is thus right in urging that on the date of the sale the plaintiff-appellant had no right to acquire any land and thus did not possess the right of pre-emption as defined in section 4 of the Punjab Pre-emption Act, 1913.

It has been found by the lower appellate Court, and this is a finding of fact which can neither be disputed before us nor has it been challenged, that even thereafter the appellant continued to own land in excess of the permissible limit. Accordingly, his suit was liable to dismissal on the short ground that he had no right of pre-emption either on the date of the sale or the date of the suit or on the date when the decree was passed in his favour by the trial Court. It is well-settled, as has been recently laid down by a Full Bench of this Court in *Ramji Lal and another* v. *The State of Punjab and others* (3), that a pre-emptor must not only have a right to pre-empt on the date of sale but must also retain his qualification up-to the date of the decree of the trial Court. In view of our finding that the appellant had no right of pre-emption on all these three occasions, his suit must fail, and the learned District Judge quite rightly dismissed the same. I thus find no force in this appeal and dismiss the same, but in the circumstances of the case leave the parties to bear their own costs.

S. B. CAPOOR, J.—I agree.

K.S.K

REVISIONAL CIVIL

Before S. B. Capoor and Gurdev Singh, JJ.

RAGHBIR SINGH,—*Petitioner*

versus

THE ELECTION TRIBUNAL, AMBALA AND ANOTHER,—*Respondents*

Civil Revision No. 934 of 1966

December 19, 1966

Representation of the People Act (XLIII of 1951)—Ss. 117 and 118—Recrimination Petition—Security for costs—When to be deposited—Security deposited

(3) I.L.R. (1966) 2 Punj. 125 (F.B.)=1966 P.L.R. 345.

before the commencement of evidence—Whether sufficient—Order of deposit of further security under section 188*—When can be made—Time for deposit—Whether can be prescribed by the order—Default in making the deposit within the time prescribed—Effect of—Constitution of India* (1950)*—Arts.* 226 *and* 227*—Petition against order deciding preliminary issues—Whether maintainable in case appeal is provided against the final order—Alternate remedy—Whether a bar to such petition—Argument necessary to bring out the error in the order—Whether justifies High Court in refusing to hear petition on merits.*

Held, that the only penalty laid down for non-deposit of security for costs under sections 117 and 118 of the Representation of the People Act, is that the party filing the recrimination petition will not be permitted to lead evidence. Clearly, this does not imply that the Tribunal can even reject the notice of recrimination or refuse to consider the allegations made in the recriminatory application. There may be cases in which the party filing recrimination may not consider it necessary to lead evidence in support of its allegations, but may be in a position to substantiate the same from the material which is already available on the record. In such cases it appears that even if no evidence is led in support of the recrimination, the party concerned can still take advantage of the provisions of sub-section (1) of section 97 of the Representation of the People Act.

Held, that it is only in cases in which the provisions of sections 117 and 118 with regard to security deposit are not complied with before the date fixed for recording evidence in support of the recrimination that the Tribunal is entitled to refuse to admit evidence in support of the recrimination. But in cases where entire security has been deposited before the date fixed for recording evidence in accordance with section 117, the Tribunal is not justified in refusing an opportunity to the party filing the recrimination to adduce evidence in support of his case.

Held, that if at the stage of evidence the Court finds that the deposit referred to in section 117 would not be sufficient to meet the costs of the opposite party, it has ample power under section 118 of the Act to make an order for further deposit, and in making such an order, it can lay down the time within which the deposit should be made. In case default is made in the deposit of security, it has the power to "dismiss the petition" which, in the case of recrimination, means the non-hearing of the recriminatory application.

Held, that the High Court will not be justified in throwing out a petition under Article 227 of the Constitution without going into its merits merely because the final order passed by the Tribunal in disposing of the election petition would be open to appeal. The decision of the Tribunal on the preliminary issue, if affects the ultimate decision of the election petition, calls for interference by the High Court. An erroneous decision on the preliminary issue relating to the effect of non-deposit of the full security referred to in section

117 of the Representation of People Act, will necessitate the remand of the case by the appellate Court, resulting not only in considerable expense and inconvenience to both the parties but also in prolonging the proceedings and delaying the ultimate decision of the election petition. In such circumstances it cannot be said that immediate interference of the Court is not called for and is not necessary. The true position is that existence of an alternative remedy is not an absolute bar to interference by the High Court in exercise of jurisdiction under Articles 226 and 227 of the Constitution and when the order of Tribunal goes to the root of the questions that the Tribunal is called upon to deal with and a wrong decision on such questions is bound to create unnecessary complications or prolong the proceedings, especially in an election matter, the Court will not hesitate to deal with the matter and grant the necessary relief, and in fact in doing so it will be furthering the ends of justice and the policy of the legislation not only by avoiding delay in the decision of the election dispute but in some cases cutting short the litigation.

Held, that there is no justification for refusing to consider the question on merits and throwing out the petition under Article 227, merely because some argument is necessary to establish the error alleged to have been committed by the Tribunal.

Petition under Article 227 of the Constitution of India, praying that the order of the Election Tribunal, dated the 11th October, 1966, be quashed.

ANAND SWARUP WITH G. S. CHAWLA, ADVOCATES, for the Petitioner

RAJINDER SACHAR WITH M. S. SETHI, ADVOCATES, for the Respondents.

JUDGMENT

GURDEV SINGH, J.—The short question for consideration in this petition under Article 227 of the Constitution is whether a returned candidate, whose election is challenged and who has made recrimination petition in accordance with the provisions of section 97 of the Representation of People Act (hereinafter referred to as the Act), is debarred from giving evidence to prove that the election of his rival defeated candidate who has brought the election petition and claims the seat would have been void if he had been the returned candidate and a petition had been presented calling in question his election if he (the returned candidate) fails to furnish within 14 days' of the commencement of the trial the security referred to in section 117 of the Act for the full amount. The facts giving rise to this petition, in brief, are as follows:—

The election by the Members of the Punjab Legislative Assembly (the Punjab Vidhan Sabha) to elect four

members to the Council of State (Rajya Sabha) was held on 28th March, 1966. The petitioner was one of the successful candidates, while the respondent Ravindra Nath was not elected having failed to secure the necessary votes. Ravindra Nath thereupon filed an election petition on 10th May, 1966, challenging the validity of the election of Raghbir Singh, the present petitioner, and Narinder Singh, another successful candidate, on various allegations, including those of corrupt practices. He not only asked for a declaration that the election of these two successful candidates was void but also prayed that he be declared duly elected as a Member of the Rajya Sabha in one of those seats. When the petition came up for consideration before the Election Tribunal, Ambala, for the first time on 1st July, 1966, Raghbir Singh, the present petitioner, besides putting in a written statement in reply to the election petition, availed of the provisions of sub-section (1) of section 97 of the Act, and gave a written notice of his intention to adduce evidence to prove that the election of Ravindra Nath would have been void if he had been the returned candidate and a petition had been presented calling in question his election. With that notice he filed the statement referred to in sub-section (2) of section 97 of the Act, and a treasury receipt evidencing the deposit of Rs. 1,000 as security under section 117 of the Act. An objection was taken on behalf of Ravindra Nath that the amount of security deposited by Raghbir Singh was insufficient as under section 117, it was incumbent upon him to deposit Rs. 2,000. This objection formed the subject-matter of one of the preliminary issues, which runs thus:—

"Whether the notice under section 97 of the Representation of the People Act, 1951, given and the recrimination statement filed on behalf of respondent No. 1 are invalid because of the insufficiency, if any, of the security deposit made by respondent No. 1 within the time allowed, if any?"

On behalf of Raghbir Singh, it was maintained that the proviso to section 97(1) of the Act had been fully complied with and the deposit of Rs. 1,000 was adequate. Reliance in this connection was placed upon the fact that the amending Act 40 of 1961, by which

the amount of security deposited under section 117 of Act 43 of 1951 was enhanced to Rs. 2,000 with effect from 20th September, 1961, having been itself repealed on 30th October, 1964, by the Repealing and Amending Act 52 of 1964, the position with regard to the amount of security under section 117 was the same as it stood when that provision was originally enacted in 1951, and, accordingly, the deposit, which was required to be made under that section, was only Rs. 1,000 and not Rs. 2,000. The learned Tribunal rejected this contention in view of section 6-A of the General Clauses Act, 1897, which provides:—

> "6A. Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal."

Accordingly, it was held that the amount of security originally deposited by the present petitioner Raghbir Singh was insufficient and thus there was no proper compliance with the proviso to sub-section (1) of section 97 of the Act.

It may be mentioned here that on 7th October, 1966, the day fixed for arguments on the preliminary issues, Raghbir Singh deposited a further sum of Rs. 1,000 as security and produced the relevant treasury receipt. In view of this deposit, it was urged on behalf of Raghbir Singh that the deficiency, if any, having thus been made up, he was entitled to lead evidence under sub-section (1) of section 97 of the Act. The learned Tribunal, however, rejected this contention and found the preliminary issue referred to above against Raghbir Singh, observing as under:—

> "The production of the receipt with the notice under section 97 of Act 43 of 1951 is a condition precedent to entitle the returned candidate to lead evidence to prove the allegations of corrupt practices against the election-petitioner. The subsequent deposit of an additional sum of Rs. 1,000 by Shri Raghbir Singh, respondent No. 1 to make good the amount of the required deposit does not entitle him to lead such evidence when he had lost that right by his omission to file with the notice the treasury receipt for the

deposit of Rs. 2,000 as required under section 117 of the Act. Issue found accordingly against Shri Raghbir Singh, contesting respondent No. 1".

Being thus debarred from leading evidence regarding the corrupt practices alleged to have been committed by Ravindra Nath to substantiate his plea that if Ravindra Nath had been elected, his election would have been invalid and he was thus not entitled to be declared elected even if his petition succeeded. Raghbir Singh has approached this Court under Article 227 of the Constitution praying that the order of the Election Tribunal dated 11th October, 1966, so far as it relates to the preliminary issue No. 10 reproduced above, be quashed and a direction be issued to the Tribunal requiring it to try the recrimination petition in accordance with law and allow the present petitioner to lead evidence to prove that the election of respondent No. 2 would have been void if he had been the returned candidate and a petition had been presented calling in question his election.

Though before the Election Tribunal the present petitioner, Raghbir Singh, had taken up the position that the amount of Rs. 1,000 that he had originally deposited as security for costs was adequate as section 117 did not require a deposit of Rs. 2,000 in the course of arguments before us it is conceded by his learned counsel, Shri Anand Sarup, that the decision of the Tribunal that that deposit was deficient and it was incumbent upon the petitioner to deposit Rs. 2,000 as security for costs under section 117 is correct. The sole contention raised by Shri Anand Sarup is that since the deficiency was subsequently made up before the argument on the preliminary issue commenced, the present petitioner could not be debarred from leading evidence in support of the incrimination petition under sub-section (1) of section 97 of the Act. Before dealing with this matter, it is, however, necessary to dispose of two preliminary objections that have been raised by the respondent's learned counsel, Shri Rajinder Sachar. He has urged:—

(1) that since an appeal is provided against the final order of the Election Tribunal, this Court should refuse to interfere in the proceedings of the Election Tribunal at this stage; and

(2) that even if the petitioner's contention is accepted, it is at best a case of erroneous decision by the Tribunal on a point of law, and is thus outside the ambit of Article 227

of the Constitution, which is intended only to keep the Subordinate Tribunals within the bounds of their jurisdiction and not to correct errors of law and fact, especially when the legal error which is sought to be made out in this case is not apparent on the face of record.

The Bench decision in *Ram Roop and others* v. *Bishwa Nath and others* (1), has been cited in support of both these contentions. In that case, while considering the scope and applicability of Article 227 of the Constitution, it was laid down *inter alia*:—

(1) The power under Article 227, though in a sense wider than that under Article 226, should not ordinarily be exercised if any other remedy is available to the aggrieved party even though the pursuing of that remedy may involve some inconvenience or delay.

(2) The power should not be used to correct mere errors of fact or law, including a wrong decision on a question of jurisdiction.

(3) The power is to be used sparingly only in appropriate cases in which the conscience of the Court is pricked and it feels that immediate interference is called for as it is necessary to keep the subordinate Courts or tribunals within their bounds or to prevent some outrageous miscarriage of justice and grave results would follow if the power is not exercised. Whether a particular case is of this kind or not will depend on its own facts and circumstances.

In view of the last rule laid down in that case it is apparent that this Court will not be justified in throwing out this petition under Article 227 without going into its merits merely because the final order passed by the Tribunal in disposing of the election petition out of which these proceedings have arisen would be open to appeal. The decision of the Tribunal on the preliminary issue, which is being assailed before us, is bound to affect the ultimate decision in the election petition as the Tribunal's verdict on this issue debars the present petitioner from leading evidence to prove that the respondent Ravinder Nath was himself guilty of corrupt practices and thus could not claim the seat even if he succeeds in proving that the petitioner's election was void. An erroneous decision on this

(1) A.I.R. 1958 All. 456.

preliminary issue relating the effect of non-deposit of the full security referred to in section 117 of the Representation of People Act will necessitate the remand of the case by the appellate Court thus resulting not only in considerable expense and inconvenience to both the parties but also in prolonging the proceedings and delaying the ultimate decision of the election petition. In these circumstances, it cannot be said that immediate interference of this Court is not called for and is not necessary.

In Civil Writ No. 170 of 1959 (*S. Partap Singh Kairon* v. *Shri Rama Prasad Mookerjee and another*), decided on 12th March, 1959, a Bench of this Court accepting a petition under Articles 226 and 227 of the Constitution interfered with the order of the Election Tribunal deciding certain preliminary issues, and did not consider it proper to leave the aggrieved party to agitate the matter in an appeal which may be filed against the final order of the Tribunal on conclusion of the proceedings in the election petition.

Again, in *Shri Kartar Singh Giani* v. *The Election Tribunal* (2), Mehar Singh, J. (as he then was), who was also a party to the earlier case, (Civil Writ No. 170 of 1959, supra) on review of the various authorities of the Supreme Court quashed the interlocutory order of the Election Tribunal by which it had refused to decide certain issues as preliminary issues, and directed that such issues be disposed of before trial of the election petition on merits commenced. Disposing of the objection to interference with interlocutory orders by this Court, his Lordship said:—

> "The learned counsel for the respondent has tried to support his position that there ought not to be interference in an interlocutory order as in this case by reference to *A. Sanjeevi Reddi* v. *G. C. Kondayya and another* (3), *Bhargavan* v. *Abdul Majid* (4), and *P. Kunju Raman* v. *V. R. Krishna Iyer* (5). The first of these cases concerned the question of allowance of an amendment of an election petition and not the question of want of full and material particulars of a corrupt practice alleged in the election petition and, therefore, has no bearing on the facts of the present case.

(2) 1962 Doabia's Election cases 500.
(3) A.I.R. 1960 Andh. Prad. 421.
(4) A.I.R. 1961 Kerala 183.
(5) A.I.R. 1961 Kerala 188.

> The other two cases rather speak against the contention of the learned counsel for it is clearly stated that such an interlocutory order can be interfered with if it goes to the very root of the case or reversal of it is necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the case".

Earlier in *N. T. Veluswami Thevar* v. *G. Raja Naimar and others* (6), their Lordships of the Supreme Court had dealt with the question of propriety of interfering in writ petitions under Article 226 of the Constitution with interlocutory orders passed in the course of an enquiry before an Election Tribunal, and observed:—

> "The jurisdiction of the High Court to issue writs against orders of the Tribunal is undoubted, but then it is well-settled that where there is another remedy provided, the Court may properly exercise its discretion in declining to interfere under Article 226."

Their Lordships then referred to the amendment in the Representation of People Act in the year 1958, by which appeal against a decision of Election Tribunals was provided to the High Court under section 116-A and said:—

> "Its intention is obviously that proceedings before the Tribunal should go on with expedition and without interruption, and that any error in its decision should be set right in an appeal under that section. In this view, it would be a proper exercise of discretion under Article 226 to decline to interfere with interlocutory orders."

This decision was noticed by the learned Judges of the Division Bench in *Shri Kartar Singh Giani* v. *The Election Tribunal,* (2) and it was held that where the interlocutory order of the Election Tribunal relates to a matter has to be decided at an early stage, this Court would not be justified in refusing to entertain a petition under Articles 226 and 227 of the Constitution.

The true position that emerges from the various decisions is that the existence of an alternative remedy is not an absolute bar to interference by this Court in exercise of its jurisdiction under Article 226

(6) A.I.R. 1959 S.C. 422.

and 227 of the Constitution and where the order of the Tribunal goes to the root of the questions that the Tribunal is called upon to deal with and a wrong decision on such questions is bound to create unnecessary complications or prolong the proceedings, especially in an election matter, the Court will not hesitate to deal with the matter and grant the necessary relief, and in fact in doing so it will be furthering the ends of justice and the policy of the legislation not only by avoiding delay in the decision of the election dispute but in some cases cutting short the litigation.

So far as the second objection that power vesting in this Court under Article 227 of the Constitution is not intended to correct mere errors of law or fact, especially when they are not apparent on the face of the record, is concerned, we may turn to the decision of their Lordships of the Supreme Court in *Satyanarayan Laxminarayan Hegde and others* v. *Malikarjun Bhavanappa Tirumale* (7), where dealing with the scope of Article 227 of the Constitution, K. C. Das Gupta J., speaking for the Court, thus stated the legal position—

> "Article 227 corresponds to section 107 of the Government of India Act, 1915. The scope of that section has been discussed in many decisions of Indian High Courts. However wide it may be than the provisions of section 115 of the Code of Civil Procedure, it is well-established that the High Court cannot in exercise of its power under that section assume appellate powers to correct every mistake of law. Here there is no question of assumption of excessive jurisdiction or refusal to exercise jurisdiction or any irregularity or illegality in the procedure or any breach of any rule of natural justice. If anything, it may merely be an erroneous decision which, the error not being apparent on the face of the record, cannot be corrected by the High Court in revision under section 115 of the Code of Civil Procedure or under Article 227."

These observations were made by their Lordships on an appeal against an order of the Bombay High Court interfering with the order of the Bombay Revenue Tribunal. It was also laid down in that case that an error which has to be established by a long-drawn process of reasoning on points where there may be conceivably two opinions can hardly be said to be an error apparent

(7) A.I.R. 1960 S.C. 137.

on the face of the record, and such an error cannot be corrected by the High Court in revision under section 115 of the Code of Civil Procedure or under Article 227 of the Constitution.

Earlier, a Special Bench, of three Judges of the Calcutta High Court presided over by Harries, C.J., in *Dalmia Jain Airways Ltd.*, v. *Sukumar Mukherjee* (8), considering the scope of Article 227 of the Constitution laid down that the power of superintendence that vests in the High Court is a power to keep subordinate Courts within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. Referring to an earlier judgment of that Court, Harries, C.J., further observed:—

> "The power of superintendence as pointed out by Rankin, C.J., in his judgment in this case is not a power given to this Court to correct errors, otherwise, it would be tantamount to a right to entertain appeals on law and fact. The right should be exercised only in cases where the Courts have clearly done something which they were not entitled to do. The power must be used to keep the Courts below within the bounds prescribed by law for such Courts."

These principles governing the exercise of our jurisdiction under Article 227 have not been disputed by the petitioner's learned counsel, Shri Anand Sarup, but he has urged that the interference of this Court with the impugned order of the Election Tribunal is called for as the Tribunal has over-stepped its jurisdiction in shutting out the evidence which the petitioner is entitled to lead to substantiate his allegation of corrupt practices against the respondent, thereby defeating the object of the legislature in keeping to process of election pure and untainted. Since the question which has been raised before us pertains to the interpretation of section 97 of the Representation of People Act, on which there is no reported decision of this Court or any other Court, we do not think we will be justified in refusing to consider the question on its merits and throwing out the petition merely because some argument is necessary to establish the error alleged to have been committed by the Tribunal. Shri Rajinder Sachar, counsel for the respondent, has in these circumstances agreed that it will be expedient to deal with the order of the Tribunal on merits, and that may curtail the proceedings and lead to expeditious disposal of the election petition.

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(8) A.I.R. 1951 Cal. 193.

Section 97 of the Representation of People Act (43 of 1951) reads thus :—

"Section 97—Recrimination when seat claimed:—

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

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

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

The security and further security required to be deposited by a person filing the recrimination are those referred to in sections 117 and 118 of the Act, which are in these words:—

"117. *Deposit of security.*—The petitioner shall enclose with the petition a Government Treasury receipt showing that a deposit of (two thousand rupees) has been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Election Commission as security for the costs of the petition.

118. *Further security for costs*:—During the course of the trial of an election petition, the Tribunal may at any time call upon the petitioner to give such further security for costs as it may direct, and may, if he fails to do so, dismiss the petition."

It is not disputed that the further security to which section 118 relates is that which a Tribunal in the course of the trial may consider necessary to demand where it finds that the security already deposited under section 117 may not be sufficient to cover the costs of the opposite party. It is thus obvious that the occasion for furnishing further security arises only after the notice of recrimination has been given and the deposit made under section 117 is considered to be inadequate in view of the costs likely to be incurred. It cannot thus be disputed, nor has Shri Sachar attempted to do so, that the expression "within 14 days from the commencement of the trial," occurring in the proviso to sub-section (1) of section 97 cannot apply to the further security referred to in section 118.

Section 117, however, refers to the initial deposit of security of costs which has to accompany an election petition. Shri Sachar has argued that since the notice of recrimination, as observed by their Lordships of the Supreme Court in *Inamati Mallappa Basappa* v. *Desai Basavaraj Ayyappa and others* (9), is in the nature of a counter-petition and the person giving such notice is required to comply with the provisions of section 117, the treasury receipt showing that the necessary deposit has been made must accompany the notice, and in this view of the matter, the deposit of security referred to in section 117 after the expiry of the period of 14 days from the commencement of the trial, the period prescribed for giving the notice of recrimination, would not be in order.

Apart from section 97 with which we are dealing, there are other provisions in the Representation of People Act which require the deposit of security referred to in section 117, among them being sections 110(3)(c) and 115, which relate to substitution of a petitioner on the withdrawal or death of the original petitioner. A similar provision is found in section 119A of the Representation of People Act, 1951, which provides:—

> "119A. Every person who prefers an appeal under Chapter IVA shall enclose with the memorandum of appeal a Government Treasury receipt showing that a deposit of five hundred rupees has been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Election Commission as security for the costs of the appeal."

(9) AI.R. 1958 S.C. 698.

The effect of the failure of the appellant to make the deposit which does not fully comply with this provision was recently considered by their Lordships of the Supreme Court in *Kumaranand* v. *Brij Mohan Lal and others* (10). In that case the appellant had not made the requisite deposit in the Government treasury but had tendered the amount while filing the memorandum of appeal to the Registrar of the High Court as "security deposit". Though their Lordships accepted the contention that such a deposit did not manifestly comply with the requirements of section 119 of the Act, they held that this non-compliance did not necessarily result in the dismissal of the appeal, observing as under:—

> "The appellant was, it is true, not entitled on that account to ignore the statutory provision requiring that a Government Treasury receipt for the requisite amount in favour of the Election Commission as security for the costs of the appeal shall be enclosed. But when there is default in complying with the requirement, it is for the Court in each case to consider whether it will exercise its discretion to proceed with the appeal after rectifying the mistake committed or it will decline to proceed with the appeal."

In coming to this conclusion their Lordships pointed out that no penalty for failure to comply with the requirements of section 119A was prescribed in the Act, and observed:—

> "Section 119A is enacted with a view to secure the costs of the successful party and for that purpose the Legislature has enacted that the deposit should be made in a Government Treasury in favour of the Election Commission so that the Election Commission would pay the amount to the person entitled to the costs. But failure to comply with the requirements of section 119A does not necessarily result in the dismissal of the appeal, for the Act imposes no express penalty for non-compliance with the requirements of that section."

The decision, upon which the petitioner's learned counsel has mainly relied, has, however, been sought to be distinguished by Shri Sachar by pointing out that it was not a case of non-deposit or short deposit of the amount required as security but of irregular deposit, and even then the learned Judges did not go to the length of holding that

(10) A.I.R. 1965 S.C. 628.

the appeal could not be dismissed for defective deposit, but on the other hand merely laid down that it was a matter for discretion of the Tribunal in the exercise of which the circumstances of a particular case will have to be taken into account.

Shri Sachar further contends that this decision in *Kumaranand's case* (supra) proceeded mainly on the basis that no penalty for non-compliance with section 119A was provided in the Act, and argues that in the case before us the position is entirely different as sub-section (1) of section 97 itself lays down that unless the requirements of the proviso to that sub-section regarding the giving of notice of security are complied with, the person filing the recrimination is not entitled to give evidence in support of the recrimination. On a fair reading of the proviso to sub-section (1) of section 97, it is obvious that in requiring the person giving the notice of the recrimination to furnish the security referred to in section 117 the legislature intended to guard against frivolous allegations not only to save harassment to the opposite party but also to prevent delay in the disposal of the election petition. If the full amount of security is not furnished, the Tribunal is not competent to admit evidence in support of the recrimination, but there does not appear to be any justification for its refusal to take such evidence if before the date fixed for recording such evidence the full deposit in accordance with the provisions of section 117 has been made. Even if at that stage the Court finds that the deposit referred to in section 117 would not be sufficient to meet the cost of the opposite party, it has ample power under section 118 of the Act to make an order for further deposit, and in making such an order it can lay down the time within which the deposit should be made, and as laid down in section 118 itself, in case of default it has the power to "dismiss the petition" which in the case of recrimination means the non-hearing of the recriminatory application.

It may be pointed out here that even in the case of non-deposit of costs under section 117 with the election petition itself, the law at present is not so stringent as it used to be. Before the amendment of the year 1956, section 90(3) of the Representation of People Act provided that if the provisions of sections 81, 82 and 117 have not been complied with, the Tribunal shall dismiss an election petition. By the Amending Act 27 of 1956, the new sub-section (3) was substituted deleting section 117 from this provision, with the result that even if the person filing an election petition does not comply with section 117 regarding deposit of security, it is not incumbent upon the Election Commission to dismiss the petition for

such non-compliance. It is true that under section 85, the Election Commission is bound to dismiss an election petition for its non-compliance of section 117, but the omission of this section 117 from the powers of the Tribunal under section 90(3) clearly indicates that the legislature did not intend that the Tribunal should refuse to entertain a petition if the deposit is not made in accordance with the provisions of this section. The object of such provisions regarding furnishing of security is to secure the costs of the opposite party, and that object can be achieved in the case of recrimination by calling upon the party concerned to deposit the security before he is permitted to lead evidence in support of the recrimination. In *Jagan Nath* v. *Jaswant Singh and others* (11), it was held that non-joinder of necessary parties to an election petition was not fatal under section 82 of the Act, and where the verification of the petition was defective, the defect could be cured in the course of proceedings. In that connection, it was observed by their Lordships of the Supreme Court that such a provision with regard to joinder of parties and verification cannot be considered to be mandatory, as no penalty for non-compliance was provided in the Act. It may be mentioned that the Representation of People Act, 1951, as it stood at that time, did not enjoin upon the Election Commission or the Tribunal to dismiss an election petition for failure to implead the necessary parties.

Later, in *Murarka Radhey Shyam Ram Kumar* v. *Roop Singh Rathore and others* (12), it was held that the defect in the verification of an election petition and attestation of copies referred to in sub-section 3 of section 81 of the Act could be removed in the course of the proceedings and was not fatal to the maintainability of the petition, as they did not attract sub-section 3 of section 90 inasmuch as that sub-section did not refer to the non-compliance of the provisions of section 83 as a ground for dismissal of an election petition.

Reverting to section 97(1) of the Act with which we are concerned in this case, we find that the only penalty laid down for non-deposit of security of costs under sections 117 and 118 is that the party filing the recrimination will not be permitted to lead evidence. Clearly, this does not imply that the Tribunal can even reject the notice of recrimination or refuse to consider the allegations made in the recriminatory application. There may be cases in which the party filing a recrimination may not consider it necessary to lead

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

(12) A.I.R. 1964 S.C. 1545.

evidence in support of its allegations, but may be in a position to substantiate the same from the material which is already available on the record. In such cases it appears that even if no evidence is led in support of the recrimination, the party concerned can still take advantage of the provisions of sub-section (1) of section 97 of the Act.

In view of the above discussion, I am of the opinion that it is only in cases in which the provisions of sections 117 and 118 with regard to security deposit are not complied with before the date fixed for recording evidence in support of the recrimination that the Tribunal is entitled to refuse to admit evidence in support of the recrimination. But in cases like the present where the entire security has been deposited in accordance with section 117, the Tribunal is not justified in refusing an opportunity to the party filing the recrimination to adduce evidence in support of his case. Accordingly, I would accept the petition and quash the order of the Election Tribunal so far as it relates to issue No. 10. In view of the nature of the question involved in the decision, the parties are left to bear their own costs.

S. B. CAPOOR, J.—I agree.

R.N.M.

APPELLATE CIVIL

Before Harbans Singh and J. N. Kaushal, JJ.

UNION OF INDIA,—*Appellant*

versus

LACHHMI NARAIN—*Respondent*

Regular First Appeal No. 175 of 1962

December 19, 1966

Constitution of India (1950)—*Article* 311—*Temporary Government servant—Departmental inquiry against him initiated but later dropped and simple order of discharge passed—Such order—Whether amounts to dismissal—Formal order dropping the inquiry—Whether necessary to be made—Central Civil Services (Temporary Services) Rules* (1949)—*Rule* 5—*Order of termination of service providing for payment of fifteen days' pay and allowances instead of one month's—Whether invalid—Punjab Civil Service Rules, Volume II—Rule* 5.32—*Provision as to three months' notice to be given to a government servant before retiring him after attaining the age of* 55 *years—Whether mandatory—Non-observance of the rule—Whether makes the order of retirement invalid.*