(12) The contention of the learned counsel for the objectors, namely Shri Parkash Singh Badal, respondent No. 8, and Shri A. S. Pooni, respondent No. 9, is that they are not parties to an election dispute and, therefore, their names should be deleted from the array of parties.

It is straightaway conceded by the learned counsel for the election-petitioner that both these gentlemen are not necessary parties. He however, maintains that they are proper parties and for this reliance is placed on section 87 of the Act. This contention is met by the learned counsel for the objectors on the plea that the Act is a self-contained code. It indicates clearly as to who are the parties to an election dispute. It also provides that besides the parties originally impleaded, what other party and at what stage can be impleaded. It is stressed that with regard to the parties to an election petition including their addition or substitution, the field is occupied. Therefore, the Code of Civil Procedure must yield to that field and no party other than those mentioned in the Act can be impleaded either originally or by substitution or by addition.

(13) Before I deal with the respective contentions, I must make an observation that one must approach the matter disabusing one's mind with the notion of 'necessary and proper parties' in an ordinary civil litigation. This is a notion which would affect any mind which has been dealing with civil matters and may even cloud the issue when one is called upon to deal with a special statute like the Act.

(14) Section 82 is in the Chapter dealing with presentation of election petitions and indicates the parties to such a petition. But this section has to be read with section 81 for it cannot be envisaged that the petitioner is not a party to an election petition. It fact, section 82 merley tells us the respondents to the petition. It is not so worded as to permit any other parties being added as respondents, besides those mentioned therein. If there could be other parties to the petition than those mentioned in the section, it would have been worded as : "A petitioner may join as respondents to his petition all persons interested in the decision of the petition"; or "A petitioner shall join respondents to the petition those mentioned in section 82 and any other persons interested in the decision of the election, petition". If the intention was not to make section 82 exhaustive, its non-compliance would not have resulted in the dismissal of the petition. The legislature was well aware of section 99 on which much of the argument has been founded for the inclusion of proper parties. Can it be said that any person besides those mentioned in section 81 can present an election petition? If the Code of Civil Procedure is to control section 81, then any person interested in an election dispute can come and present an election petition but section 81 restricts the right to present an election petition to any candidate at such election

or any elector and the explanation restricts the meaning of the word "elector" to one who is entitled to vote in the constituency with regard to which the election dispute has arisen. It is significant that an elector who is not an elector in the constituency can come and contest the election in the constituency but such an elector is not given the right to present an election petition in the constituency in which he is not recorded as an elector. But if he is a candidate in that constituency, by virtue of his being a candidate, he has a right to present the election petition. It appears to me that sections 81 and 82 read together, tell us the parties to an election petition and wherever the legislature thought fit to make a departure it specifically provided for it in clear terms. In fact, section 86(4) is enacted to permit a candidate who is not impleaded a party under section 82 to get impleaded. If the object of the legislature was that any other person could claim to be impleaded nothing could have prevented it from including him in sub-section (4). In that eventuality, sub-section (4) would have been worded: "Any person not already a respondent" and not "Any candidate not already a respondent". It is significant that the right to get impleaded is restricted by a period of limitation specified in this very provision. It is true that the words "party", and "person" have been used in different provisions of the Act, but it appears that they have not been used in water-tight compartments. Their meaning has to be ascertained with reference to the context in which they have been used. What is significant is that the Act contemplates a petitioner and respondent as parties to the election petition and they are an elector and a candidate. For instance in section 82, the parties to be joined as respondents are described as "candidates" whereas in section 81, in addition to the candidate, a party can be an elector, though regarding each category of petitioner it is not said in so many words that he is a party to the petition. In section 83(1)(b), the requirement is that "the names of the parties alleged to have committed such corrupt practice" have to be set forth. In section 86(4) again, "candidate" is mentioned and it is not said: "a candidate who is not already a party", but on the other hand, "a candidate who is not already a respondent". Under section 99, all persons who have been proved at the trial to be guilty of any corrupt practice are to be named. The phrase "all persons" is used and it will include a petitioner, a respondent and any other person guilty of a corrupt practice. The grounds given in section 100 are for declaring the election of a returned candidate void, and section 101 sets out the grounds on which a candidate, other than the returned candidate, may be declared to have been elected. It will appear from

these two provisions that it is really the candidate whose election is either to be upheld or set aside or a defeated candidate can be declared as elected. All this happens after an election petition is filed. There may be any number of corrupt practices committed in an election, but if no petition is filed they will never come to light, nor would the provisions of sections 100, 101 or 99 come into play.

(15) At this stage, mention may also be made that there are certain electoral offences mentioned in sections 125 to 136 and these offences have to be tried in the ordinary courts of law and some of them have been made cognizable. Therefore, barring the electoral offences, the other matters enumerated in sections 99, 100 and 101 can only be determined in an election petition and that too by a special procedure prescribed in the Act.

(16) The scheme of the Act is that only those persons can be parties who are expressly mentioned in the Act. It hardly matters that when steps are taken under section 99 in the matter of naming persons guilty of corrupt practices those who are not parties to the election petition can only be proceeded against after a notice to them why they should not be named has been issued. This does not mean that they become parties to an election petition. To take an example, a witness to whom a notice for perjury is issued does not become a party to a trial. In fact, section 99 has nothing to do with the question of parties to an election petition. To hold to the contrary will lead to strange results. For instance, all persons against whom any allegation of corrupt practice is made, and such person can be innumerable, will have to be impleaded and it will defeat the very object of a speedy trial as envisaged by section 86(7).

(17) There is another way of looking at the matter. The trial is that the returned candidate has committed a corrupt practice and his election should be declared void. Another relief is open to the petitioner, namely that he can claim that instead of the returned candidate he may be declared elected. In fact, these are the two reliefs that are open in an election petition. What section 99 contemplates is not a relief. It is a penal provision for bringing to book persons who are guilty of corrupt practices. If reference is made to section 123 of the Act, it will appear that corrupt practices are committed by a candidate. The persons who aid or abet are either his agents or persons who act under his behest. In other words, if a person actually

works in an election but is not the agent of the candidate and is also not working with his consent commits a corrupt practice, it will not be a corrupt practice within the meaning of section 123. In the trial of an election petition, such a person does not figure at all. Therefore, the concept of parties has to be examined *vis-a-vis* section 123 and the only parties who are really necessary or proper for the trial of an election petition are those mentioned in the Act itself and none other. Take, for instance, a case where no corrupt practice is alleged within the meaning of section 123, i.e., neither the candidate nor his agent nor any other person with the consent of the candidate has committed a corrupt practice. The allegation is that in the election a person wholly unconnected with the candidate has committed a corrupt practice and as relief under section 99, as the learned counsel for the petitioner puts it, is available to him and he is impleaded a party. Though the petitioner will fail for want of allegations against the returned candidate, it can still proceed against the person who is unconnected with the candidate but has committed the corrupt practice. The learned counsel for the petitioner was constrained to admit that such a course is not permissible under the Act. If such a person is a proper party and indeed he would be a proper party, as understood in the Code of Civil Procedure, there is no reason why such a petition should not proceed to trial to further the ends of section 99. It is, therefore, obvious that the so-called proper parties are not parties to an election dispute and if it was so, the result would be fantastic. Therefore, it hardly matters that very grave allegations have been made against the returning officer and Shri Parkash Singh Badal and a relief has been claimed in the petition that both of them should be named under section 99 of the Act as persons who have committed corrupt practices. If ultimately the court finds them guilty of such practices it can proceed against them under section 99 and if this is done, notice will issue to them and they will be heard.

(18) I look at section 99 in a totally different context. This is a provision which does not give a right to the party to a petition to have somebody named as guilty of corrupt practice if during the trial the Court comes to a tentative conclusion that he is guilty of such a corrupt practice. But before naming him, the Court must give him a notice and hear him so that he is not condemned unheard unless he is a party to the election petition. That is why this Court was driven to the conclusion that an order under section 99 must be passed

simultaneously with an order under section 100. [*See S. Partap Singh Kairon* v. *S. Kartar Singh Chadha,* (10)].

(19) The proper way to ascertain the true import of section 82 is to read this section not in an isolated manner but in the entire set up of the election trial and if this is done, it will appear that whenever the farmers of the Act thougrt fit to permit an addition of a party or to admit substitution of a party, they specifically provided for it. I have no hesitation in holding that the entire field as to parties in an occupied field so far as election petition is concerned and it is not open to the Court to resort to section 87(1) and under its cover hold that anyone besides those mentioned in sections 82, 86(4), 110, 112 and 116 can be impleaded as parties to the petition. In fact, the notion of 'necessary and proper parties' is not germane to the election dispute. The dispute is between the petitioner on one hand and the respondents on the other. The mere fact that this dispute visits someone who is not a party to the petition with the consequences mentioned in section 99, does not necessarily make him a party to the petition. If the intention of the legislature was that such a person should be party to the petition, nothing could have prevented the legislature from framing section 82 in that manner. In terms of section 87, the provisions of the Code of Civil Procedure are excluded on matters for which provision has been made in the Act itself. So far as the array of parties is concerned, a specific provision has been made and, therefore, it is idle to suggest that anyone other than those who have been mentioned in the Act can be parties in an election petition.

(20) The view I have taken of the matter finds ample support from the observations of the Supreme Court in *K. V. Rao* v. *B. N. Reddi,* (8). In this decision, their Lordships categorically stated that no addition of parties is possible in the case of an election petition except under the provisions of sub-section (4) of section 86 of the Act. To a similar effect is the decision in *Amjad Ali* v. *B. C. Barua* (5). It was held in this case that section 82 is exhaustive in the matter of parties to an election petition.

(21) In England, the law makes the returning officer a party to the election petition. The framework of the Indian Act is based on the English Act and yet the framers of the Act did not think it advisable to make the returning officer a party to the election petition. In

(10) A.I.R. 1959 Pb. 309.

fact, the Supreme Court in *Ram Sewak Yadav* v. *Hussain Kamil Kidwai* (6), observed :—

> "The returning officer is not a party to an election petition and an order for production of the ballot papers cannot be made under Order 11, Code of Civil Procedure."

It is significant that the Supreme Court did not say that he was not a party to the election petition before them, but used the expression that "he is not a necessary party to an election petition". In case, he was a proper party, observations to that effect would have been made and the Supreme Court would not have observed that "the Court was not powerless and can permit the production of the documents by the returning officer even if he was not a party in the interests of justice". If he was a proper party, the problem would have been solved by impleading him as such. It cannot be disputed that a proper party can be impleaded under the Code of Civil Procedure at any time. It is only in the case of a necessary party under the Code of Civil Procedure that the rule of limitation steps in.

(22) So far as the returning officer is concerned, there is a line of cases beginning with *G. C. Partabrai* v. *A. T. Chuharmal* (1), which have taken the view that in case there are allegations of *mala fides* made against the returning officer, he would be a proper party to the election petition. This view has been adopted by the Calcutta High Court in *Dwijendra Lal Sen Gupta* v. *Harekrishna Konar* (2), *H. R. Gokhale* v. *Bharucha Noshir C. and others* (3), and *K. T. Kosalram* v. *Dr. Santhosham* (4), whereas the contrary view has been taken in *Returning Officer, Atmakur,* v. *G. C. Kondaiah* (11), wherein it has been held that section 82 is exhaustive.

(23) It appears to me that the decisions which have taken the view that proper parties can be impleaded in an election petition including a Returning Officer, with utmost respect to the learned Judges who have taken that view cannot be held to be good law in view of the scheme of the Act and the various provisions as to impleading of parties made therein. In my view, neither Shri Parkash Singh Badal nor the Returning Officer can be impleaded as a party to the election petition. If they are found to be guilty of corrupt practices during the trial, section 99 will naturally come into play and

(11) 22 E.L.R. 45.

after they had been heard they can be named. That is a duty enjoined on the Court and is not a matter on which an election petition can be grounded. In fact, that is not a ground for calling in question the election of a returned candidate.

P. C. Pandit, J.

(24) I have gone through the judgment prepared by my learned brother Narula, J., but, I say so with respect, that I have not been able to persuade myself to agree with him and that is why I am writing my separate judgment.

(25) The election to the Fazilka Parliamentary Constituency was held in March, 1971, wherein Shri Gurdas Singh Badal was declared elected. Shri Iqbal Singh, one of the defeated candidates, filed an election petition challenging the said election. Therein, he impleaded all the candidates, who contested the election, as respondents. In addition to them, Shri Parkash Singh Badal, the then Chief Minister of Punjab and brother of the successful candidate, and Shri A. S. Pooni, I.A.S., Deputy Commissioner, Ferozepur, who was the Returning Officer, were also made respondents Nos. 8 and 9.

(26) Shri Gurdas Singh Badal filed a written statement and thereafter a replication was put in by the petitioner. Applications under sections 82 and 87 of the Representation of the People Act, 1951 (hereinafter called the Act) read with section 151, Code of Civil Procedure, on behalf of respondents Nos. 8 and 9 were made praying that their names be struck off from the array of parties and costs be awarded to them for unnecessarily dragging them in the litigation.

(27) The petitioner contested these applications by filing his replies to them.

(28) One of the preliminary objections raised in the case was :

"The petition is bad for misjoinder of respondents 8 and 9, Shri Parkash Singh Badal and Shri A. S. Pooni."

(29) Arguments were addressed by the counsel on this preliminary objection before D. K. Mahajan, J., who was trying the election petition. It was contended on behalf of respondents Nos. 8 and 9 that they were neither 'necessary' nor 'proper' parties and no relief was claimed or could be claimed against them in the election petition. According to them, only the candidates in the said election were necessary and proper parties.

(30) The position taken by the petitioner, on the other hand, was that both the respondents were 'proper parties' to the petition and their names could not be deleted from the list of respondents.

(31) Some authorities were cited before the learned Judge, which had taken the view that the Returning Officer was a 'proper party' to an election petition. As regards the impleading of respondent No. 8, attention of the learned Judge was invited to a decision of the Assam High Court in *Amjad Ali* v. *B. C. Barua and others* (5), in which the learned Judges seemed to have taken the view that section 82 of the Act was exhaustive of the parties to an election petition.

(32) The learned Judge was of the opinion that the question as to whether the persons, who were not candidates in the election, should be permitted to be impleaded as 'proper parties' in an election petition, was an important one and as there was no decision of this Court on this point, it deserved to be settled by a Full Bench. That is how the matter has been placed before us.

(33) It is common ground that in the election petition allegations of corrupt practices having been committed by respondent No. 8 as an agent of his brother, the successful candidate, have been made. It has also been stated that respondent No. 8, who was the Chief Minister of the Punjab State at that time, used his entire official machinery to further the chances of his brother. As regards the Returning Officer, it was alleged that he had committed illegalities in passing various orders against the rules and the statute. Charges of *mala fides* had also been levelled against him. It was said that he committed these irregularities under the undue influence of respondent No. 8. The petitioner had claimed that the election of Shri Gurdas Singh Badal be declared void and he be disqualified for a period of six years and further that the former be declared duly elected under section 101 of the Act. It was also prayed that in accordance with the provisions of section 99 of the Act, Shri Parkash Singh Badal, respondent No. 8, be held to have been guilty of corrupt practices as stated in the petition and he too be disqualified for a period of six years as enjoined under section 8-A of the Act.

(34) The question for decision is whether the names of respondents Nos. 8 and 9, who have been impleaded as parties to the election petition, be struck off from the list of respondents. Two applications for this purpose, as I have already mentioned, were made

ɔy the said respondents under sections 82 and 87 of the Act read with ;ection 151, Code of Civil Procedure.

Sections 82 and 87 of the Act read—

82. "Parties to the petition—A petitioner shall join as respondents to his petition—

(a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

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

"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."

(35) It will be seen from the above that these sections do not deal with the deletion of parties to an election petition. The argument ırged on behalf of the respondents on the basis of section 82 was that 'n an election petition only the cadidates, who stood in the election were the "necessary parties". If the petitioner was only claiming

that the election of the returned candidate be declared void, then that returned candidate alone would be a 'necessary party'. If he was also wanting a further declaration that he himself should be declared as the duly elected candidate in the said election, then all the contesting candidates would be "necessary parties". This section goes on to say that if allegations of any corrupt practice have been made in the petition against any other candidate, then he must be made a respondent in the petition. It was contended that no other person could be impleaded as a respondent and, therefore, the names of respondents 8 and 9 should be deleted. Is section 82 exhaustive on the subject of "parties to the petition"? This section provides for the parties who shall be joined as respondents to an election petition, that is, "necessary parties", and if any of them is not joined as a respondent the petition shall be dismissed (*vide* section 86). But it will be noticed that section 82 does not in terms prohibit the addition of other persons as respondents in the election petition. It does not provide that any other person shall not be made a party. It only mentions the persons, who *must* be impleaded as such. In other words, it specifies the necessary parties to an election petition. There is no doubt about the proposition that the candidates mentioned in the said section are "necessary parties" and if the petitioner does not comply with the provisions of this section then his petition has to be dismissed under section 86(1) of the Act. This section, however, does not solve the problem before us. There is indisputably a distinction between 'necessary' and 'proper' parties. A 'necessary party' is one without whom no order can be made effectively; a 'proper party' is one in whose absence an effective order can be made, but whose presence is necessary for a complete and final decision on the question involved in the proceeding. (See in this connection *Udit Narain Singh Malpaharia* v. *Additional Member Board of Revenue, Bihar and another* (12). The question is—Do the provisions of the Act prohibit the impleading of 'proper parties' to an election petition? Is it the intention of the Act that only the 'necessary parties', as mentioned in section 82, should be impleaded? It is true that this section tells us as to who are the 'necessary parties in an election petition and there is no section in the Act, which talks of 'proper parties'. It is equally true that there is no provision in the Act, which deals with the deletion of parties already impleaded as respondents or which prevents the impleading of 'proper parties'. Section 87 of the Act lays down that an election petition shall be

(12) A.I.R. 1963, S.C. 786.

tried, as nearly as may be, in accordance with the procedure laid down in the Code of Civil Procedure for the trial of a suit, but this would be subject to the provisions of the Act and the Rules framed thereunder.

(36) It was contended by the learned counsel for respondents Nos. 8 and 9 that the Act was a complete Code in itself and the provisions of the Code of Civil Procedure would apply only if no specific provisions had been made in the Act or the Rules made thereunder for a particular matter. Learned counsel could not, however, point out any section in the Act or Rule framed thereunder, according to which a 'proper party' could not be impleaded as a respondent in the petition or if impleaded his name could be struck off from the array of parties. His entire argument was that section 82 mentioned the persons, who had to be impleaded as respondents and if somebody was not covered by that section, he could not be made a party to an election petition, and further that if some person had been impleaded against the provisions of that section, then his name had to be deleted.

(37) As I have already said, this section only specifies 'necessary parties' to an election petition and nothing more. It does not create a bar in the impleading of 'proper parties' nor it says that the names of the parties, who have already been impleaded, should be deleted, because they were only 'proper' and not 'necessary parties'. So it has to be held that the Act and the Rules framed thereunder do not debar the impleading of 'proper parties' to an election petition and further that there is no section or rule under which the names of 'proper parties' already impleaded can be scored off.

(38) We are then left with the provisions contained in the Code of Civil Procedure regarding this matter. It cannot be disputed that the trial of an election petition has to be held in accordance with them, if they are not in conflict with those of the Act or the Rules made thereunder. The only provision that is relevant for this purpose is Order I, rule 10, the relevant part of which reads :

"10. (1) * * * *

(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name

of any person who ought to have been joined, whether as plaintiff or defendant or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

(39) Under Order 1, rule 10(2) of the Code of Civil Procedure, the Court can order that (1) the name of any party improperly joined, whether as plaintiff or defendant, be struck out; (2) the name of any person who ought to have been joined, whether as plaintiff or defendant, be added; and (3) the name of any person, whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added. Under this provision, the Court can direct the addition of a party, whose presence is felt necessary in order to effectually and completely settle all the questions involved in the suit and this power can be exercised at any stage of the trial of the suit. If respondents Nos. 8 and 9 want this Court to strike off their names under this provision, they have to show that their names had been improperly joined or their presence before the Court was not necessary for a complete and final decision of the questions involved in the petition. It has already been stated above that in the election petition, serious charges of corrupt practices have been levelled against respondent No. 8 and several illegalities and *mala fides* have been attributed to respondent No. 9. A prayer has been made in the said petition that respondent No. 8 be held to have been guilty of corrupt practices and he be disqualified for a period of six years. In view of these allegations and the relief claimed in the petition, can it be said that these two persons had been improperly joined as resondents or that their presence was not necessary to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the election petition? If in a plaint allegations are made against one of the defendants and relief is claimed against him on the basis of those allegations, it cannot be said that he has been improperly joined as a defendant. If the plaintiff fails to prove those allegations, then his suit would be dismissed against the said defendant and he will also be burdened with costs. But it is not possible to hold that the name of the said defendant deserves to be struck out on the ground that he had been improperly joined. No judicial decision of any Court had been brought to our notice taking a contrary view. Besides, it is idle to suggest that when so many serious allegations

have been made against respondents Nos. 8 and 9 in the election petition, their presence before the Court would not be necessary for enabling it to effectually and completely adjudicate upon them. It has, therefore, to be held that respondents Nos. 8 and 9 are 'proper parties' to the election petition and their names cannot be struck off under the provisions of Order 1, rule 10(2) of the Code of Civil Procedure.

(40) It was submitted by the learned counsel for the respondents that the provisions of Order 1, rule 10(2) of the Code of Civil Procedure, could not be applied and these respondents could not be impleaded on the ground that they were proper parties to the election petition, because according to section 87 of the Act although the provisions of the Code would be applicable to the trial of an election petition, but that would be subject to the provisions of the Act and the rules made thereunder. According to the learned counsel, it was only section 82 of the Act, which dealt with the parties to an election petition and no person, who was not covered by that provision, could be made a party. In other words, only the candidates were the necessary and proper parties in an election petition and nobody else. Even if a proper party could be impleaded under Order 1, rule 10(2) of the Code of Civil Procedure, that provision would not apply in the presence of section 82 of the Act.

(41) I have already held above that section 82 only deals with the 'necessary parties' to an election petition. This section is not exhaustive of all the parties to such a petition. If there was any provision in the Act, which debarred the impleading of any other person to an election petition except those mentioned in section 82, then it could perhaps be urged that the provisions of Order 1, rule 10, Code of Civil Procedure could not be made applicable. But, as already stated, there is no such provision either in the Act or the Rules framed thereunder. Consequently, the provisions of Order 1, rule 10(2), Code of Civil Procedure, would be applicable to an election petition and proper parties could be impleaded and the names of those, who had been improperly joined as respondents, could be deleted from the array of parties.

(42) Reference was then made by the learned counsel for the respondents to section 86(4) of the Act, which reads :

> "86(4) Any candidate not already a respondent shall, upon application made by him to the High Court within

fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent."

(43) On the basis of this provision, it was urged that apart from the parties mentioned in section 82, any candidate could apply under this section for being impleaded as a respondent. According to the learned counsel, this was the only exception to section 82, made by the Act. The argument proceeded that if other persons, besides those mentioned in section 82, could be impleaded as proper parties, the Act would have so stated in any of its provisions or it would have been so mentioned in the Rules made thereunder. According to the learned counsel, the only other person who could be impleaded as a proper party was stated in section 86(4) and nobody else.

(44) There is no substance in this contention. Section 86(4) only empowers a candidate, who has not already been impleaded as a respondent, to make an application to the High Court within a specified period for being made a respondent and he would be entitled to be joined as such subject to any order as to security for costs. Under this provision, no right has been given to the election petitioner to implead a candidate. It is the candidate's own choice to make an application under this section. This provision does not deal with 'proper parties' to an election petition and, therefore, it cannot be said that such a candidate, as mentioned in section 86(4), was the only 'proper party' contemplated by the provisions of the Act.

(45) Learned counsel for the respondents placed great reliance on two decisions of the Supreme Court, viz., *Ram Sewak Yadav* v. *Hussain Kamil Kidwai and others* (6) and *K. Venkateswara Rao and another* v .*Bekkam Narasimha Reddi and others* (8), and submitted that the said authorities laid down that no other person except the candidates could be impleaded as parties in an election petition.

(46) In *Ram Sewak Yadav's case* (6), attention was invited to paragraph 6 of the judgment, where it was stated :

"An election petition must contain a concise statement of the material facts on which the petitioner relies in support

of his case. If such material facts are set out, the Tribunal has undoubtedly the power to direct discovery and inspection of documents with which a Civil Court is invested under the Code of Civil Procedure when trying a suit. But the power which the Civil Court may exercise in the trial of suits is confined to the narrow limits of Order 11, Code of Civil Procedure. Inspection of documents under Order 11 Code of Civil Procedure may be ordered under Rule 15, of documents which are referred to in the pleadings or particulars as disclosed in the affidavit of documents of the other party, and under Rule 18(2) of other documents in the possession or power of the other party. The returning officer is not a party to an election petition and an order for production of the ballot-papers cannot be made under Order 11, Code of Civil Procedure. But the Election Tribunal is not on that account without authority in respect of the ballot-papers. In a proper case where the interests of justice demand it, the Tribunal may call upon the returning officer to produce the ballot-papers and may permit inspection by the parties before it of the ballot-papers : that power is clearly implicit in sections 100(1)(d)(iii), 101, 102 and Rule 93 of the Conduct of Election Rules, 1961. This power to order inspection of the ballot-papers which is apart from Order 11, Code of Civil Procedure may be exercised, subject to the statutory restrictions about the secrecy of the ballot-paper prescribed by section 94 and 128(1)."

(47) On the basis of the above observations, it was said that according to the Supreme Court, a returning officer was not a party to an election petition and, consequently, an order for production of the ballot-papers could not be made under Order 11 of the Code of Civil Procedure. In this case, the Tribunal had dismissed the election petition and an appeal against that order was filed before the High Court of Allahabad. The said Court reversed the order of the Tribunal and remanded the case for trial with a direction among others that the Tribunal should give reasonable opportunity to both the parties to inspect the ballot-papers and the other connected papers. The successful candidate, namely, Ram Sewak Yadav, took an appeal to the Supreme Court against the order of the High Court. The only question which fell for determination in that appeal was

whether the Election Tribunal had erred in declining to grant an order for inspection of the ballot-papers. The Supreme Court accepted the appeal, because in its view the High Court was in error in interfering with the exercise of discretion by the Election Tribunal, which proceeded upon sound principles. During the course of its judgment, the above observations were made by the Supreme Court. It is noteworthy that the Returning Officer had not been impleaded as a party to that election petition. It would thus be seen that the precise question that is before us, namely, whether the names of persons, other than the candidates, who had been impleaded in an election petition, could be deleted, did not arise for decision in *Ram Sewak Yadav's case,* (6).

(48) In *K. Venkateswara Rao's case,* (8) one of the candidates, who stood in the election, was made to withdraw on payment to him of illegal gratification by another candidate. It was held that the taint of corrupt practice attached both to the payee and the payer of illegal gratification and the candidate withdrawing was a necessary party to the election petition and since he was not joined as such within limitation, the High Court had no power to allow addition of his name after limitation. While deciding this case, the Supreme Court observed :—

"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 a 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 the 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 82 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 the Section 81. Under Section 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."

(49) On the strength of these observations, it was argued that no addition of parties was possible in the case of an election petition except under the provisions of section 86(4) of the Act.

(50) In the first place, the point to be decided by the Supreme Court was different from the one we are considering. Secondly, in the instant case, there is no question of the addition of any party to an election petition. Respondents Nos. 8 and 9 have already been impleaded as parties and it is they who are wanting that their names be struck out. Thirdly, in the Supreme Court case, the question was of adding a "necessary party" after the limitation for filing the election petition was over. There is no such position in the instant case. It would, therefore, be seen that the above mentioned Supreme Court ruling does not deal with the point in issue in the present case.

(51) Both the Supreme Court decisions are, therefore, in my opinion no authority for the proposition that nobody except the candidates can be impleaded as respondents in the election petition and if somebody else has already been made a party, his name has to be scored off.

(52) It is plain that unlike a civil suit, where the dispute is confined to the plaintiff and the defendant, in an election petition the Tribunal is not concerned only to find out whether the election petitioner is entitled to the relief claimed, namely, whether the election should be set aside or not, it has further to give a finding whether the allegations of corrupt practices, which are alleged to have been committed at the election, have been established or not. It was held by the Supreme Court in *Raj Krushna Bose* v. *Binod Kanungo and others*,, (13) :—

"——it is essential that Tribunals should do their work in full and decide the whole case. If any charge of corrupt

(13) 9 E.L.R. 294.

practice is made their duty does not end with declaring the election void, but they must also, as laid down in section 99 of the Act, record a finding whether any corrupt practice has or has not been committed and the nature of the corrupt practice and also the names of the persons found guilty of any corrupt practice."

(53) As pointed out by Balakrishna Ayyar, J., in *A. Sreenivasan* v. *Election Tribunal, Madras and another,* (14) an election petition is not a matter in which the only persons interested are the candidates, who fought against each other in the elections. The citizens at large have an interest in seeing and they are justified in insisting that elections are free and not vitiated by corrupt or illegal practices.

Sections 98 and 99 of the Act read :

"98. Decision of the High Court—At the conclusion of the trial of an election petition the High Court shall make an order—

(a) dismissing the election petition; or

(b) declaring the election of all or any of the returned candidates to be void; or

(c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

99. Other orders to be made by the High Court—(1) At the time of making an order under section 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

(14) 11 E.L.R. 278.

(b) fixing the total amount of costs payable and specifying the persons by and, to whom costs shall be paid :

Provided that a person who is not a party to the petition shall not be named in the order under sub-clause (ii) of clause (a) unless—

(a) he has been given notice to appear before the High Court and to show cause why he should not be so named; and

(b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by the High Court and has given evidence against him, of calling evidence in his defence and of being heard.

(2) In this section and in section 100, the expression 'agent' has the same meaning as in section 123".

(54) According to section 99, where a charge of any corrupt practice has been made in a petition, the High Court has to record a finding whether the said corrupt practice has been committed at the election or not. It has also to name the person, who has been proved at the trial to have been guilty of any corrupt practice. If that person is not already a party to the election petition, he shall not be named in the order of the High Court, unless he is given notice to show cause why he should not be so named and further he is given an opportunity of cross-examining any witness who has already been examined by the High Court, and producing evidence in his defence. The proviso to section 99 obviously visualizes that such a person can, in a particular case, be already a party to the petition and in that eventuality he will not be given any show cause notice or the right to cross-examine the witnesses already examined and an opportunity to produce evidence in defence. Suppose in some case, according to the election petition, a particular person has committed a number of corrupt practices at an election either as an agent of the successful candidate or with his consent, why can he not be impleaded as a respondent in the election petition from the very beginning ? By doing so, there will be two distinct advantages. Firstly, the election petition will be tried expeditiously and there will be every likelihood of its trial being concluded within six months

as contemplated by section 86(7) of the Act. Secondly, the double trial of the petition will be obviated. Take for instance the present case. In the election petition practically all the allegations of corrupt practices have been levelled against respondent No. 8, with the result that the entire evidence will be recorded against him. At the conclusion of the trial, if this Court is *prima facie* of the opinion that he is proved to be guilty of the corrupt practices, a notice will have to go to him to show cause as to why he should not be named, if he is not a party to the petition. He will then appear in pursuance of the notice and is likely to call all the witnesses who had been examined in his absence for the purpose of cross-examining them and he will then produce evidence in his defence. Thus, there would be practically a double trial of the same petition. If the original trial had taken about six months, another six months or perhaps more would be required after the issue of the notice to respondent No. 8. The election petition would thus not be finished within the desired period. Such an intention could not be ascribed to the Legislature. On the other hand, there does not seem to be any harm in impleading respondent No. 8 from the very start. The only submission made in this connection by the learned counsel for the respondents was that there was no reason why other persons, apart from the candidates, be unnecessarily dragged in the litigation, before this Court *prima facie* comes to the conclusion on the evidence produced by the election petitioner that a particular person is guilty of a corrupt practice. The reply to this submission, in my opinion, is a simple one. No petitioner would like to implead persons unnecessarily as respondents, because it will always be his desire that his petition should be disposed of as quickly as possible. By impleading more persons than those who are absolutely necessary, he will himself be delaying the trial of the election petition. If the impleaded person feels that he is being brought in the controversy without any reason and if, according to him, there is absolutely no case against him, he can well-afford to remain absent and allow the proceedings to go *ex parte*. If, on the other hand, he is of the view that he has to meet a case, it is equally good for him that he should be associated with the whole matter from the very beginning so that he can see how the case is proceeding. If such a person can be made a party to the petition later at the conclusion of the trial, I see no reason as to why he cannot be impleaded at the very start. By adopting the interpretation put on sections 82 and 99 by the learned counsel for the respondents, it would, in a way, be giving a handle to such

persons to prolong the trial of the election petition for a considerably long period. One cannot lose sight of the fact that no petitioner would ordinarily like to delay the trial of his election petition by impleading unnecessary parties and on the other hand, it is the anxiety of the respondent to prolong it as much as possible. The intention of the Legislature in this respect has been made clear by section 86(7) of the Act, where it is stated that every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial. The interpretation sought to be put on section 82 by the learned counsel for the petitioner would, in my opinion, also fulfil the intention of the Legislature as envisaged in section 86(7) of the Act.

(55) Thus it will be seen that by virtue of section 99 of the Act, the Court trying the election petition has to pass an order naming any person, who has been proved at the trial to have been guilty of any corrupt practice, as a part of the order under section 98. So naming of a party guilty of a corrupt practice is one of the matters involved in the election petition. It is not indicated in the section as to the stage at which such a person should be joined as a party to the proceedings. All that is said is that if he is not already a party, he should be given notice, afforded an opportunity of cross-examining the witnesses, who have deposed against him, and adducing his own witnesses in defence. If he is already a party and he had during the trial the opportunity to cross-examine the witnesses deposing against him and produce witnesses in his defence, no further opportunity is required to be given to him. The power of joining him as a party to the proceedings in an election petition for this purpose can be exercised by the Court at any time during the trial under Order 1, rule 10(2) of the Code of Civil Procedure. Such a power does not come into conflict with either section 82 or section 99 of the Act. On the other hand, the exercising of such a power at an early stage of the trial of an election petition will be more desirable in the interests of the expeditious disposal of an election petition, which has now been highlighted in the Act as an essential object to be achieved. If the Court waits till the end of the trial to make him a party by issuing a notice to him, the election petition *qua* that corrupt practice shall have to be tried afresh, which will consume a good deal of time. The service of notice on such a party may take some time. Some of the witnesses who had deposed against him may

not be available owing to death or any other cause and the cross-examination of the witnesses who are available and the examination of defence witnesses will take considerable time and all this procedure will delay the decision of the election petition, which is against the policy and object of the Act.

(56) Section 99 of the Act, in my view, only prescribes the time when the order *naming a person* as guilty of having committed a corrupt practice is to be recorded and not necessarily the time when *notice* is to be issued to such a person. All that has been stated in the proviso is that if such a person is not already on the record, he shall be issued a notice and heard, afforded a chance to cross-examine witnesses who have deposed against him, and given an opportunity to lead his defence evidence. It may happen that the petitioner produce one or two witnesses with regard to a particular corrupt practice having been committed by a person who is not a party to the petition, and the Court is *prima facie* satisfied from the evidence of that witness or those witnesses, that he might have to be named under section 99, there is nothing in that section debarring the Court from issuing notice to him at that stage and before the conclusion of the trial of the election petition. Similarly, there is nothing in that section to prevent the Court from refusing to delete a party from the array of respondents, if after considering the allegations in the petition and documents, if any, it is of the opinion that a *prima facie* case of having committed a corrupt practice exists against him and that there will be likelihood of the party being named under section 99. It is significant to mention that section 99 itself uses the words "party" and "person". According to respondents 8 and 9, no person other than a candidate, can be made a party to the election petition, because section 82 and 86(4) only talk of candidate, but section 99 contemplates that some persons found guilty of having committed a corrupt practice are already parties to the petition, which includes persons other than the candidates, as in section 83 of the Act the names of the parties having committed corrupt practices have to be specified.

(57) It is true and cannot be denied that section 82 of the Act provides for the necessary parties to the petition whose non-joinder will have the effect of summarily dismissing the election petition without a trial. It is also clear that under section 86(4), any

candidate, not already a respondent can be joined as such, if an application is made by him for that purpose within the time prescribed therein. Section 99 provides that it is the duty of the Court to name a *person* as guilty of having committed a corrupt practice, if a case is proved against him and whether he is a party to the petition or not. In addition to these provisions, section 83 of the Act points out as to who is to be made a party to the petition in case a corrupt practice is alleged therein. The full particulars of the corrupt practice have to be stated including the *names of the parties* alleged to have committed such corrupt practice. The use of the word "parties" in this section is significant. The section does not speak of "persons" but of "parties", and it would appear that the impleading of "proper parties" other than the "necessary parties" is already conceived of in the scheme of the Act. In section 123, wherein "corrupt practice" is defined, the word used is any "person". From that definition, it is clear that a corrupt practice can be committed by the election agent of the candidate or any other person with the consent of the candidate or his election agent and if such a corrupt practice is proved, the candidate, his election agent and any other person committing the corrupt practice can be named under section 99 of the Act. The legislature is supposed to know the difference between "person" and "parties" especially when these different words are used in the various sections of the Act and sometimes in the same section, viz., section 99. The use of the word "parties" in section 83, is, therefore, not without reason and it means that any person, who is alleged to have committed a corrupt practice, has to be made a party to the petition and if not made so, the particulars of that corrupt practice alleged will not be full and the same may not be tried. So if such a person is not made a party to the petition, the petitioner will run the risk of that corrupt practice being scored out or not tried on the ground that the person against whom the allegation has been made, has not been made a party to the petition. There is a good reason for doing so. Holding a person guilty of a corrupt practice is quite a serious matter. Proceedings for that purpose are of a quasi-criminal nature and it is only proper that they should not be conducted behind his back. He must be associated with them from the very start and that is why he should be impleaded as a party to the election petition. One should not forget that he has to be called as a witness to prove the corrupt practice. If he is added as a party from the beginning, the only additional thing he is required to do

is to put in his written statement and meet the case alleged against him.

(58) Even if it is held that the word "parties" in section 83(1) (b) means "persons", under this provision the petitioner has to set forth full particulars of any corrupt practice that he 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. While setting forth such particulars, the petitioner can visualize that if he is able to prove them, the persons mentioned by him as having committed that corrupt practice shall have to be named in the final order by the Court and in order to avoid delay in the disposal of the petition, he can make such persons (named by him in the petition in connection with the corrupt practice) respondents to the election petition, so that a notice can be issued to them in the very beginning of the trial and they are afforded an opportunity to defend themselves. No bar to such a course being adopted is to be found either in section 82 or section 99 of the Act. It has been held in *Tirath Singh* v. *Bachittar Singh and others,* (15), that the original notice to a respondent to an election petition serves both as a notice of the election petition as also for naming him under section 99 of the Act. On the parity of reasoning a person alleged to have committed the corrupt practice can be added as a respondent to the election petition right from the beginning and it is not necessary that he should be joined as a party to the proceedings after the trial is over and the Court has given a finding about his guilt. The argument that such a person should not be dragged into Court till he is found to be guilty, has no force, because if he is exonerated of the allegations he can be suitably compensated by the award of costs.

(59) It was suggested by the learned counsel for the respondents that if all persons against whom allegations of corrupt practices have been made in the election petition are allowed to be impleaded as respondents, then the petitioner would be well within his rights to implead innumerable persons as respondents and thus make the trial cumbersome, which could not be the intention of the Legislature.

(6) There is no substance in this contention. As I have already mentioned, the election petitioner would like to see that his petition is disposed of expeditiously and he would not desire to implead

(15) A.I.R. 1955, S.C. 830.

unnecessary parties. In case a person could prove that he was being dragged in without any reason and with some ulterior motive, he can make an application to the Court for striking off his name under the provisions of Order 1, rule 10(2) of the Code of Civil Procedure. The Court has ample powers to delete the names of such persons. It cannot, therefore, be said that in such a contingency the Court will be powerless.

(61) Some argument was addressed on the words "subject to the provisions of this Act and of any Rules made thereunder" occurring in the beginning of section 87 of the Act and it was suggested that the impleading of a "proper party" under the provisions of Order 1, rule 10. Code of Civil Provedure, would be contrary to the provisions of section 82 of the Act.

(62) These words had been interpreted by the Supreme Court in *Harish Chandra Rajpai and another* v. *Triloki Singh and another*, (9), and there it was held :—

> "The true scope of the limitation enacted in section 90(2) [present 67(1)] on the application of the procedure under the Civil Procedure Code is that when the same subject-matter is covered both by a provision of the Act, or the rules and also of the Civil Procedure Code, and there is a conflict between them, the former is to prevail over the latter. This limitation cannot operate, when the subject-matter of the two provisions is not the same."

(63) The argument of the learned counsel for the respondents would have merit if he could show that section 82 prohibited the impleading of a "proper party", as envisaged by Order 1, rule 10(2) of the Code of Civil Procedure, to an election petition. But, as I have already said, this section only mentions the "necessary parties" to an election petition, which is the minimum requirement regarding parties. It nowhere lays down that no other party can be impleaded in such a petition. It cannot, therefore, be said that there is a conflict between the provisions of the Act and the Code of Civil Procedure on this point.

(64) When one goes through the election petition and the various allegations of corrupt practices made therein, one cannot escape the conclusion that the real person against whom all the allegations have

been made is respondent No. 8. Serious allegations have been made against respondent No. 9 as well. That being so, it cannot be said that they were not the affected parties. Why should they then not be allowed to be impleaded and defend the allegations made against them? If they are likely to be named afterwards at the conclusion of the trial, there is no harm if they remain in the array of parties from the very start. In any case, no provision of law has been shown under which their names can be deleted.

(65) One cannot ignore the fact that, at any rate, respondents Nos. 8 and 9 were very important witnesses and will have to be called in evidence by the election petitioner. If they are not impleaded as respondents, the election petitioner would have to call them as his own witnesses and he would thus be deprived of cross examining them. This to my mind is an additional reason for making them respondents in the election petition.

(66) As already indicated above, section 82, from the phraseology used therein, cannot be called to be exhaustive of the parties to an election petition. This conclusion finds support from a Supreme Court decision in *Jagan Nath* v. *Jaswant Singh and others* (7), where it was observed :

> "Provision has been made in section 90(1) [present section 86 (4)] for any other candidate subject to the provisions of section 119 (present section 118), to have himself impleaded as a party in the case within a prescribed period. *This provision indicates that the array of parties as provided by section* 82 *is not final and conclusive and that defects can be cured. Provisions of sections* 110, 115 *and* 116 *of Chapter IV of this Part (present sections* 110, 112 *and* 116) *also support this view.* Section 110 provides the procedure for the withdrawal of a petition. It says that any person who might himself have been a party may within 14 days of the publication of the notice of withdrawal in the official gazette apply to be substituted as a petitioner in the place of the party withdrawing it.
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> Section 115 provides that such a person can be substituted as a petitioner on the death of the original petitioner while section 116 provides that if a sole respondent dies or gives notice that he does not wish to oppose the petition or any

of the respondents dies or gives such notice and there is no other respondent who is appearing in the petition, the Tribunal shall cause notice of such event to be published in the official gazette and thereupon any person who might have been a petitioner may within 14 days of such publication apply to be substituted in the place of such respondent and oppose the petition and shall be entitled to continue the proceedings on such terms as the tribunal may think fit. *These provisions suggest that if any proper party is omitted from the lists of respondents, such a defect is not fatal and the tribunal is entitled to deal with it under the provisions of the Code of Civil Procedure, Order* 1, *Rules* 9, 10 *and* 13."

(67) Some assistance in this respect can also be drawn from another Supreme Court decision on *Amin Lal* v. *Hunna Mall,* (16), where it was held :

"The next contention of learned counsel is that since the petition had become defective by reason of the amendment the Tribunal should either have permitted the appellant to join Suraj Bhan as a respondent or to further amend the petition by deleting reference to Suraj Bhan. A party can avail himself of the provisions of Order 1, rule 10(1), Code of Civil Procedure, subject to the law of limitation. Assuming that a Tribunal can permit the joinder of parties, we must point out that under section 81 of the Act an election petition has to be presented within 45 days of the date of the election of the returned candidate. The application under Order 1, rule 10 was made more than eight months after the election of the respondent and was thus inordinately late and could, therefore, not be granted. As regards joinder of Suraj Bhan in exercise of the powers conferred on a Court by Order 1, rule 10(2) all that we need say is that the matter was in the discretion of the Tribunal and we would not lightly interfere with what the Tribunal has done."

(68) If the interpretation put on section 82 by the learned counsel for the respondents is correct, then admittedly nobody except the candidates can be impleaded as a respondent in the election petition.

(16) A.I.R. 1965, S.C. 1243=(1965) 1 S.C.R. 393.

Even the returning officer cannot be made a party. But, there are decisions of some High Courts taking a contrary view on this point.

(69) A Division Bench of the Calcutta High Court in *Dwijendra Lal Sen Gupta* v. *Harekrishan Konar* (2).

> "There cannot be a hard and fast rule that a Returning Officer under no circumstances and in no case and on no facts, can be added as a party to the election petition. In appropriate cases where allegations of bad faith, negligence and impropriety are made against the returning officer, the returning officer, though not a necessary party, can certainly be joined as a "proper" party at least under the provisions of the Civil Procedure Code which are expressly made applicable to the trial of the election petitions.
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> Apart from the charges of negligence, *mala fides* and impropriety made in the election petition one of the serious questions raised in the election petition, is the system of proportionate representation and wrongful and inaccurate determination, ascertainment and counting of quota by the returning officer under the system. That consideration on the facts of this petition, will also make the Returning Officer a proper party.
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> Section 82 does not make the Returning Officer a 'necessary' party to the election petition. But that only at best shows that the returning officer is not what is called a "necessary" party to the extent that his non-joinder will not lead to the penalty of dismissal of the petition. But the Returning Officer may nevertheless in an appropriate case be a "proper party" who may be added as party to the election petition. The result will appear to follow from section 90 (present section 87) of the Representation of the People Act. The necessary implication of that section is, that the trial of election petition shall, as nearly as may be, in accordance with the procedure applicable under the C.P.C. to the trial of suits subject no doubt to the provisions of the Representation of the People Act and to the rules made thereunder. The trial of election petition in the context of section 90, therefore, must necessarily imply, interlocutory proceeding dealing with addition of parties as proper parties."

(70) The above Calcutta authority was relied on by the Bombay High Court in *H. R. Gokhale* v. *Bharucha Noshir C. and others* (3).

(71) Similar view was taken by the Madras High Court in *K. T. Kosalram* v. *Dr. Santhosham and others* (4).

"Section 82 of the Act is not final and conclusive in the matter of array of parties to an election petition. Provisions of Civil Procedure Code can be used and utilised. The Act does not say, whether the Returning Officer is either a necessary party or proper party in an appropriate case. Whenever there are allegations of bad faith, misconduct and impropriety and not merely illegality made against the Returning Officer in an election petition, the Returning Officer is a proper party though section 82 does not make him a necessary party. Section 90 (present section 87) of the Act enables the Tribunal to implead the Returning Officer as a party under the provisions of the Civil Procedure Code which are expressly made applicable, to the trial of election petitions subject to the provisions contained in the Representation of the People Act and the Rules made thereunder."

(72) Same view was taken by the Election Tribunal, Bombay, in *Gidwani Choithram Partabrai* v. *Agnani Thakurdas Chuharmal and others* (1), where it was held :

"Turning now to Shri Kazi's grievance that respondent No. 8 had been unnecessarily added and that the petition should be dismissed as against him with costs, the Tribunal does not see any substance in this grievance. Section 82 of the Representation of the People Act, 1951, provides that the petitioner shall join as respondents to his petition all the candidates who were duly nominated at the election. It is not stated anywhere in the said Act that the Returning Officer should not be made a party. Under the Civil Procedure Code a person may be made a party to an action either because he is a necessary party or a proper party. The Tribunal is not prepared to say that the respondent No. 8 is a necessary party to this petition, but in view of the allegations of irregularity and illegality made against him and his subordinates by the petitioner, the Tribunal thinks

that the Returning Officer is a proper party. Shri Kazi has relied on the decision in *Tahur Ahmed* v. *Humayun Reza,* (17). In that case the allegation against the Returning Officer, was that he had improperly accepted the nomination paper of the respondent. It was held by the Commission that as no allegations of misconduct had been made against him, the Returning Officer was not a necessary party. This decision does not help respondent No. 8 very much because this Tribunal is of the opinion that he is a proper party for the reasons stated above."

(73) Reference in this connection may also be made to a decision of the Supreme Court in *Khaji Khanavar Khadirkhan Hussain Khan* v. *Siddavanballi Nijalingappa and another* (18). In that case, the Returning Officer was a party to the election petition and the Supreme Court did not *suo motu* direct that his name be struck out, on the ground that a Returning Officer could not be a party to an election petition, as is now being contended by the learned counsel for the respondents.

(74) Reference was then made by the learned counsel for the respondents to a ruling of the Assam High Court in *Amjad Ali* v. *B. C. Barua and others* (5). There it was observed :

"In a petition under section 80 for setting aside certain election, the petitioner also prayed for a notice to be issued against certain persons to show cause why they should not be named in the order of the Tribunal as persons guilty of corrupt practices. Along with other parties, a notice was issued to such persons also who objected that they could not be made parties at that stage.

Held that the persons did not come under the category of 'candidate', returned or contesting, and, as such, they could not be made a party to the petition for setting aside the election, within the meaning of section 82.

(2) that it was only after the conclusion of the trial that the question of issuing notice on such persons within the

(17) Sen. and Poddar 704.
(18) 1969 (1) S.C. Reports 636.

meaning of the proviso to section 99 arose, provided the Court held, on the materials produced, that they were found guilty of such corrupt practices.

(3) that the suggestion that these persons could be made parties to the proceeding at this stage under some residuary provision or even under Order 1, rule 8, Civil Procedure Code, could not be entertained in view of the specific provisions in sections 82 and 99. The order of the Tribunal was therefore without jurisdiction and not warranted by any provision in the Act."

(75) The facts in the above case, it would be seen, were quite different. The persons concerned had not been made parties to the election petition contrary to the position in the instant case. There, it was only prayed that the Tribunal might issue a notice to them to show cause as to why they should not be named in the order of the Tribunal as persons guilty of corrupt practices. The High Court decided that the stage for a notice to them under the proviso to section 99 of the Act had not arisen at all. Besides, in that case it was not disputed that the persons did not come in the category of 'candidate', returned or contesting, and as such they could not be made parties to the petition for setting aside the election within the meaning of section 82 of the Act.

(76) Our attention was also invited by the learned counsel for the respondents to a Bench decision of this Court in *Sardar Partap Singh* v. *S. Kartar Singh Chadha and others* (10), wherein it was held :—

"It is not correct to say that notice under section 99 of the Representation of the People Act can only be issued to the persons concerned after the election Tribunal has decided the election petition, and has come to a definite conclusion that these persons had been guilty of corrupt practices. What appears to be the intention of the law is that at the conclusion of the evidence of the parties the position has to be reviewed by the Tribunal. Obviously the fate of the election petition, and of the successful candidate, will depend not only on those allegations of corrupt practices which are made directly against himself or his recognised agents, but also on the allegations of corrupt

practices made against other persons supposed to be acting on his behalf. Such persons, however, cannot be named under section 99(1)(a)(ii) unless and until they have been given notice and an opportunity to contest the matter and defend themselves in accordance with the terms of the proviso. It would be violating a fundamental principle of jurisprudence to hold that definite findings must be given against the persons who are later to be named under section 99 in the main judgment deciding the petition in one of the ways provided in section 98 before notice can be issued to them under the proviso to section 99. Such a course might lead to the absurd result.

Besides, it appears to be fundamentally wrong in principle that any tribunal should only call on persons against whom allegations have been made to appear and allow them to be heard after a definite finding has already been given by the tribunal that the charges are proved. It seems to be quite obvious that the intention of sentions 98 and 99 is that the final order of the Tribunal deciding the election petition one way or another under section 98, and any orders passed under section 99 naming persons as guilty of corrupt practices in connection with the election must be passed simultaneously, and that if the decision to name particular individuals as guilty of corrupt practices under section 99 has any bearing on the fate of the election petition as such, then the findings even in the main election petition on those particular charges of corruption can only be given after the affected parties have been heard under section 99. There may possibly be cases in which the fate of the election petition may not depend on the naming or otherwise of persons as being guilty of corrupt practices, but even in such cases it would be better if the law were to be followed as stated above."

(77) As regards the above authority, it is not helpful in resolving the present controversy, because in that case the main point for determination was the stage at which a notice for proceedings under section 99 could be issued. Rather the upholding of the issue of notice at the intermediary stage before the conclusion of the trial of the election petition, thus making the person concerned a party to

the proceedings and declining to quash the order regarding the giving of such notice at his instance, indirectly lends support to the view that the person against whom allegations of corrupt practice are made cannot apply for deletion of his name from the array of parties, once he is impleaded as a respondent, because as already mentioned above, he is a proper party. Moreover, the same remarks, which I have stated above regarding *Amjad Ali's case* (5), apply to this ruling.

(78) In view of what I have said above, I hold that no ground has been made out for striking out the names of respondents 8 and 9 from the array of parties. In the circumstances of this case, however, the parties are left to bear their own costs.

R. S. Narula, J.

(79) The facts giving rise to this reference have already been set out in requisite detail in the order of reference made by my Lord Mahajan J. on August 20, 1971, which order may be read as a part of this judgment.

(80) The issues (i) whether any person who is not a candidate at an election can properly be joined as a respondent to a petition filed under sections 80 and 84 of the Representation of the People Act (43 of 1951) (hereinafter called the Act) merely because allegations of corrupt practices have been made against such a person in the petition; and (ii) whether the Returning Officer is a proper party to such a petition if it has been alleged therein that he has been guilty of committing illegalities etc., have to be answered in the light of the scheme of the Act and by keeping in view the following settled propositions of law relating to election disputes on which there can be no two opinions—

(i) statutory requirements of election law must be strictly observed;

(ii) an election contest is not an action at law or a suit in equity. It is purely a statutory proceeding unknown to the common law;

(iii) a Court deciding an election petition does not possess any common law power, but has to proceed in accordance with the provisions of the relevant statute. If the statute itself requires the election Court to proceed with the trial of a petition in accordance with certain prescribed procedure, the same must be followed as far as possible.

(Authority for propositions (i) to (iii) is contained in the judgment of the Supreme Court in *Jagan Nath* v. *Jaswant Singh and others,* (7).

(81) The dispute before us relates to the question of parties to an election petition. Parties can either be necessary or proper. No one can be allowed to be impleaded as a respondent to any proceedings who is neither a necessary nor a proper party thereto. Any person without whom no order can be made effectively or whose non-impleading is fatal to the action itself (either because of the nature of the claim or because of a statutory requirement) is a "necessary party". A person in whose absence an effective order can be made, but "whose presence is necessary for a complete and final decision *on the question involved in the proceedings*" is a proper party (*Udit Narain Singh Malpaharia* v. *Additional Member Board of Revenue, Bihar and another* (12). Both sides are agreed, and I think rightly, that the only necessary parties to an election petition are those enumerated in section 82, the non-impleading of anyone of whom results in the summary dismissal of the petition itself under section 86(1) of the Act. Any candidate at the election who is not a necessary party under section 82 is permitted to be impleaded as a respondent in pursuance of the provisions of sub-section (4) of section 86. Except in the case of abatement or substitution on death of a respondent covered by section 116 of the Act, there is no other provision in the Act relating to impleading of respondents.

(82) The Act has been passed by the Parliament in exercise of the legislative powers vested in it under Articles 327, 329, 245(1) and 246(1) read with entry 72 in List I of the Seventh Schedule to the Constitution. Article 329(b) has enacted an absolute prohibition against any election to either House of Parliament being called in question except by an election petition presented to the prescribed authority "in such manner as may be provided for" in the Act, which is the relevant law made by the appropriate Legislature. This clearly shows that no general laws extraneous to the Act can

be permitted to be invoked for determining the procedure for filing an election petition except to the extent to which the Act might itself have expressly permitted resort to any such other law or any part thereof. Provisions relating to disputes regarding elections are contained in Part VI of the Act which commences with section 79 and ends with section 122. Section 80 of the Act bars the trial of an election petition which is not presented in accordance with the provisions of Part VI of the Act. The forum competent to try an election petition (the High Court) is provided for in section 80-A. The only grounds on which a petition may be filed (contained in sections 100 and 101) and the only persons competent to file a petition as well as the period of limitation within which a petition can be filed, are provided for in section 81. Section 82 contains a list of persons who are to be joined as respondents to the petition. This section is headed "Parties to the petition". Section 83 prescribes the contents of the petition. Section 84 provides that an election-petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected. Section 86(1) enjoins on the High Court the duty to dismiss an election petition which has (i) not been presented on any of the grounds contained in section 100 or 101 of the Act or (ii) not been filed by a candidate or an elector, or (iii) not been filed within time, or (iv) omitted to join any of the candidates referred to in section 82 as respondents, or (v) has been filed without depositing the security for costs requisite under section 117. Reference has already been made to sub-section (4) of section 86 which permits any candidate (other than those necessary under section 82) to apply for being impleaded as a respondent within fourteen days from the commencement of the trial of the petition. Sub-section (6) of section 86 contains provisions relating to expeditious disposal of election petitions. Provisions regarding procedure before the High Court are contained in section 87.

(83) Section 96 relates to expenses of witnesses. Sections 98 and 99 enumerate the matter on which the High Court is bound to record its findings and pass orders. Sections 109 to 111 contain provisions relating to withdrawal of election petitions. Sections 112 and 116 deal with abatement and sections 116-A and 116-C with appeals. On all the subjects referred to above, the Act is self-contained and there appears to be no room for invoking any general law.

(84) Section 87 which permits resort being had to the Code of Civil Procedure (that also not literally but as nearly as may be) "subject to the provisions of this Act" gives statutory supremacy to the Act over the Code. In matters not covered either by the Act or the Code, this High Court is to act under Rule 26(c) of Chapter 4-GG of Volume V of its Rules and Orders. The rule reads :

"(a) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the follwing day to be necessary for reasons to be recorded.

(b) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.

(c) The High Court may give such other orders or directions in the course of a trial of the petition as may appear to it to be necessary in the interests of justice or for expediting the trial and disposal of the case or to prevent abuse of process of Court."

One more fact to which reference was made by counsel repeatedly must be noticed at this stage. From the time the Act was passed in 1951, up to the time it was amended by the Central Act 27 of 1956, the non-impleading of a candidate required to be impleaded under section 82 of the Act was not fatal to the election petition. Parties mentioned in section 82 were, therefore, commonly referred to till then as proper parties. After the amendment in 1956, making the defect of non-impleading of a respondent mentioned in section 82 fatal to the petition by introducing section 82 into subsection (3) of section 90, the parties mentioned in section 82 became necessary and have often been referred to as such.

(85) I may now deal in this perspective with the various cases to which reference has been made before us by the learned counsel for the parties, in a chronological order.

(86) In order to appreciate the law laid down in the first set of two English cases, it is necessary to refer to a few provisions of the Corrupt Practices (Municipal Elections) Act, 1872 (hereinafter referred to as the English Act). Section 3 provides, *inter alia*, that any person who is guilty of a corrupt practice at a municipal election shall be liable to the same penalties, etc., as if the corrupt practice had been committed at an election of members to serve in Parliament. Section 5 provides for the avoidance of an election for corrupt practices by agents. Section 7 prohibits the employment of paid canvassers. Part II of the English Act starting from section 12 deals with election petitions. An election of any person at an election for a borough or ward is permitted to be questioned by section 12 by a petition before an election Court on the ground that the election was wholly avoided for general bribery, etc., or on the ground that the election of such a person was avoided for corrupt practices or offences against the Act, or on the ground that the candidate was disqualified. The section further provides that an election shall not be questioned except in the manner provided by the English Act. Section 13 deals with the presentation of election petitions. Sub-section (1) states as to who can be a petitioner and refers to the prescribed forms and other formalities for filing a petition. It provides, *inter alia*, that the terms 'petitioner' and 'respondent', as hereinafter used in this Act, include respectively any one or more persons by whom a petition is presented, and any one or more persons against whose election a petition is presented. Sub-sections (2) (3) and (4) of section 13 deal with the period of limitation, the necessity to furnish security, and the manner of service of notices of the petition on the respondents. Sub-section (6) of section 13 states that "where a petition complains of the conduct of a returning officer, he shall be deemed to be a respondent". Section 21(2) states that until general rules have been made in pursuance of sub-section (1) of that section, and so far as such rules (when made), under the provisions of the English Act, do not extend, the principles, practice, and rules which are for the time being observed in the case of election petitions under the provisions of the Parliamentary Elections Act, 1868, shall be observed as far as may be by the Court and superior Court in the case of petitions under the English Act.

(87) In *Yates and others* v. *Leach and another* (19), A and B were candidates for the office of Town Councillor, at Oldham. 'A'

(19) (1874) L.R. 9 Common Pleas 605.

obtained majority of votes over B, and was declared elected, but, being disqualified, refused to serve. B thereupon claimed to have been elected and having made the requisite declaration, entered on the office of town councillor at Oldham though he had in fact never been elected. A petition having been presented under the English Act, A and B were both made respondents. A was not interested and, therefore, gave notice under section 18 of the English Act of his intention not to oppose the petition. B having served similar notice made an application to the Court that his name might be struck out of the array of respondents in the petition as he never having been elected, there could be no question of a petition being presented against his election within the meaning of section 13(1) of that Act. The two questions which arose before the Court of Common Pleas were (i) did B fall within the definition of "persons against whose election a petition is presented" within the meaning of section 13(1) of the English Act, and (ii) if not, could he be retained in the array of respondents ? Lord Coleridge, C.J., who prepared the leading judgment held that the meaning of the term "respondent" in the 13th section, includes a person who claims to be elected and acts as if he had been, and that B was, therefore, properly made a respondent to the petition. On the second question it was held that in section 21(5) of the English Act, the Court had the power to strike out the name of the respondent who had been improperly impleaded. Brett, J., came to the same conclusion and held that the Court had the power to strike out the name of the person improperly made respondent, but on the facts of that particular case, B had not been improperly made a respondent, as he fell within the definition of "respondent" contained in section 13(1) of the English Act. Grove, J., also agreed with that view. I have referred to the Oldham case as support was sought to be drawn by the election-petitioner from that case on the ground that a person not required to be impleaded as a respondent had been permitted to continue in the array of respondents in that election contest. As explained above, the judgment of the court of Common Pleas in the *case of Yates and others* (19) is, if anything, an authority for the contrary proposition. Leach (referred to as 'B' by me) was held to fall within the statutory definition of "respondent" and was permitted to continue as such only on that account, the Court having left no doubt in the matter that they would have struck out his name if he had not been found to come within that definition. If the general rule of proper parties could be applied to election petitions, the Court of Common Pleas need

not have troubled itself with the question whether 'B' came within the expression "persons against whose election a petition is presented". It would have been enough to say that he was the only person who claimed to have been elected and had actually occupied the office as if he had been elected and he was, therefore, at least a proper party if not a necessary party. But in order to retain his name in the array of respondents, the Court had to construe the relevant words in the Act in such a manner as to hold that 'B' was one of the persons who were required by the English Act to be impleaded as a respondent.

(88) The second English case—*Lovering* v. *Dawson and others* (20) is still more in point. It relates to the same English Act. The Court (who was a Barristor appointed under the English Act) was called upon to try an election petition in which besides impleading Dawson and Walker, the two persons who had been elected as town councillors for the borough of Maidenhead, another candidate, viz. Poulton, was also joined as a respondent, though he was not a person against whose election the petition was presented. At the trial of the petition a preliminary objection was taken to the effect that Poulton was not liable to be impleaded as a respondent on the ground that the Act only contemplated a petition being filed against those persons who were actually returned to the office and that the word "candidate" employed in the English Act could not be said to apply to those who, although candidates for election, had not been returned to office. The corrupt practice pleaded in the petition was that Dawson, Walker and Poulton had coalesced for the purpose of canvassing the burgesses. At the trial it was found that though Dawson had been guilty of personal bribery, Walker and Poulton had been guilty of bribery through their agents. Poulton's counsel asked the Court to determine whether Poulton was properly made a respondent as the decision on that question would determine the question of liability for costs. If Poulton had been properly joined, he had to pay costs to the election-petitioner proportionate with the respondents. If he had been improperly joined, he was entitled to get his costs from the petitioner, when the matter ultimately went to the Court of Common Pleas, Lord Coleridge, C.J. held that Poulton was not a person against whose election the petition was presented. After distinguishing the case of *Yates* v. *Leach* (19) (supra) it was held that

(20) (1875) L.R. (10) Common Pleas 711=Law Journal Reports 44 Court of Common Pleas 321.

Poulton had not been properly joined. Brett J. with whose judgment Coleridge, C.J. had agreed, held in unequivocal terms that the petitioner could not, by his own act, make poulton a respondent to the election petition and that "Poulton's name ought to have been taken off the petition as respondent." Grove and Lindley, JJ, agreed with the same view and judgement was entered for Poulton. *Lovering's case* (20) (supra) appears to me to be a clear authority for the proposition that even in the absence of any bar in a statute to the impleading of any person as a respondent who is not required to be so impleaded by the Act, such person is not permitted by the election law to be unnecessarily impleaded, and if he is so impleaded, the Court is duty bound to strike out his name.

(89) In *Gidwani Choithram Partabrai* v. *Agnani Thakurdas Chuharmal and others,* (1) the three member Election Tribunal held that where there are allegations in an election petition of irregularities or illegalities committed by a Returning Officer or his subordinate, the Returning Officer is a proper though not a necessary party to the petition. This is the basic authority on which Mr. Madan Lal Sethi, the learned Advocate for the election-petitioner, has relied in support of the proposition that respondents 8 and 9 (the then Chief Minister and the Returning Officer) are proper parties to the election petition. The claim made in that case was that only candidates could be impleaded as respondents to an election petition in view of the provisions of section 82, and that the Act not having provided for the Returning Officer being made a party, the petition against him was liable to dismissal. The point was disposed of by the Tribunal in the following words —

> "It is not stated anywhere in the said Act that the Returning Officer should not be made a party. Under the Civil Procedure Code a person may be made a party to an action either because he is a necessary party or a proper party. The Tribunal is not prepared to say that the respondent No. 8 is a necessary party to this petition, but in view of the allegations of irregularity and illegality made against him and his subordinates by the petitioner, the Tribunal thinks that the Returning Officer is a proper party. Shri Kazi has relied on the decision in *Tahur Ahmed* v. *Humayun Reza* (17). In that case the allegation against the Returning Officer was that he had improperly accepted the nomination papers of the respondent. It was held

by the Commission that as no allegations of misconduct had been made against him, the Returning Officer was not a necessary party. This decision does not help respondent No. 8 very much because this Tribunal is of the opinion that he is a proper party for the reasons stated above."

The only two grounds on which the plea of the Returning Officer was repelled were (i) that the Act did not contain any specific bar to the Returning Officer being impleaded and (ii) that though the Returning Officer was not a necessary party, he was a proper party under the Code of Civil Procedure as allegations of irregularity and illegality had been made against him and his subordinates by the petitioner.

(90) In *Sitaram Hirachand Birla* v. *Yograjsing Shankarsing Parihar and others* (21) a Division Bench of the Bombay High Court held (under the pre-amendment Act) that the object of section 82 is that all parties, who were concerned with the actual election and who contested the election, should be before the tribunal, but a person who did not contest the election and who withdrew from the fight does not stand in the same position as candidates who not only were duly nominated, but who were candidates at the election. In that context it was held that if respondent No. 7 was not a necessary party to the petition at all, the fact that the Tribunal had added him as a party was a mere surplusage and no further question could arise as to the jurisdiction of the tribunal merely because of the addition of a surplus respondent. Objection having been taken to the addition of a party by the tribunal, it was held that the power to add parties was derived from the wide language used by the Legislature in section 90(2) (which corresponds to section 87(1) of the Act as it now stands) of the Act as it existed in 1951. Respondent No. 7 in that case was a duly nominated candidate, but had withdrawn from the contest. He was not an outsider and had not been impleaded because of any allegation of corrupt practice against him, but had been impleaded under a misapprehension of the requirements of section 82 as it then stood. The question that faces us did not arise in that case. *Sitaram Hirachand Birla's case* (21) (supra) is, therefore, no authority for the proposition canvassed by Mr. Sethi. It was in connection with the power of the tribunal to permit amendment to the petition that the Division Bench of the Bombay High Court had held in *Sitaram Hirachand Birla's case*

(21) A.I.R. 1953, Bom. 283.

(22) that it is difficult to make any distinction between the procedure and the powers of a Court under the Code of Civil Procedure. It was held that in the course of procedure with which the Code deals, the Court always exercises powers and when the Court exercises such powers, it does so in order to carry out the procedure laid down in the Code. It was observed that the tribunal had the power to amend the petition under sub-section (2) of section 90 of the Act.

(91) Reference was also made by Mr. Sethi to the judgment of the Supreme Court in *Raj Krushna Bose* v. *Binod Kanungo and others*, (13). It was held by the Supreme Court in that case that section 99 of the Act enjoins on the State Government a duty to record a finding whether any corrupt practice has or has not been committed and about the nature of that corrupt practice and also to name persons found guilty of any corrupt practice, where there are allegations of corrupt practice. The Election Tribunal had declared the election void on a technical point without adjudicating upon the allegations of corrupt practice made in petition. The order of the Tribunal declaring the election void on a mere technical ground was reversed by the Supreme Court and the case was remitted to the Election Commission with a direction to reconstitute the election tribunal which originally tried the case, and to direct the tribunal to give its findings on all the issues raised and to make a fresh order. It is significant that the petition had been finally disposed of by the tribunal under section 98 of the Act without discharging its duty under section 99. The judgment of the Supreme Court in *Raj Krushna Bose's case*, (13) (supra) does not, in my opinion, lend any support to the case of the election-petitioner about the legality of impleading as respondents to an election petition persons who were not candidates at the election (and who were neither required nor permitted by the Act to be impleaded as respondents) merely because allegations of corrupt practice are made against them. Procedure for giving notice of the proceedings to any person who is not a party to the petition at the conclusion of the trial of an election petition in the event of a *prima facie case* for naming such a person under section 99 of the Act, does not envisage such a person being made a respondent in the election petition itself and being brought into the election contest. For similar reasons, the judgment of the Supreme Court in *Tirath Singh* v. *Bachittar Singh and others* (16), does not appear to me to be of much help in solving the problem. It had been contended before the Supreme Court in that case by Tirath Singh, the returned candidate whose election

had been set aside by the election tribunal, that he could not be named under section 99 and consequently disqualified without fresh notice under section 99 having been issued to him after coming to a finding of his having committed a corrupt practice under section 98. At that time section 99 simply required notice to be sent to any person who was sought to be named, and did not say, as is the provision now, that such a notice need be sent only to those persons who are not already parties to the election petition. Their Lordships of the Supreme Court held, construing the provision as it then stood, that no such notice was necessary to a person who was already a party to the petition and had ample opportunity to cross-examine the witnesses.

(92) Great stress was laid by Mr. Sethi on the judgment of the Madras High Court in *A. Sreenivasau* v. *Election Tribunal, Madras and another,* (14). In the election petition with which the Madras High Court was concerned allegations of various corrupt practices had been made against the respondents and it had been prayed that (a) the election be declared to be wholly void; (b) the election of both the respondents be declared void; and (c) a finding about the respondents being guilty of corrupt and illegal practices specified in the petition be recorded. In a writ petition filed during the pendency of the election petition, the High Court held that the petition so far as it related to relief (b), i.e., for declaring the election of the respondents void, was barred by limitation. By the appropriate writ the election tribunal was, therefore, prohibited from proceeding with the trial of the petition so far as relief (b) was concerned. On the case going back to the tribunal, it was contended that in view of the High Court's direction, the tribunal was precluded from considering the allegations of corrupt practices as they were germane to relief (b). The learned Single Judge of the Madras High Court, before whom this question was raised in a writ petition, held that section 99 enjoined on the tribunal a duty to investigate and record a finding on all the corrupt and illegal practices alleged in the petition, and that the order of the High Court precluding the tribunal from granting the relief of declaration of the election of both the respondents being void did not bar the tribunal from investigating into the allegations of corrupt practices. In the course of the judgment it was emphasised that the analogy founded on a civil suit cannot be pressed very far in dealing with an election petition. Once again there was no question of an outsider being or not being permitted to be made a party to the election

petition in that case. Nor is that judgment an authority for the impossible proposition that an Election Court is bound to or even can investigate into allegations of corrupt practices made in a petition in which no relief under sections 80 or 84 and 98 is claimed. The claim for declaring the election wholly void claim (a) had to be tried by the Tribunal. If in the course of that trial any corrupt practice appeared to have been committed, the tribunal was duty bound to proceed under section 99(1)(a)(ii). It was to that duty that the attention of the Tribunal had been invited by the High Court.

(93) A Division Bench of the Madras High Court had to deal with a somewhat similar matter in *S B. Adityan and another* v. *S. Kandaswami and others* (22). Adityan's election was challenged before the election tribunal by Kandaswami, one of the defeated candidates. He impleaded four out of nine candidates, who had been duly nominated, leaving out Meganathan, who had withdrawn his nomination, and Muthu, who had retired from the contest. One of the corrupt practices alleged in the petition was that Muthu had been paid Rs. 5,000 by the returned candidate (Adityan) for the purpose of making him to retire from the contest. Another allegation was that Meganathan had similarly been paid Rs. 10,000 by Adityan and his election agents to withdraw from the contest. Objection was taken to the non-impleading of Muthu and Meghnathan as respondents on the ground that they were necessary parties under section 82(b) of the Act. The election-petitioner then applied to the tribunal for leave to amend the petition by impleading Muthu and Meganathan. The tribunal dismissed that application as well as the application of the returned candidate wherein a prayer had been made to dismiss the petition on account of non-compliance with section 82(b). The returned candidate impugned the order dismissing his application in a writ petition, and prayed for restraining the tribunal from proceeding further with the enquiry into the election petition. Kandaswami, the election-petitioner, also filed a writ petition for quashing the order whereby the tribunal had refused him permission to amend the petition and to implead Muthu and Meganathan. Both sets of petitions were disposed of by the judgment of Rajagopalan, Officiating C.J., and Rajagopala Ayyangar, J., dated November 1, 1957. In a considered judgment, the Division Bench held that the expression "any-candidate against whom allegations of any corrupt practice are

(22) A.I.R. 1958 Mad. 171=13 E.L.R. 246.

made" in section 82(b) of the Act is to be construed as "any candidate who is alleged to have committed corrupt practices" and that there is no scope for importing any concept of vicarious liability under section 82(b) as it stands. On a proper consideration of section 123(1)(A) of the Act, it was held that the acceptance of a bribe by a candidate from a returned candidate or his agent does not constitute by itself the corrupt practice of bribery and the candidate who accepted such a bribe could not be held to be guilty of a corrupt practice. The argument then advanced before the Bench about the person accepting bribe being guilty of abetting the corrupt practice of bribery was repelled on the ground that section 123 does not contain any such express provision and that abetment therefore, even if established, would not come within section 123, and would not make the impleading of a person alleged to be guilty of such an abetment a party to the election petition under section 82(b). The principal part of the judgment which is relevant for our purposes deals with the argument that Muthu and Maganathan were in any case liable to be impleaded as parties to the election petition as they were ultimately liable to be named under section 99 of the Act. That part of the case of Adityan was disposed of by the Madras High Court in the following words: —

> "We are unable to accept the contention that the liability to be named under section 99 of the Act is a test for determining either the scope of section 82(b) or the scope of section 123(1)(a) of the Act.
>
> It should be remembered that section 99 does not require every person to be named to be added as a party to the election petition. The addition of parties is governed by the provisions of section 82 of the Act."

With these observations it was held that the decision of the tribunal to the effect that failure to implead Muthu and Meganathan did not come within the mischief of section 82(b) was correct. When reference was made in the writ petition filed by the election-petitioner to the judgment of Mahajan, C. J. in *Jagan Nath's case* (7), (supra), the Division Bench of the Madras High Court held that the amendment of the Act in 1956 had changed the entire situation, rendering the decision of the Supreme Court in *Jagan Nath's case* (7) no longer applicable to the matter of impleading parties. It was observed that

the penal consequence of the rejection of the petition having 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 of the Code of Civil Procedure can no longer apply. The order of the tribunal refusing permission to implead Muthu and Meganathan was accordingly upheld by the Madras High Court. What is still more important is that after holding that Muthu and Meganathan were not necessary parties under section 82(b) of the Act, the High Court did not permit them to be impleaded (even as proper parties) and held that "there was no need to implead them as party respondents and the provisions of section 90(3) could not, therefore, apply." The judgment of the Madras High Court in *Adityan's case* (22) has assumed greater importance because of its having been subsequently upheld by their Lordships of the Supreme Court in *S. B. Adityan* v. *S. Kandaswami and others* (23). While upholding the judgment of the Madras High Court, A. K. Sarkar, J., who was speaking for the Court, held that section 99 of the Act does not define or widen the definition of corrupt practice contained in section 123, that section 99 applies only to corrupt practices as defined in section 123, and that the expression "allegations of corrupt practice against a candidate" in section 82(b) means allegations that a candidate has committed a corrupt practice, in other words that the candidate was guilty of a corrupt practice. Their Lordships made it clear beyond doubt that the expression "allegations of corrupt practice against a candidate" in section 82(b) does not mean merely allegations relating to or concerning a corrupt practice. The argument of the counsel for Adityan about Muthu and Meganathan being necessary parties to the petition on account of corrupt practices having been alleged against them in view of the requirements of section 99 of the Act was repelled by the Supreme Court with the observations that section 99 does not purport to define a corrupt practice and that the only corrupt practice which is relevant for purposes of an election petition is the one alleged against a candidate. Their Lordships further held that inasmuch as section 82(b) talks of allegations of corrupt practice against a candidate only, the allegations of corrupt practice must mean that the candidate was guilty of corrupt practice. Their Lordships of the Supreme Court did not differ from any of the observations made by the Madras High Court.

(23) 14 E.L.R. 394.

(94) The next case in the chronological order appears to be on all fours. That is the Division Bench judgment of the Assam High Court in *Amjad Ali* v. *B C. Barua and others* (5). That is the basic Indian case in favour of the contention raised by respondents 8 and 9. In addition to the prayer for declaring the election of B. C. Barua to the Legislative Assembly void and the prayer for declaring Abdul Bari Sarkar, the election-petitioner, having been elected, it was prayed by the election-petitioner that the tribunal may issue notice to Amjad Ali to show cause why he should not be named in the order of the tribunal as a person guilty of corrupt practice. Such a notice was issued to Amjad Ali. He appeared and objected to his being made a party to the proceedings at that stage. The tribunal did not accept his contention as it was of the view that section 82 of the Act was not exhaustive and although Amjad Ali was not a necessary party to the application for setting aside the election, he was virtually a proper party, inasmuch as allegations had been made against him of corrupt practice invalidating the election. Thereupon Amjad Ali moved the High Court under Article 226 of the Constitution for quashing the order of the tribunal and for preventing it from proceeding against him as a party to the election petition. After referring to the provisions of section 82 of the Act and the definition of "candidate" therein and referring to the admitted case of both sides that Amjad Ali did not come under section 82 of the Act, the Division Bench held that the suggestion that Amjad Ali should be made a party to the proceedings under some residuary provision or even under Order 1, Rule 8 (misprint for Rule 10) of the Code of Civil Procedure could not be entertained in view of the specific provisions of sections 82, 98 and 99 of the Act, and that, therefore, the order of the tribunal was unjustified, unwarranted and without jurisdiction. Consequently Sarjoo Prasad, C. J., speaking for the Bench, quashed the impugned order of the tribunal and directed it to issue notice to Amjad Ali to show cause within the meaning of the proviso to section 99 only after the conclusion of the trial if he thought necessary to do so at that stage.

(95) The judgment of the Assam High Court was approved and followed by a Division Bench of this Court (Falshaw and Dua, JJ.) in *Sardar Partap Singh* v. *S. Kartar Singh Chadha and others* (10). At the conclusion of the trial of an election petition filed by one Balbir Singh against the election of Partap Singh Kairon, the tribunal in a lengthy order reviewed the whole of the evidence relating to the allegations made against the three persons and held

that there was no necessity for issuing a notice to them under section 99. In a comparatively brief order of the same date it was held that certain charges against Partap Singh Kairon and one Daljit Singh required further consideration and, therefore, the tribunal ordered the issue of notice to them in respect of those allegations. Those orders directing the issue of notice under section 99 were challenged in writ petitions before the High Court. It was alleged that the order was without jurisdiction since there was no finding by the tribunal that the writ-petitioners were guilty of corrupt practice and that the tribunal had no jurisdiction to issue notices merely on the ground that there was a *prima facie* case which required further investigation. Reliance was placed in support of that proposition on the judgment of the Assam High Court in *Amjad Ali's case* (supra) (5). After referring to the facts of *Amjad Ali's case* (5) and to the decision of the Assam High Court therein, Falshaw, J., speaking for the Court observed as follows :—

> "I do not see any reason for differing from this decison so far as it holds that persons other than candidates named in allegations of corrupt practices made in an election petition are not to be impleaded as parties, at the outset and that it is only after the evidence of the parties is concluded that the question of issuing notice to them under section 99 can arise."

In an elaborate judgment, the Division Bench held that the intention of section 98 and 99 was that the final order of the tribunal deciding the election petition one way or the other under section 98 and any orders passed under section 99 naming persons as guilty of corrupt practices in connection with the election must be passed simultaneously, and that if the decision to name particular individuals as guilty of corrupt practices under section 99 has any bearing on the fate of the election petition as such, then the findings even in the main election petition on those particular charges of corruption can only be given after the affected parties have been heard under section 99.

(96) The next important case which directly deals with the point in issue is the decision of the Election Tribunal, Nellore, in *Returning Officer, Atmakur* v. *G. C. Kondaiah* (11). The election-petitioner in that case impleaded the Revenue Divisional Officer, Nellore, the Returning Officer of the concerned Constituency, as third respondent to the election petition. The Returning Officer applied to the tribunal to remove his name from the array of parties

as he was neither a necessary nor a proper party to the election petition. Both sides having agreed that he was not a necessary party, the election-petitioner claimed that he was a proper party to the election petition because he had made some allegations in the petition against the Returning Officer. This argument was repelled by the Election Tribunal in the following words :—

> "I do not agree with this argument of the learned advocate. Merely because some allegations have been made against 3rd respondent (returning officer) he need not be added as a party to the petition. According to the provisions of section 82 of the Representation of the People Act, the Returning Officer is not a necessary party to the petition. If the allegations made by the petitioner in the main O. P. are proved, the Tribunal can take action under section 90 (appears to have been misprinted for 99) of the Representation of the People Act. This is not the stage at which 3rd respondent (returning officer) should have been joined as a party to the petition."

Support was derived for the view taken by the tribunal from the judgment of the Division Bench of the Assam High Court in *Amjad Ali's case* (5), (supra) and from the observations of the Supreme Court in *S. B. Adityan's case* (23) (supra). The application of the Returning Officer was allowed and his name was removed from the array of parties in the election petition.

(97) Then comes the Division Bench judgment of the Calcutta High Court on which Mr. Sethi has relied. In *Dwijendra Lal Sen Gupta* v. *Harekrishna Konar* (2), the question whether the Returning Officer is either a necessary or a proper party to an election petition was raised before the Division Bench of the Calcutta High Court in a petition under Article 227 of the Constitution, wherein the correctness of the order of the tribunal dismissing the application of the election-petitioner under Order 1, Rule 10 of the Code read with section 90 of the Act for adding the Returning Officer as a respondent, and for issuing a notice to him had been challenged. Reliance was sought to be placed on paragraph 782 of Volume XII of Halsbury's Laws of England (2nd edition) for the proposition that the Returning Officer was a proper party to an election petition in certain circumstances. P. B. Mukharji, J., who prepared the judgment of the Division Bench referred to the dissenting note of Sen, J. in *Nur*

Mahammad v. *S. M. Solaiman,* (24), wherein reference had been made to section 51 of the Parliamentary Election Act (31 and 32 Victoria Chapter 125) which provided that when an election petition complained of the conduct of a Returning Officer, such Returning Officer shall for all the purposes of the Act be deemed to be a respondent. Reference was similarly made to the observations in the dissenting judgment of Sen, J. regarding the express provision contained in the English Municipal Corporation Act (45 and 46 Victoria Chapter 50) to the effect that the Returning Officer may be made a party respondent to an election petition if there is a complaint in the petition against his conduct [section 88, sub-section (2) of the said English Act]. In view of the express provision contained in the relevant English statute, Sen, J. had observed that the practice prevailing in England was of no assistance to them. On the principle that a person is not a necessary party when no relief is claimed against him, or when he has no interest in the eventual result of the judicial proceedings, Sen, J. had held that the Returning Officer was not a necessary party to an election petition under the Calcutta Municipal Act. The views expressed in the cases relating to the Calcutta Municipal Act were distinguished by the Division Bench on two grounds, namely, (i) that they relate to a different statute, i.e., the Calcutta Municipal Act, which only authorises the tribunal to declare an election to be null and void and to direct a fresh election as distinguished from the Representation of the People Act which authorises the declaration of a defeated candidate as being the successful one; and (ii) that the observations in the Municipal Act case were in the nature of *obiter dicta.* The decision of the Election Tribunal, Nellore, in the case of the *Returning Officer, Atmakur* v. *G. C. Kondaiah* (11), was not approved in view of the observations of a Division Bench of the Madhya Pradesh High Court in *Inayatullah Khan* v. *Diwanchand Mahajan* (25), to the effect that if allegations of corrupt practice were to be made with regard to the conduct of a Returning Officer, he should have been joined as a party to the proceedings. That observation was in turn based on what is stated in Halsbury's Laws of England (Simonds Edition, Volume 14, paragraph 456 at page 255), wherein it is stated that the Returning Officer is generally joined in the proceedings if allegations are made against him. The Division Bench of the Madhya Pradesh High Court had, however, stated in the course of its judgment that it was unfortunate

(24) 49 Cal. Weekly Notes 10.
(25) A.I.R. 1959, M.P. 58=15 E.L.R. 219.

that the reports of the English cases on which the passage in Halsbury's Laws of England was based had not been made available to them for consideration. The Madhya Pradesh High Court had further observed that section 99 of the Act showed that the Returning Officer should be joined as the proviso to that section says that no person who is not a party to the petition shall be named as having committed a corrupt practice unless and until he has been given a notice to appear before the tribunal and to show cause why he should not be so named. With the greatest respect to the learned Judges of the Madhya Pradesh High Court, I am of the opinion that both the considerations which prevailed with their Lordships were not appropriate. It has already been noticed that the relevant observations in Halsbury's Laws of England are based on the peculiar statutory provisions in the English Acts, the like of which are nowhere to be found in the Indian Act. Nor does it appear to me to be correct to spell out from section 99 any requirement to implead as respondent a person against whom proceedings may possibly have to be taken under that section. As will be discussed later, this view appears to me to be contrary to the scheme of section 99. Difficulty was then expressed by the Division Bench of the Calcutta High Court about the manner in which the election-petitioner could prove the allegations against the Returning Officer about his having been negligent, about his conduct having been improper, and about his conduct having been *mala fide* inasmuch as no useful purpose could be served by the election-petitioner calling the Returning Officer as his own witness, and then possibly to ask for his being declared hostile. It was observed that on the other hand if the Returning Officer was made a party, the election-petitioner would have an opportunity of proving his case by cross-examining him. It was held that calling the Returning Officer as a witness is not the same thing as making him a party to the petition, as a witness does not disclose what his evidence is going to be at least to the party who is going to cross-examine him. Inasmuch as the evidence of a witness comes as a surprise for the cross-examining party, but the stand of a party is disclosed in his written statement to the election petition so that everyone knows what his answers to the allegations in the petition are, the cross-examining party is able to get armed with documentary and other evidence which may be necessary to confront the Returning Officer. Without expressly subscribing to the view expressed by the Madhya Pradesh High Court the decision of the Election Tribunal Nellore in *Returning Officer, Atmakur* (11) was distinguished on the ground that none

of the two things which formed the basis of that judgment (the decision of the Division Bench of the Assam High Court and the observations of the Supreme Court in *S. B. Adityan's case* (23), related to the impleading of a Returning Officer. It was observed that the Assam High Court case merely stated that a person who is to be named under section 99 cannot be made a party to an election petition, at an earlier stage either under section 82 or in exercise of any residuary powers under the Code of Civil Procedure. The observations of the Supreme Court in *Adityan's case* (23), were left out of consideration on the ground that those had nothing to do with the joining of a Returning Officer as a party to an election petition. Reference was then made to the decision of the Bombay Election Tribunal in *Gidwani Choithram Partabrai* v. *Agnani Thakurdas Chuharmal and others* (2). After consideration of the case law on the subject, the Calcutta High Court held that it subscribed to the opinion expressed by the Bombay Election Tribunal in *Gidwani Choithram Partabrai* v. *Agnani Thakurdas Chuharmal and others* (1) as representing the sounder view without giving any additional reason for adopting that view. The reasoning behind the judgment of the Bombay Election Tribunal has already been noticed. The correctness of the judgment of the Division Bench of the Assam High Court was not doubted. The only ground on which the Bombay Election Tribunal had held a non-candidate to be a proper party was that there was no bar in the Act to such a course being adopted. The only additional reason (for agreeing with that view) given by the Division Bench judgment of the Calcuta High Court relates to the predicament in which an election-petitioner would be placed for proving the improper conduct of a Returning Officer, if he were not to implead him as a party.

(98) Counsel for the election petitioner relied on the observations of the Supreme Court in *Amin Lal* v. *Hunna Mal* (16), in support of the proposition that a party can avail himself of the provision of Order 1, Rule 10 (1) of the Code of Civil Procedure subject to the law of limitation. In that context it had been observed that the power of the election tribunal under Order 1, Rule 10(2) of the Code was discretionary. This case is of no direct assistance to us in answering the question posed by the parties.

(99) The question whether the Returning Officer is or is not a necessary or a proper party on an election petition was answered in the affirmative by a learned Single Judge of the Madras High Court in *K. T. Kosalram* v. *Dr. Santhosham and others* (4), on the ground that though section 82 does not make him a necessary party, section 99 of

the Act enables the tribunal to implead the Returning Officer as a party under the Code of Civil Procedure as the Code has been mode expressly applicable to the trial of election petitions, subject to the provisions of the Act and there is no bar in the Act. The learned Judge held that the Returning Officer could only be impleaded when there are allegations of bad faith, misconduct und impropriety against him in the election petition. This course was adopted in view of the following passage in the Halsbury's Laws of England (Simonds Edition, Third Edition, Volume 14, paragraph 446) :—

> "Where, however, a parliamentary election petition complains of the conduct of a Returning Officer, he will, for all the purposes of the Act, except as regards the admission of respondents in his place, be deemed to be a respondent. The allegation against the Returning Officer need not necessarily be one of wilful misconduct, and he may be joined as a respondent—where the acts or omissions or negligences complained of are not personal but are those of his subordinates."

As previously noticed, the law in England is that the Returning Officer is deemed to be a party to an election petition wherein llegations of misconduct, ect. are made against him and the Returning Officer can, at the discretion of the election-petitioner be impleaded as a respondent where acts or omissions of his subordinates are complained of in the petition. There are no such provisions in our Act. Venkatadri, J., who decided *K. T. Kosalram's case* (4), expressly stated after referring to the English cases that "the trend of opinion from these English cases seems to be that, whenever there is any allegation of misconduct, he must be deemed to be a proper party." Relying on the English practice, (which is really based on the provisions in the English statutes) and on the judgment of the Bombay Election Tribunal in *Gidwani Choithram Partabrai's case* (1) (supra) and on the Division Bench judgment of the Calcutta High Court in *Dwijendra Lal Sen Gupta's case* (2) (supra), it was held by the learned Single Judge that even under the Act whenever allegations of bad faith, misconduct and impropriety and not of mere illegality are made against a Returning Officer in an election petition, the Returning Officer is a proper party though not a necessary party. With the greatest respect to the learned Judge, I think that the distinction between the English statute and the Indian Act was not pointed out to the learned Judge which led him to take that view.

(100) Similarly a learned Single Judge of the Bombay High Court held in *H .R. Gokhale* v. *Bhrucha Noshir C. and others,* (3), that a Returning Officer can be properly impleaded as a respondent to an election petition if improprieties are alleged against him. In that case the Returning Officer was not permitted to take up the plea that he was not a proper party as he had failed to take up that position in his written statement and he had already filed a contentious reply to the election petition. It is significant that while allowing inspection of ballot papers in the course of that judgment (paragraph 20 of the A.I.R. report), the learned Judge made it distinctly clear that the orders for inspection were not being passed under the provisions of Order 11 Rule 15 of the Code of Civil Procedure, read with section 87 of the Act. as the District Election Officer was not a party to the petition, but pursuant to the provisions of rule 93 of the Conduct of Election Rules, 1961. Really speaking the learned Judge had made it clear in the same paragraph that what had weighed with him was that the Returning Officer had not taken up any plea in his written statement to the effect that he should not have been joined, but had on the contrary filed a contentious written statement. When the attention of the learned judge was drawn to the observations of the Supreme Court in *Ram Sewak Yadav* v. *Hussain Kamil Kidwai and others* (6), to the effect that "the Returning Officer is not a party to an election petition and an order for production of the ballot papers cannot be made under Order 11 Code of Civil Procedure" the learned Judge of the Bombay High Court merely stated that the above-quoted observation of the Supreme Court was "as such-only a passing observation." It was in the abovementioned circumstances that the learned Single Judge of the Bombay High Court held in *H. R. Gokhale's case* (3) (supra) that the Returning Officer was a proper party to that particular petition and it was not open to him to raise that point after having filed a contentious written statement.

(101) In *K. Venktteswara Rao and another* v. *Bekkam Narasimha Reddi and others* (8), (a judgment on which great reliance has been placed by Mr. Hira Lal Sibal, the learned counsel for the respondents 8 and 9), it was held that an election petition is not equated to a suit by the provisions of section 87, but that section 87 merely shows that subject to the provisions of the Act and the rules, if any, made thereunder, a trial of an election petition is to conform as merely as possible to the trial of a suit under the Code. Reference was then made to certain clear points of distinction between the trial of an

election petition on the one hand and the trial of a suit under the Code on the other. Thereafter it was observed:—

> "The above brief analysis is sufficient to show that the trial of an election petition is not the same thing as the trial of a suit."

Certain observations from their Lordships' earlier judgment in *Kamaraja Nadar* v. *Kunju Thevar* (26), were then quoted wherein it had been stated that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law. It was emphasised that not only the right to elect is statutory, but so are all the processes connected with the election and there is no element of any common law right in the process of election. Referring to the question of impleading parties, the Supreme Court observed as below :—

> "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 the 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 82 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."

(102) The abovequoted observations of the Supreme Court which were made in connection with a case arising under the amended Act, leave in my opinion, no doubt about the proposition that the only persons who can be impleaded as respondents to an election petition are either those mentioned in section 82 or those referred to in sub-section (4) of section 86, except of course in the case covered by section 116. Mitter, J., who spoke for the Court in K. *Venkateswara Rao's case* (4) (supra) laid great stress on the fact that the trial of an election petition and the powers of the Court in respect thereof are all circumscribed by the Act (which is a complete and self-contained Code) which does not admit of the introduction of the principles or provisions of law contained in general Acts like the Indian Limitation

(26) 1959 S.C.R. 583.

Act. Before closing the judgement in *K. Venkateswara Rao's case*, (8) the Supreme Court referred to the provisions of section 99 also and it was observed that an obvious case for the use of power under that section would be one of an agent guilty of commission of a corrupt practice with the consent of the candidate, and added that nevertheless such a person would not be a necessary party to the petition though he must have an opportunity of showing cause and of being heard before the High Court can name him as guilty of a corrupt practice while making an order under section 98. Observations were also made by the Supreme Court in *Khaji Khanavar Khadirkhan Hussain Khan* v. *Siddavanballi Nijalingappa and another*, (18) to the effect that the Returning Officer is not interested in any of the two rival candidates. This case was cited before us by Mr. Madan Lal Sethi to show that the Returning Officer was a party to that election petition and the Supreme Court did not direct his name being struck off. This submission has, in my opinion, no force. No objection was raised to the Returning Officer being a party to that petition either by him or by any other respondent. Neither the High Court, nor the Supreme Court was, therefore, called upon to decide the question whether the Returning Officer was or was not a proper party to the petition. I am inclined to think that if no objection had been taken even in the present case about respondents 8 and 9 being or not being proper parties to the petition, it is quite possible that they would have continued to remain parties to the petition not only in this Court, but even in the Supreme Court.

(103) Mr. Madan Lal Sethi lastly relied on the observations of a learned Single Judge of the Jammu and Kashmir High Court in *Sham Lal Saraf* v. *Mohd. Shafi Quareshi and another* (27), for the proposition that any third person can be impleaded as a respondent to an election petition under the Act. I have carefully gone through the judgment of J. N. Bhat, J. in *Sham Lal Saraf's case* (27), (supra) and I am wholly unable to spell out of it the proposition which is sought to be canvassed by Mr. Sethi. That case was concerned with two election petitions which were pending in the State of Jammu and Kashmir. One of them had been filed by Sham Lal Saraf against the election of Mohd. Shafi Quareshi. Another had been filed by one G. R. Mantu against the election of S. Mir Qasim. An identical pure question of law arose in both the

(27) A.I.R. 1968 Jammu & Kashmir 18.

cases. It was apprehended that Sham Lal Saraf's petition might reach the stage for arguments earlier than G. R. Mantu's petition. An application was, therefore, made by Mir Qasim that he may also be heard in *Sham Lal's case* (27), on the common questions of law which arose in both the cases. Following the practice of the Supreme Court (which is based on the express provisions contained in the rules framed by that Court), the learned Judge held that in exercise of its inherent jurisdiction, the High Court could permit Mir Qasim to be heard on the questions of law in Sham Lal Saraf's case as an intervener. It was, however, made clear in the course of the judgment that so far as the questions of fact between the parties in *Sham Lal Saraf's case* (27), were concerned, Mir Qasim would not be permitted to have any say, and he could not even be allowed to be heard in those matters. It was only in order to save Mir Qasim from being possibly prejudiced by the decision of the Court on a pure question of law (which arose in his petition also) without hearing him that he was allowed to address the Court on that question. The learned Judge of the Jammu and Kashmir High Court did not lay down at all that Mir Qasim could be impleaded as a party to Sham Lal's election petition. On the contrary, a safeguard was taken to avoid delay in the disposal of the election petition against Mir Qasim by observing as below in the last paragraph of the judgment:—

> "With regard to the other apprehension in the mind of the petitioner that grant of this application may be used as a weapon to delay the proceedings before the Election Tribunal, I might straightaway say that that will not be permitted to happen. S. Mir Qasim will be heard on this simple point of law as enunciated above when the election petition is ripe for argument before me. But the proceedings before the Election Tribunal in election petition *G. R. Mantu* v. *S. Mir Qasim* will go on unhampered and the Election Tribunal may decide that petition at any time even before the election petition before me is ripe for decision and decide all points arising in that petition before the disposal of the election petition before me. The application of the applicant S. Mir Qasim is granted in terms of the above order."

(104) As to how this judgment is sought to be construed in favour of adding unprovided parties to an election petition is just beyond me.

(105) A brief analysis of all the cases noticed above reveals that:—

(i) it has not been held anywhere that a person who is neither a candidate nor a Returning Officer is either a necessary or a proper party to a petition filed under section 80/84 of the Act merely because allegations of corrupt practice have been made against him in the petition;

(ii) it has not been laid down in any case that the Returning Officer is a necessary or a proper party to an election petition, if no allegation of any kind has been made against him in the petition;

(iii) the view that a Returning Officer is a proper party to an election petition wherein allegations of irregularities, illegalities or *mala fides* have been made against him or his subordinates in the petition is based on four grounds; namely,

(a) the English practice to which reference has been made in the Halsbury's Laws of England;

(b) there being no bar in the Act to the impleading of the Returning Officer;

(c) being permitted by the provisions of Order 1 Rule 10(2) of the Code by invoking section 87 of the Act; and

(d) the predicament in which an election petitioner may find himself by being compelled to call the Returning Officer as his witness in spite of the fact that the Returning Officer is not expected to support the petitioner's case and there may be no ground to declare him hostile to the petitioner in the witness-box.

(106) Following are the grounds on which it has been held in the previously decided cases that persons not mentioned in the Act cannot be impleaded as respondents to an election petition:—

(a) the Act is a self-contained code and does not admit of the invoking of Order 1 Rule 10(2) of the Code of Civil Procedure for the purpose of impleading any party to an election petition;

(b) no addition of parties is possible in the case of an election petition (beyond those enumerated in section 82) except under the provisions of sub-section (4) of section 86;

(c) the English practice to which reference is made in the Halsbury's Laws of England is based on the statutory provisions of the English Act, the like of which are not to be found in the Indian Act;

(d) persons other than the candidates are not parties to the election dispute and persons like Returning Officers have no interest in the dispute relating to the setting aside of the election or the declaring of an election-petitioner to have been elected in place of the returned candidate;

(e) persons other than the candidates to whom notice may ultimately have to be issued in some cases under section 99 of the Act (to show cause why they should not be named for having committed a particular corrupt practice) do not come into the field till the conclusion of the trial of the election petition.

(107) The answer to the questions posed in the beginning of my judgment initially depends on the soundness of one or other of the two sets of views. This task has, in my opinion, been rendered less difficult because of the authoritative pronouncements of their Lordships of the Supreme Court in *Ram Sewak Yadav's case* (6), in *K. Venkateswara Rao's case,* (8), and *in S. B. Adityan's case* (23), (supra). Taking into consideration those pronouncements and after carefully weighing all the arguments addressed before us on the points in issue, I am firmly of the opinion that the view taken by the Election Tribunal, Bombay, in *Gidwani Choithram Partabrai* v. *Agnani Thakurdas Chuharmal and others* (1), by the learned Single Judge of the Madras High Court in *K. T. Kosalram* v. *Dr. Santhosham and others* (4), by the learned Single Judge of the Bombay High Court in *H. R. Gokhale* v. *Bharucha Noshir C. and others* (3), and by the learned Judges of the Calcutta High Court in *Dwijendra Lal Sen Gupta* v. *Harekrishna Konar* (2), is, with the greatest respect to the learned Judges who decided those cases, not the correct view particularly in the context of the observations of the Supreme Court in the aforementioned three cases, and that the view taken by the Division Bench of the Madras High Court in *S. B. Adityan and another* v. *S. Kandaswami and others* (22), by the Division Bench of

the Assam High Court in *Amjad Ali* v. *B. C. Barula and another* (5), by the Division Bench of this Court in *Sardar Partap Singh* v. *S. Kartar Singh Chadha and others,* by the Election Tribunal, Nellore in *Returning Officer, Atmakur* v. *G. C. Kondaiah* (11), is the correct view and is consistent with the law laid down by the Supreme Court from 1964 onward. I will now proceed to record my reasons for preferring one view to the other.

(108) Firstly, it has to be borne in mind that the Act is indisputably a self-contained code. The right to file an election petition, the grounds on which such a petition can be filed, the persons against whom it can be filed, the period within which it can be filed, the relief which can be claimed therein, and the findings which the Court is required to or bound to give in such a petition, are all matters for which express and clear provisions have been made in the Act. The procedural field in respect of all these matters is covered by the Act and does not admit of any intrusion by the provisions of general law like the Code of Civil Procedure. It was contended by Mr. Madan Lal Sethi, on the authority of the Division Bench judgment of the Madras High Court in *Vydianadayyan* v. *Sitaramayyan,* (28), that a Court is entitled to add parties to a proceedings before it, whose presence before the Court may be necessary to enable the Court factually and completely to adjudicate upon and settle all the questions involved in the suit, i.e., to enable the Court "to try and determine, once for all, material questions common to the parties and to third parties and not merely questions between the parties to the suit." That judgment was based on an interpretation of section 32 of the Code of Civil Procedure of 1877, which provision corresponds to Order 1 Rule 10(2) of the Code of 1908. The expression which fell for consideration was "whose presence before the Court may be necessary to enable the Court factually and completely to adjudicate upon and settle all the questions involved in the suit." That principle would have been applicable to the trial of an election petition if the filing of a petition to set aside an election would have been a common law right. I have already referred to the settled law to the contrary. The principles contained in Order 1 Rule 10(2) of the Code of Civil Procedure do not, as such have any application to the trial of election petitions. If a candidate required to be impleaded as a respondent under section 82 of the Act is not so impleaded by error and the application for impleading him is made

(28) I.L.R. (1882) 5, Mad. 52.

within the period of limitation prescribed for filing the election petition, it may be permissible to implead him within such period, and for that purpose Order 1 Rule 10(2) of the Code may be invoked. Similarly if a provision of the Code of Civil Procedure has to be mentioned for making an application by a candidate under subsection (4) of section 86, it may be permissible to mention Order 1 Rule 10(2). But the provisions of that rule cannot, in my opinion, be invoked for impleading anyone as a respondent who is not shown in the Act to be either a necessary or a proper party, i.e. either a party required to be impleaded (Section 82) or a party permitted to be impleaded [Section 86(4) and Section 116] as a respondent.

(109) Secondly, I am of the opinion that strictly speaking, no reference can be made to Order 1 Rule 10(2) of the Code for deciding as to who is a proper party to be impleaded as a respondent to an election petition. The opening words in section 87 of the Act prohibit the invoking of Order 1 Rule 10(2) of the Code for adding a respondent not provided for in the Act. No other law can be looked into for deviating from the course provided in the Act. Authority for this proposition is found in the judgment of the Supreme Court in *K. Venkateswara Rao's case* (8). (supra). The observations of the Supreme Court in its earlier judgment in *Amin Lal's case* (16), (supra) must, in my opinion, be confined to the facts and circumstances of that case, and have to be read subject to the subsequent pronouncement of their Lordships in *K. Venkateswara Rao's case* (8).

(110) Thirdly, it appears to me that there is an implied bar in the Act to the impleading of persons not mentioned in the Act as respondents. This bar has been created by making a specific provision about the persons who can be impleaded as respondents. The question as to whether the subject of parties to an election petition has or has not been dealt with by the Act was also referred to by the Supreme Court in *Amin Lal* v. *Hunna Mal* (16). It was observed (at page 402) in connection with the power of the tribunal to permit an election-petitioner to remedy the defect caused by the non-impleading of a necessary party or the non-presentation of the petition in the manner prescribed by section 81 that the tribunal had not enabled "the appellant to remove a defect pertaining to the presentation of a petition or joinder of parties (which are matters dealt with by sections 81 and 82)". It is clear from the above-quoted observations that their Lordships of the Supreme Court were

expressly of the opinion that the matter of joinder of parties has been specifically covered by the Act. Whenever such a special provision is made in a statute, which is a self-contained code, the general provision on that subject contained in the general law stands ousted by implication. The judgment of the Supreme Court of Alabama in *Hutto et al* v. *Walker County* (29), is also an authority for the proposition that where an election statute makes adequate provision for parties, to that extent at least the procedure provided by the Code is rendered inapplicable.

(111) The subject of parties to an election petition has as much been covered by the Act as matters like the relief which can be claimed in an election petition, and the grounds on which such a relief can be claimed as well as the findings which the High Court must record. The fallacy in the argument about the absence of a bar in the Act to the impleading of a Returning Officer as a respondent amounting to an implied permission to implead such a person becomes obvious when one questions oneself as to whether the absence of a bar to the calling of an election in question on grounds other than those enumerated in sections 100 and 101 of the Act impliedly permits an election petition being filed on such other grounds? To ask that question is to answer it. Similarly there is no provision in the Act which says that no one other than a candidate or an elector shall file an election petition. Absence of any express bar in that respect does not entitle anyone not mentioned in section 81 of the Act to file a petition for setting aside an election. Once again the reliefs which can appropriately be claimed by an election-petitioner are confined to those mentioned in sections 80 and 84 of the Act. Though the claiming of a relief for naming a person under section 99 will not ordinarily cause any harm, no such relief can, strictly speaking be claimed by an election-petitioner in a petition. In fact the election dispute itself is not concerned with the matter of naming a person under section 99. Section 99(1)(a)(i) and (ii) casts a duty on the High Court to record a finding whether any corrupt practice has or has not been proved to have been committed, and to name the persons, if any, who have been proved at the trial to have been guilty of any corrupt practice. The provisions of section 98 clearly show the reliefs which can be claimed under sections 80 and 84 of the Act. I think the field relating to persons who can be impleaded as respondents in an election dispute is

(29) 64 Southern Reporter (Ala bama) 313.

covered as fully and completely by the Act as the fields relating to who can be petitioners, what relief they can claim and on what grounds such relief can be claimed. In none of these matters does the Act state anywhere that no one other than the persons mentioned in section 81 will be entitled to file a petition or that no other relief can be claimed, or that relief under sections 80 and 84 cannot be claimed on any ground other than those set out in sub-section (1) of section 100 and section 101 of the Act. Still it is impossible to argue that the general law can be invoked for any of those purposes. If that it is so, as indeed it is, where is the justification for making an exception to this rule in the matter of deciding as to who can appropriately be joined as respondents to an election petition, a matter for which also detailed and specific provisions have been made in the Act.

(112) Fourthly, the language of section 87 itself does not appear to me to leave any doubt in this respect. The invoking of the Code of Civil Procedure having been made "subject to" the provisions of the Act and of any rules made thereunder, nothing contained in the Code of Civil Procedure can be permitted to divert the course of trial of an election petition from the channel in which it is expected to flow under the Act. The expression "subject to the provisions of this Act and of any rules made thereunder" occurring in the relevant provision has been interpreted by their Lordships of the Supreme Court in *Harish Chandra Bajpai and another* v. *Triloki Singh and another* (9), to mean :—

(*a*) that in case of a conflict between the Act and the Code, the former is to prevail over the latter; and

(b) that the Code will operate only in fields not occupied by any specific provision of the Act.

Similar expression is used in Article 372 of the Constitution. The scope and meaning of the expression "subject to the provisions of" as used in that Article came up for consideration before their Lordships of the Supreme Court in *South India Corporation (P) Ltd* v. *Secretary, Board of Revenue, Trivandrum and another* (30). It was held that the expression 'subject to' conveys the idea of a provision yielding place to another provision or other provisions to

(30) A.I.R. 1964 S.C. 207.

which it is made subject. In the same manner, the provisions of sections 82 and 86(4) of the Act appear to me to override *pro tanto* the enabling provisions contained in sub-rule (2) of rule 10 of Order 1 of the Code. The general provisions in the Code must yield to the express provisions (relating to the persons who can be impleaded as parties) contained in the Act. In short, the invoking of the Code of Civil Procedure is prohibited by the opening words of section 87 at least in two contingencies viz:—

(a) where a provision exists on the same subject in the Act as well as the Code, and they are irreconcilable or inconsistent; and

(b) where a specific provision has been made in the Act on the particular subject on which the Code may also have some other provision which may be wider or narrower or different in any other respect.

In matters on which there is no provision either in the Act or the Code, the High Court can prescribe its own procedure, in exercise of its inherent powers and under rule 26(c) which has been quoted in an earlier part of this judgment. Following the observations of the Supreme Court in *Jagannath* v. *Jaswant Singh* (7), the Andhra Pradesh High Court held in the same connection in *N. V. L. Narasimha Rao* v. *Kotha Raghuramaya and others* (31), that the provisions of the Code of Civil Procedure apply only when there is no express provision in the Act and when there is no inconsistency with the Act. These observations were made in connection with the consequences of non-compliance with the impleading of parties required by section 82(b) of the Act. It was held that the Court cannot invoke power under Order 1 of the Code of Civil Procedure in that connection. I think the provisions of section 82 read with sections 86(4) and 116 of the Act contain a comprehensive enactment on the whole subject of parties who can be impleaded as respondents to an election petition. The maxim-*expressio unius exclusio alterius*—applies to this case and the express and complete provisions as to parties to an election petition contained in the Act exclude the operation of the general provisions on the subject contained in Order 1 Rule 10(2) of the Code of Civil Procedure.

(31) A.I.R. 1969 A.P. 68.

(113) Fifthly, the fact that the points in dispute have arisen in an election contest which is not an action at law, or a suit in equity, but is a purely statutory proceedings unknown to the common law, necessarily envisages that the statutory requirements of the Act must be strictly observed. Permitting the addition of parties not authorised or permitted by the Act would, in my opinion, be not in conformity with the relevant provisions and scheme of the Act. There is no innovation in specific provision being made as regards parties to an election petition in the Act. Such provision has been made in laws relating to the trial of election petitions even in America. In the American Jurisprudence (Second Edition, Volume 26, at page 154, in paragraph 334) it is stated on the subject of parties to an election dispute as follows:—

> "Since election contests are special statutory proceedings, the proper or necessary parties to such proceedings usually are prescribed by statute."

The English practice has already been noticed from the two decisions of the Court of Common Pleas.

(114) Sixthly, even from the point of view of general law, it appears to me that a person who is alleged to have committed a corrupt practice is not a proper party to an election petition unless he is a candidate because his presence is not necessary for a final decision "on the question involved in the proceedings." Questions involved in the trial of an election petition are concerned with only such reliefs which can be claimed by an election petitioner, i.e. for setting aside an election or declaring it void. A person to whom a notice under section 99 can be issued or may even ultimately be issued does not become a party to the election petition. He is really not effected by the declaration that may be given under section 98 of the Act and is not expected to have any interest in the election contest itself. Liability to be named under section 99 is not a question involved in the proceeding for setting aside of an election. I am supported in this view by the judgment of the Madras High Court in *Adityan's case* (22). (supra).

(115) Seventhly, the observations of their Lordships of the Supreme Court in *K. Venkateswara Rao's case* (8), (supra) to the effect that notwithstanding the power vested by the Code of Civil Procedure for adding parties to a suit under Order 1 Rule 10 "no

addition of parties is possible in the case of an election petition except under the provisions of sub-section (4) of section 86" appears to me to seal the fate of the proposition with which we are faced. Candidates who can be impleaded under section 86(4) of the Act can only be called proper parties as they are certainly not necessary parties. Their Lordships specifically referred to section 82 of the Act which enumerates the necessary parties (respondents) to an election petition. What they said in that context about no addition of parties to an election petition being possible except under sub-section (4) of section 86 of the Act is not capable of any interpretation except the one which has been canvassed before us by Mr. Hira Lal Sibal.

(116) Eighthly, so far as the Returning Officer are concerned, the pronouncement of the Supreme Court in *Ram Sewak Yadav's case* (6), (supra) appears to me to have laid down the general law on the subject which cannot be brushed aside as "a passing observation" (and I say so with respect to the learned Judge of the Bombay High Court who described it as such). If their Lordships intended to merely base the judgment on the fact that the Returning Officer was not a party to those particular proceedings, they would have used the word "this" in place of the word "an" in the sentence— "the Returning Officer is not a party to an election petition". While so saying the Supreme Court was, in my opinion, clearly laying down the general law to the effect that under the Act, a Returning Officer is not a party to an election petition.

(117) Ninthly, though it may not be necessary to maintain any distinction between what are popularly known as necessary parties on the one hand and proper parties on the other even if it has to be assumed that such a distinction must be made in all kinds of actions including election disputes, it is clear that the subject of necessary parties has been dealt with in section 82 and that of proper parties in section 86(4) of the Act. The whole field of parties having thus been covered there is nothing left for which Order 1 Rule 10 of the Code can be invoked, unless of course somebody likes to mention that provision for the purpose of impleading a party which is specifically required or permitted by the Act to be brought in to the array of petitioners or respondents.

(118) Tenthly, there appears to be a definite reason for excluding non-candidates from the array of respondents in an election

petition. If the contention of Mr. Madan Lal Sethi could be correct, all possible persons who may be alleged to have committed corrupt practices either as agents of a candidate or with his consent or connivance could appropriately be impleaded as respondents to an election petition. If that happens, each of such persons may deny the allegations of corrupt practice against him, and everyone of those allegations of fact will have to be put into issue in the election petition, thus complicating the trial of the election petition to such an exent as to defeat the very object of the statutory provisions for expediting its disposal. Again an illustration which was cited by Mr. Sibal does not appear to me to be inapt to demonstrate the policy behind keeping out non-candidates from the array of respondents, even if corrupt practices are alleged against them. The Prime Minister of India may, in his or her capacity as a leader of the political party which he or she may represent, go round the whole country making speeches in the course of the election campaign of the candidates of that party. Suppose it was alleged that in each of those speeches he or she had said something which constituted a corrupt practice (e.g. appeal to religion, caste or creed). According to Mr. Sethi, he or she could appropriately be impleaded as a respondent in all the election petitions that may be filed in the country. In that event all his/her time would probably be taken in defending himself/herself against the allegations of corrupt practice in all the election petitions leaving no time for his/her real work. Similar instances can be given in the case of Chief Ministers of States.

(119) Eleventhly, it is also a matter of experience that most of the allegations of corrupt practices made in election petitions normally fail for want of proof. The policy of the Legislature appear to be that persons other than candidates against whom corrupt practices are alleged should not be dragged into election contests till the last stage when on evidence adduced before an election Court a *prima facie* case is made out against them. This is the object of section 99. The scheme of the Act is that section 82(b) which makes it obligatory on the part of an election-petitioner to implead a candidate who is alleged to have committed a corrupt practice does not extend its scope to anyone who is not a candidate. Even if it may be said that section 82 relates only to necessary parties, it cannot be so said about sub-section (4) of section 86. That provision deals with proper parties. It is significant that even that section is restricted to candidates. If the Parliament had to

permit non-candidates (against whom corrupt practices were alleged) to be impleaded as respondents the word "person" would have been used in place of the word "candidate" in sub-section (4) of section 86.

(120) Twelfthly, the fallacy in the contrary view taken by some of the learned Judges and members of the tribunals appears to me to be three-fold. Reliance has in almost all those cases been placed on observations in the Halsbury's Laws of England and based on statutory provisions in the English Laws. The Act is principally based on the English Representation of the People Act, 1949. The fact that the Parliament while incorporating all necessary and relevant provisions from the English Act *mutatis mutandis* in the Indian Act deliberately and consciously left out the provision relating to the Returning Officer being a party to an election petition clearly shows that under the Act, the Returning Officer was not to be a party. The second ground on which that view is based is the absence of a bar to the impleading of a person who is not mentioned in section 82 or section 86 (4) as a respondent. The law laid down by the Court of Common Pleas in *Lovering* v. *Dawson and others* (20) (supra) is a complete answer to that argument. The third argument which weighed with the Division Bench of the Calcutta High Court about the predicament in which an election-petitioner may be placed by being compelled to call the Returning Officer as his witness also does not appear to me to be insurmountable. In a suitable case an election-petitioner can apply to the Court for the Returning Officer being called as a Court witness, and an opportunity can thus be seized, if the Court allows that course to be adopted, to cross-examine the Returning Officer. On the other hand, the grounds on which the view in favour of respondents 8 and 9 has been taken by the various High Courts appears to me to be sound and consistent with the relevant law laid down by the Supreme Court to which reference has already been made.

(121) For all these reasons, I am of the considered opinion that respondents 8 and 9 have not been properly joined as parties to this election petition and that their names are liable to be struck off from the array of respondents without prejudice to the right of the Court to issue appropriate notices to them under section 99 of the Act, if and when it becomes necessary to do so. The costs of the proceedings before the Full Bench should, in my opinion, be left to be borne by the parties as incurred by them.

ORDER OF THE FULL BENCH.

(122) That respondents 8 and 9 cannot be joined as parties to this election petition by the majority decision of the Full Bench and, therefore, their names are ordered to be struck off from the array of respondents, without prejudice to the right of the Court to issue appropriate notices to them under section 99 of the Representation of the People Act, if and when it becomes necessary to do so.

(123) There will be no order as to costs of the Full Bench.

K.S.K.

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