does not say that the salary and the allowances have to be paid along with the passing of the order terminating the services. It cannot be said that if the salary is not paid simultaneously, the government servant is entitled to come back to service. The order will come into force on the day it is passed and all that the government servant is entitled to is the salary and allowances for the notice period. He can ask for them and if the Government refuses to pay the same, he can institute a suit for their recovery. The order, however, cannot be kept in abeyance or rendered invalid, because the said payment has not been made in the first instance. Under this rule, the appointing authority is vested with the right of terminating the services of the Government servant forthwith and correspondingly the government servant has a right to demand salary and allowances for the notice period from the government. In my view, therefore, the trial Judge was in error in holding that simply because the salary and the allowances for the notice period were not paid to the plaintiff when the impugned order was passed, the same became invalid and without jurisdiction. I would, consequently, accept this appeal, reverse the decisions of the courts below and dismiss the plaintiff's suit. In the circumstances of this case, however, I will leave the parties to bear their own costs in this Court. I may mention that the learned Deputy Advocate-General, who appeared on behalf of the Union of India, made a statement at the bar that the salary and the allowances due to the plaintiff under rule 5 would be paid to him within one month from today.

B.R.T.

FULL BENCH

Before A. N. Grover, Harbans Singh and D. K. Mahajan, JJ.

JUGAL KISHORE,—*Petitioner*

versus

DR. BALDEV PARKASH,—*Respondent*

Election Petition No. 9 of 1967.

September 1, 1967

Representation of the People Act (XLIII of 1951)—Ss. 109 and 110—Application for leave to withdraw election petition—How to be dealt with—Application not made bona fide—*Whether must be refused.*

Jugal Kishore *v.* Dr. Baldev Parkash (Harbans Singh, J.)

Held, that section 109 of the Representation of the People Act, 1951, clearly indicates that the Court has to exercise its judicial discretion in refusing or granting leave to withdraw an election petition. This discretion is fettered to the extent indicated in sub-sections (1) and (2) of section 110. In other words, if the application is not on behalf of all the petitioners, where they are more than one, the Court must dismiss the application and refuse to grant leave. Similarly, if there is evidence of a bargain between the parties, the Court must, again, refuse leave and dismiss the application. In these two cases, the Court has no discretion whatever and the application for leave to withdraw must necessarily be dismissed. It does not, however, lay down and there is nothing either in section 110 or any other provision of Act which fetters the judicial discretion of the Court to disallow such an application if the circumstances so warrant. It is neither proper nor feasible to make an attempt to lay down categories of cases in which leave should be refused or given by the Court. Each case has to be dealt with according to its own peculiar circumstances. However, one general rule of guidance in all such cases, where judicial discretion is to be exercised, is to see whether the application for withdrawal is made *bona fide* or whether it is merely a garb for escaping the consequences which would otherwise result. No doubt, one of the well-recognised principles is that the purity of the elections must be maintained by not stifling a proper enquiry in an election petition. At the same time, there is another principle equally well recognised by the Courts that the election of a duly elected candidate should not be lightly set aside and there is a further well-established principle that by the delaying tactics of one party, the other should not be unnecessarily harassed. An application for withdrawal which is not made *bona fide* with a view to withdraw from the petition but has been made only to get somebody else substituted who would get another opportunity to lead evidence which the petitioner has lost by his own default, must be rejected as the petitioner cannot be allowed to escape the result of his own default.

Case referred by the Hon'ble Mr. Justice Harbans Singh on 8th August, 1967 *to a Full Bench for decision of the important question of law involved in the case. The case was finally decided by the Full Bench consisting of the Hon'ble Mr. Justice A. N. Grover, the Hon'ble Mr. Justice Harbans Singh and the Hon'ble Mr.* Justice *D. K. Mahajan, on 1st September,* 1967.

Petition under Sections 80 *and* 81 *of the Representation of the People Act,* 1951 *under the provision of Part VI, Chapter II praying that the election of the respondent from theAmritsar East Constituency of the Punjab Legislative Assembly be declared null and void.*

J. S. Rekhi, Advocate, for the Petitioner.

Rajinder Sachar and B. S. Dhillon, Additional, Advocate-General with B. S. Shant, Advocate, for the Respondent.

ORDER OF THE FULL BENCH

HARBANS SINGH, J.—Election petition No. 9 of 1967 was filed on 6th of April, 1967, by Jugal Kishore, an elector, challenging the election of Dr. Baldev Parkash from the Amritsar East Constituency to the Punjab Legislative Assembly, on the ground that the nomination papers of two other candidates, namely, Shri Harcharan Singh and Shri Gurdeep Singh were improperly rejected by the returning officer on the date of scrutiny. Issues were settled on 5th of May, 1967. Arguments were heard and preliminary issue decided on 8th of May, 1967, and the case was adjourned to 22nd of May, 1967, to enable the parties to file lists of witnesses. On that date, an application was made by the petitioner that he would examine thirteen witnesses, out of which he wanted some, including the returning officer, to be summoned and offered to bring the others with him. The respondent wanted to examine six witnesses. The case was adjourned to 8th of August, 1967, for the evidence of the petitioner, 9th of August, 1967, for the evidence of the respondent and 10th of August, 1967, for arguments. Diet-money, process-fee, etc., for the witnesses, who were required to be summoned, was directed to be deposited within the time prescribed in the rules, which is three days from the date of the order of the Court. Thus the diet-money and the process-fee for the witnesses, required to be summoned by the parties, was to be deposited on 26th of May, 1967, giving three clear days to the parties. The petitioner failed to put in either process-fee or diet-money. On 8th of August, 1967, when the case was taken up for recording the evidence on behalf of the petitioner, his counsel stated that no witnesses were present. He further stated that the petitioner had met him about ten days after the date of the order of the Court, directing the witnesses to be summoned and ascertained from him the amount of diet-money, etc., he was required to deposit. Thereafter he did not turn up till about twenty days before the date fixed for recording the evidence and the petitioner told him that his father had been taken seriously ill and that for that reason he could not come earlier or arrange to deposit the diet-money, etc. The counsel informed him that that was no stage for making an application for deposit of diet-money and that he should arrange to bring the witnesses himself. Thereafter the petitioner met him only that morning stating that his father died on 25th of July, 1967, and that the Kirya ceremony was to take place on 9th of August, 1967. The counsel for the petitioner stated that in view of the changed circumstances the petitioner proposed to withdraw the

election petition and prayed for a short adjournment to enable him to make such an application. The application was filed after lunch wherein it was stated that after 22nd of May, 1967, his father fell seriously ill and on that account he could not deposit the diet-money; that he came to the High Court after the close of the summer vacation; ascertained the amount and went back to Amritsar to arrange for money, but his father was ill and he could not come. That the petitioner being the youngest son has now to bear the entire burden of looking after his mother and unmarried sisters and was not in a position effectively to prosecute this petition and incur any further expenses and, therefore, wished to withdraw the main petition. As required by section 109 of the Representation of the People Act, 1951, the same was directed to be published in the official Gazette and the case was adjourned till today for the decision of the leave application which was opposed.

The contention of the learned counsel for the petitioner was that he being the sole petitioner his application to withdraw the petition must be granted as a matter of course unless the case fell under sub-section (2) of section 110, namely, where the application for withdrawal has been induced by any bargain or consideration (of which there was no suggestion) which, in the opinion of the High Court, ought not to be allowed. On the other hand, the counsel for the respondent urged that apart from the cases mentioned in section 110, the power for granting or refusing leave to the petitioner to withdraw the election petition is completely in the discretion of the High Court, which has to be exercised taking all the circumstances of the case into consideration and where the application is made simply to escape the consequences of his default in prosecuting the case or failure to produce the evidence, the discretion should be exercised by refusing leave. Considering that this matter was likely to arise in a number of cases and was of considerable importance on which there was no direct authority, I referred the matter to be placed before a larger Bench for authoritative decision and that is how this matter is before this Full Bench.

Sections 109 and 110 of the Representation of the People Act, 1951, are as follows :

> "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 theretofore 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."

If a plaintiff desires to withdraw unconditionally any suit, the Court cannot under Order 23, rule 1, refuse his request and the plaintiff takes the consequences of such a withdrawal. Leave of the Court is necessary only if he wants to withdraw the suit with leave to bring a fresh suit on the same cause of action. This provision of the Civil Procedure Code is not applicable to Election Petitions and the Election Petitioner has no absolute right to withdraw the petition or even a part thereof [see *Bijayananda Patnaik* v. *Satrughna Sahu and others* (1), and *Inamati Mallappa Basappa* v. *Desai Basavaraj*

(1) A.I.R. 1963 S.C. 1566 at p. 1569.

Ayyappa and others (2)] The procedure applicable to the petition in respect of the withdrawal and abatement has been specially laid down in the Act itself and to that extent, the Act is a complete code and no reference can be made, in this respect to the provisions of the Civil Procedure Code. The counsel for the petitioner made a reference to the provisions of section 112 which provide that when an election petition abates on the death of a sole petitioner the matter of abatement is to be published in such manner as the High Court may deem fit and any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner on furnishing security, etc., and to continue the proceedings. Similarly, under section 116, even on the death of a sole respondent or his giving notice that he does not intend to oppose the petition, the matter has again to be published in the Official Gazette and thereupon any person who might have been a petitioner may apply and get substituted in place of such respondent.

In view of the above, he urged that the legislature has taken ample precaution that once a petition has been filed the same cannot be put an end to at the option of the petitioner or the respondent. He relied upon the observations of the Supreme Court in *Bijayananda Patnaik* v. *Satrughna Sahu and others* (1), which are as follows—

> "It will be seen from these provisions in Chapter IV that the petitioner in an election petition has not an absolute right to withdraw it; nor has the respondent the absolute right to withdraw from opposing the petition in certain circumstances. The basis for this special provision as to withdrawal of election petitions is to be found in the well-established principle that an election petition is not a matter in which the only persons interested are candidates who strove against each other at the elections. The public of the constituency also is substantially interested in it, as an election is an essential part of the democratic process. That is why provision is made in election law circumscribing the right of the parties thereto to withdraw. Another reason for such provision is that the citizens at large have an interest in seeing and they are justified in insisting that all elections are fair and free and not

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(2) 14 E.L.R. 296 at p. 311.

vitiated by corrupt or illegal practices. That is why provision is made for substituting any elector who might have filed the petition in order to preserve the purity of elections."

Similar observations were made by the Supreme Court in *Inamati Mallappa Basappa* v. *Desai Vasavaraj Ayyappa and others* (2).

The contention of the learned counsel for the petitioner was that no doubt under section 109 a petition can be withdrawn by the petitioner only with the leave of the Court, yet the only two cases in which the leave can be refused by the Court are enumerated in sub-sections (1) and (2) of section 110. He urged, therefore, that in all other cases the petitioner should be given leave to withdraw the petition as a matter of course. He urged that to refuse such a leave would result in stifling the enquiry in the election petition in which the public at large is deeply interested. If the petitioner is either unwilling or unable for any reason whatever to produce the evidence necessary in the case or to otherwise prosecute the petition and he is not permitted to withdraw, the result would be that no other person, who would have been entitled to bring the petition and who is willing and in a position to properly prosecute the petition, would be entitled to apply for being substituted and continue the petition. He urged that this should not happen. In this connection, he referred to the observations of Mahajan, C.J., in *Jagan Nath* v. *Jaswant Singh and others* (3), at page 215, as follows—

"Various provisions of the Act referred to above show that the election petition does not necessarily abate or fail by reason of the death of the petitioner or any of the respondent or *by their ceasing to take any interest in the trial of the petition once that petition has been referred to the Tribunal*. On the other hand, any person who could be a petitioner can continue the petition in spite of the death of either the petitioner or the respondents to the petition and on the original parties failing to prosecute it."

It may be mentioned here that so far as the facts and the point involved in that case are concerned they are quite different from

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

those in the present case. There, the petitioner had omitted to implead, as required by section 82 of the Representation of the People Act, 1951, one of the candidates whose nomination had been accepted but who had withdrawn his candidature subsequently. On an objection being taken, the Tribunal had held that such a person was not a necessary party but he was certainly a proper party and they gave permission to the petitioner to implead him. The respondent was dissatisfied with the decision, but a writ petition filed by him under articles 226 and 227 of the Constitution was dismissed by the High Court and he went to the Supreme Court by special leave under articles 136 of the Constitution. The sole point before the Supreme Court was whether the omission to implead a candidate who was duly nominated but who withdrew his candidature, was fatal to the petitioner or not. It was held by the Supreme Court that in view of the provisions of the Act such an omission was not fatal. The question whether a petition can be dismissed or not if the petitioner ceases to take any interest in the trial of the petition, was not before their Lordships of the Supreme Court. In any case, it was conceded by the learned counsel for the petitioner that if the petitioner just ceases to take interest in the prosecution of the petition and either produces incomplete evidence or produces no evidence or on the date fixed for evidence neither the petitioner nor his counsel appears in Court and makes no application for withdrawal under section 109, there is no provision in the Representation of the People Act under which the Court can direct any other person to be substituted for the petitioner. In fact, the result of refusal to allow the withdrawal of the application in a case where the High Court is of the opinion that the withdrawal has been actuated by some bargain would be to stifle the enquiry in an election petition. Where the petitioner and the respondent have entered into an agreement or a bargain, under sub-section (2) of section 110, the Court must refuse leave to withdraw the petition. Consequently, the provisions of sub-section (3) of section 110 would be inapplicable and no one else can get himself substituted for the petitioner. So far as the petitioner is concerned, in view of the agreement with the respondent, he would not be interested in actively prosecuting the petition and result would be that he would just go through a farce of producing some evidence which would, in no way, establish the contentions in the petition and as a consequence the petition shall have to be dismissed. There is no manner of doubt that, as observed by the Supreme Court and as is now well-established, an election petition is not a contest

between the parties concerned and it is in the interest of purity of elections and democratic institutions that the election petitions, particularly those alleging commission of corrupt practices, should be enquired into and such an enquiry should not be brought to an immature end by the petitioner ceasing to have any interest in prosecuting the same. However, it is rather strange that although provision has been made in case of abatement of a petition by the death of the petitioner and also in the case of the petitioner withdrawing from the petition, for somebody to be substituted in his place, there is no provision in the Act where the petitioner just does not take any interest and allows the petition to be dismissed in default of prosecution. It was not denied by the petitioner that the Court has power to dismiss a petition for default in such a case and, in fact, has no other option but to do so. Again, by providing that leave to withdraw shall be refused by the Court in case of a bargain between the petitioner and the respondent, the real object of the legislature to see that an enquiry in an election petition reaches to its logical end is altogether frustrated.

Be that as it may, if the argument of the learned counsel for the petitioner is accepted, namely, that leave cannot be refused except in the cases covered by sub-sections (1) and (2) of section 110, the provisions of section 109 providing that the petition shall be withdrawn only with the leave of the Court become absolutely redundant. As was urged on behalf of the respondent, section 109 clearly indicates that the Court has to exercise its judicial discretion in refusing or granting leave. This discretion is fettered to the extent indicated in sub-sections (1) and (2) of section 110. In other words, if the application is not on behalf of all the petitioners, where they are more than one, the Court must dismiss the application and refuse to grant leave. Similarly, if there is evidence of a bargain between the parties, the Court must, again, refuse leave and dismiss the application. In these two cases, the Court has no discretion whatever and if, as is urged on behalf of the petitioner, in all other cases the Court must necessarily grant leave, then the result is that in no case, the Court has any discretion whatever. In two cases covered by section 110 it must refuse the leave and in all other cases must necessarily grant it. There is a well-settled rule of interpretation of statutes that, as far as possible, all the words used in a statute should be given their natural meaning. I have, therefore, no hesitation, in my mind, in holding that sub-sections (1) and (2) of section 110

only enumerate two cases in which the application for leave to withdraw must necessarily be dismissed. It does not, however, lay down and there is nothing either in section 110 or any other provision of the Act which fetters the judicial discretion of the Court to disallow such an application if the circumstances so warrant. It is neither proper nor feasible to make an attempt to lay down categories of cases in which leave should be refused or given by the Court. Each case has to be dealt with according to its own peculiar circumstances. However, one general rule of guidance in all such cases, where judicial discretion is to be exercised, is to see whether the application for withdrawal is made *bona fide* or whether it is merely a garb for escaping the consequences which would otherwise result.

There are no decided cases of the Supreme Court or of any High Court on the point, but reference was made to a decision by the Commissioners in *Lyallpur and Jhang General Constituency*, 1938, *Punjab Legislative Assembly case* reported in Sen and Poddar's 'Indian Election Cases', at page 504 (3A). In that case, the petitioner, after examining a few witnesses, closed his case stating that he did not wish to put himself into the witness-box. On the adjourned date, he filed an application for withdrawal of the petition, *inter alia*, alleging that the petitioner's business did not allow him to continue the petition and that under the circumstances he prayed that he might be allowed to withdraw the petition. The provisions governing the dismissal of such applications were incorporated in the Punjab Legislative Assembly Electoral Rules, 1936. Rules 17 to 21, Part E, Chapter III, were *pari materia* with sections 109 and 110 of the Representation of the People Act and were as follows—

> "17. An election petition may be withdrawn only by leave of the Commissioners or, if an application for withdrawal is made before any Commissioner has been appointed, of the Governor exercising his individual judgment.
>
> 18. If there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the other petitioners.
>
> 19. When an application for withdrawal is made to the Commissioners, notice thereof fixing a date for the hearing of

(3A) Sen and Poddar's Indian Election Cases at page 504.

the application shall be given to all other parties to the petition and shall be published in the Gazette.

20 No application for withdrawal shall be granted if in the opinion of the Governor, exercising his individual judgment or of the Commissioners, as the case may be, such application has been induced by any bargain or consideration which ought not to be allowed.

21. If the application for withdrawal is granted—

(a) the petitioner shall, where the application has been made to the Commissioners be ordered to pay the costs of the respondent theretofore incurred or such portion thereof as the Commissioners may think fit;

(b) notice of the withdrawal shall be published in the Gazette by the Governor or by the Commissioners, as the case may be; and

(c) any 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 of Rule 6, as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the Commissioners may think fit."

The learned Commissioners refused leave and observed as follows:—

"We have no hesitation in reaching the conclusion that the leave asked for must be disallowed. Petitioner refers to rule 20, Part E, Chapter III, Punjab Legislative Assembly Electoral Rules, 1936, and urges that as there was nothing to show.....that the application had been induced by any bargain or consideration, it must be allowed. The rule nowhere lays down that this is the only case in which the application has to be refused, and that in all other cases, it has to be allowed, as a matter of course.....
.....

> We are of opinion that there was no sufficient reason for allowing the petition. The only ground urged is that the petitioner's business did not allow him to continue the petition, but when it was brought to his notice that the case has almost closed and that there was no force in this ground, he found himself altogether non-plussed..... The request for withdrawal has been made at a late stage when the case had practically concluded and the respondent opposes it and it is proper that the respondent, whose integrity the petition assails, should be given a decision upon the evidence and these coupled with the fact that there was no force in the ground urged by the petitioner, are sufficient reasons for disallowing the petition. We had, on the other hand, a strong suspicion that the petition was in reality actuated with the object of substituting another petitioner in order to be able to bring more evidence on the record, and this suspicion was confirmed when we announced our orders disallowing the petition, the petitioner there and then presented an application which he had ready with him that he might be permitted to produce further evidence.....".

Referring to this matter in their main judgment, the Commissioners again observed as follows :—

> "After hearing arguments on behalf of the parties, we rejected the application for withdrawal.....We had a strong suspicion that the application for withdrawal was in reality a subterfuge to enable the petitioner to substitute another person for himself, so as to produce more evidence and thus reopen the case which he had closed and lengthen the proceedings by adopting this device.....".

On behalf of the respondent, a reference was also made to another case decided by the Commissioners reported as the *Darbhanga (North-East) Case* in Hammond's Reports of the Indian Election Petitions, 1920 Volume I, page 93(3B). There, at page 94, a mention was made about an application for withdrawal, as follows:—

> "On the 1st instant when the hearing had extended over 12 working days and the respondent was about to close his

(3B) Hammond's Reports of the Indian Election Petitions, 1920, Volume I, page 93.

case an application was made for withdrawal of the petition. This application was resisted by the respondent and we thought proper to disallow it for the reasons, firstly, that we considered that the respondent, whose integrity the petition assails, was entitled to a decision upon the evidence, and secondly that the withdrawal might have involved an application for substitution and a continuance of the proceedings under the provisions of rule 37 of the Election Rules."

It was urged that these two cases, at least, indicate clearly that discretion to refuse or to grant an application vests in the Court or the Tribunal concerned and the Court is not bound to grant leave in all cases where there is no suspicion of any bargain, etc.

On behalf of the petitioner reliance was placed on a decision of an Election Tribunal, to which I was a party : *Shiv Dayal and others* v. *Teg Ram and others* (4), The facts of that case were altogether different from the present case. There, the petitioner had made an application for withdrawal even before the written statement had been filed. The contest between the parties was as to whether the same was actuated by a bargain or not. On the evidence brought on the record, it was held that there was no proof of such a bargain and the leave was, therefore, granted. The learned counsel wanted to make a capital out of the observations made at page 365, wherein Mr. Parma Nand Sachdeva, learned Member of the Tribunal, who delivered the judgment on behalf of the Tribunal, observed as follows—

"There is another reason on account of which also, we think the application for withdrawal should be granted. The law does not require that the petitioner in an application for withdrawal should adduce sufficient reasons before the application for withdrawal can be accepted. A perusal of sub-section (2) of the above section (section 110) shows that the withdrawal application should be granted in due course unless it is shown that the application has been induced by any bargain or consideration which ought not to be allowed. The burden would thus shift upon those

(4) 6 E.L.R. 346.

> who oppose a withdrawal application to show that there has been any bargain or consideration which ought not to be allowed."

These observations can hardly be an authority for the proposition that is put forward on behalf of the petitioner.

Taking the facts of the present case, the affidavit put in on behalf of the petitioner nowhere states definitely as to when his father fell ill. In any case, the rules of this Court are clear and specific that if a party wants any witnesses to be summoned through Court, he has to file an application and if the same is allowed either in respect of all the witnesses or some of them, the process-fee and the diet-money is to be deposited within three days from the order of the Court. When the application for summoning the witnesses came up for hearing on 22nd of May, 1967, the petitioner, who is assisted by a counsel of standing, should have known that he would be required to deposit process-fee and the diet-money within three days of 22nd of May, 1967. He should have either put his counsel in funds to enable him to put in the process-fee and the diet-money, or, in any case, it was his duty to enquire about the same immediately after the hearing of the case and to take steps to put in the process-fee and the diet-money. Sub-section (7) of section 86 of the Act, specifically lays down that every election petition shall, as far as possible, be disposed of within six months from the date of its filing. The rules of procedure laid down by this Court have been made specific and clear with a view to achieve this end and if the petitioner did not care to contact his counsel till ten days after the hearing of his application and even then did not bring any money with him to pay the process-fee and the diet-money and thereafter did not care to send the money, it is obvious that he has not taken reasonable interest in the prosecution of the petition. We have not been able to understand him when he states in the affidavit that he being the youngest son of his father, who had died on the 25th of July, 1967, the entire burden of looking after his unmarried sisters and other family affairs had fallen on him. Normally speaking, it is the elder son on whom the burden falls. Be that as it may, between 22nd of May, 1967, when the orders were passed allowing him to summon the witnesses for 8th of August, 1967, and 25th of July, 1967, when his father, unfortunately, died, there was a period of full two months and I have not been able to appreciate that any insuperable difficulty lay before him, even if his father was ill, to send the amount of money that his

counsel had told him was necessary for putting in the process-fee and the diet-money. In fact, he did not care to inform even his counsel as to what had prevented him till twenty days before the date of hearing. He then appeared on the date fixed for the evidence and made only an oral request through his counsel for withdrawal of the petition. He had not even a written application ready and had not cared to inform his counsel soon after his father's death, so that he could make prayer to this Court in time for the adjournment of the case to another date so that the time of the Court fixed for hearing of the case may not have gone waste and the counsel for the other party could have also got other work of his fixed for those dates. The argument of the learned counsel for the respondent is that this was the clearest case of failure to prosecute the case and seeing that the obvious result of his default would be dismissal of the petition for failure to prosecute or dismissal on account of lack of evidence, he adopted the subterfuge of putting in an application for withdrawal, so that some other person may be got substituted in his place, who could, in turn, get, as a matter of right; further opportunity to produce evidence. No doubt, one of the well-recognised principles is that the purity of the elections must be maintained by not stifling a proper enquiry in an election petition. At the same time, there is another principle equally well-recognised by the Courts that the election of a duly elected candidate should not be lightly set aside and there is a further well-established principle that by delaying tactics of one party, the other should not be unnecessarily harassed. I, therefore, find that there are no valid grounds for allowing this application for withdrawal which, to my mind is not made *bona fide* with a view to withdraw from the petition but has been made only to get somebody else substituted who would get another opportunity to lead evidence which the petitioner has lost by his own default. This application has obviously been made to escape the result of the default of the petitioner. I, therefore, have no hesitation in refusing leave to withdraw and dismiss this application with costs, which are assessed at Rs. 200. The case will now go back for further proceedings.

GROVER, J.—I entirely agree that leave to withdraw the election petition should be declined in the circumstances of the present case. However, I would like to avail of this opportunity of drawing attention of the Election Commission to certain striking anomalies in the law of elections which, if allowed to remain, would defeat

one of the main purposes of the provisions in respect of election petitions.

It has been repeatedly said that an election petition once filed is not a contest only between the parties thereto but continues for the benefit of the whole constituency. It is for that purpose that in the Representation of the People Act, 1951, provisions have been made in sections 109 and 110 relating to withdrawal of an election petition and sections 112 and 116 relating to abatement of such a petition, the effect of which is that the petition cannot come to an end by the withdrawal thereof by the death of the petitioner or by the death or withdrawal of opposition by the respondent, but is liable in such cases to be continued by any person who might have been a petitioner. There is nothing in the entire Act providing or indicating that a similar procedure is to be followed in the event of a petitioner failing to prosecute the petition. Such failure can be due to various causes. The petitioner can, by force of circumstances, be genuinely rendered helpless to prosecute the petition. For instance, he may find that his financial condition has suddenly worsened and that he can no longer afford the expenses of litigation. He may even, owing to exigencies of business or vocation or profession, have to go to such a distant place from the seat of the High Court where the election petition is being tried that he may find it impossible to prosecute the petition in a proper manner. There would be two courses open to him and that will depend entirely on his volition. He can either file an application for withdrawal of the petition disclosing the circumstances which have brought about such a situation in which case there would be no difficulty in following the procedure laid down in sections 109 and 110 of the Act, or he may choose to simply absent himself from the Court or cease to give any instructions to the counsel engaged by him or fail to deposit the process-fee and the diet-money for witnesses or take the necessary steps for summoning the witnesses in which case the Court will have no option but to dismiss the election petition under the provisions of the Code of Civil Procedure which would be applicable to the election petitions in the absence of any express provisions in the Act. The dismissal will have to be under the provisions contained in Order 9 or Order 17 of the Code.

There has been some conflict of judicial opinion on the question whether an election petition can be dismissed under the above provisions of the Code of Civil Procedure. In *Dina Nath Kaul* v.

Election Tribunal (5), a Full Bench was of the view that an election petition had to proceed to completion and the petitioner could not refuse to prosecute it or abandon or withdraw it wholly or in part and further that an order of dismissal of such a petition on the ground of non-appearance being contrary to law the subsequent order restoring the petition would not be quashed by *certiorari* under Article 226 of the Constitution. This decision was dissented from by a Division Bench in *Sawalia Behari Lall Verma* v. *Tribikram Deo Narain Singh* (6). After examining all the relevant provisions and the decided cases and following a decision of the Madhya Pradesh Court in *Sunderlal-Mannalal* v. *Nandramdas-Dwarkadas* (7), it was held that if the petitioner did not take steps when the case was fixed for hearing, the Court could dismiss the election petition under Order 9 or in exercise of the inherent jurisdiction of the Court. In *Brijmohan Lal* v. *Election Tribunal* (8), it was said that an Election Tribunal constituted under section 86 of the Act was not a Court and an Election Tribunal did not take the inherent powers of an ordinary Court. The Allahabad Court thus did not agree with the Madhya Pradesh Court that an election petition could be dismissed in the above circumstances in exercise of inherent powers. In *Vishwanath Prasad* v. *Malkhan Singh Sharma* (9), the view expressed was that there was no provision in the Act empowering the Tribunal to dismiss a petition simply because one of the witnesses or one of the parties to the petition did not appear when the case was called on for hearing and that there was no inherent power in the Tribunal to dismiss the petition. It was further said that if the party did not appear before the Tribunal and did not produce the necessary evidence relating to the issue of which the burden of proof was upon it or did not submit arguments, the Tribunal could decide it against that party but it must be a decision on the merits.

In the Act, as it stands now, it is laid down in section 87 that subject to the provisions contained in the Act and 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. Similar

(5) A.I.R. 1960 J. & K. 25.
(6) A.I.R. 1965 Pat. 378.
(7) A.I.R. 1958 M.P. 260.
(8) A.I.R. 1965 All. 450.
(9) A.I.R. 1964 All. 181.

provisions were contained in section 90(1) of the Act before the amendment made in 1966. I venture to think, with respect, that the Patna view is correct. It is quite clear that there is no distinct provision in the Act laying down any particular or special procedure which is to be followed when the petitioner chooses to commit default either in appearance or in production of evidence or generally in prosecuting the petition. The provisions of the Code of Civil Procedure would, therefore, be applicable under section 87 of the Act. I am further of the opinion that any argument which could be pressed and was adopted for saying that the inherent powers of the Court could not be exercised in such circumstances would be of no avail now as the High Court is a Court of Record and possesses all the inherent powers of a Court while trying election petitions. There can be no manner of doubt that the observations made by Hidayatullah, C.J. (as he then was) in *Sunderlal-Mannalal* v. *Nandramdas-Dwarkadas* (7), would be fully applicable. This is what he said :—

> "Now the Act does not give any power of dismissal. But it is axiomatic that no Court or Tribunal is supposed to continue a proceeding before it when the party who has moved it has not appeared nor cared to remain present. The dismissal, therefore, is an inherent power which every Tribunal possesses. *
>
> Now, the Civil Procedure Code also provides for dismissal of suits under the 9th Order. There is also an additional power of the Court to say that a particular proceeding before it is not being prosecuted and therefore is being struck off."

The significant anomaly is that where a petitioner has made up his mind for one reason or the other not to go on with the petition, he can choose to either file an application for withdrawal of the petition in which event the provisions of sections 109 and 110 of the Act would become applicable or he may simply choose not to prosecute the petition, with the result that the petition would have to be dismissed and the procedure which has been laid in sections 109 and 110 will not have to be followed. In case of withdrawal the procedure is quite elaborate. Under section 109 the petition can be withdrawn only by leave of the Court. Where an application has

been made for withdrawal, notice thereof fixing a date for the hearing of the application has to be given to all other parties to the petition and published in the Official Gazette. Under section 110 if there are more petitioners than one, no application to withdraw can be made except with the consent of all the petitioners and the application for withdrawal shall not 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. If the application is to be granted, the petitioner shall be ordered to pay the costs of the respondents and the 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. Any person who might himself have been a petitioner may, within 14 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. Under section 111 when an application for withdrawal is granted and no person has been substituted as petitioner in place of the party withdrawing, the High Court has to make a report of that fact to the Election Commission and the Election Commission has to publish the report in the Official Gazette. The aforesaid provisions have been made for the purpose of ensuring that if the petitioner chooses to withdraw his petition, any one else who may be interested from the constituency and who might himself have been a petitioner may have an opportunity to apply to be substituted as petitioner so as to prosecute the petition. This purpose and object can immediately be defeated by the petitioner following the course of having his petition dismissed for non-prosecution and by not filing an application for withdrawal. If the intention of the Legislature was that owing to the peculiar nature of the election petitions they should not be allowed to be disposed of or dismissed without prosecution to the end of trial—that apparently was the reason for enactment of sections 109 to 111—it is difficult to understand why it has been left to the whim, caprice and sweet will of the petitioner to defeat that intention by following not one course but the other.

It appears that some Election Tribunals felt that although the petition could be dismissed in the event of non-prosecution but it should be first considered whether an enquiry could be conducted

suo motu or whether no respondent was prepared to continue it and the evidence already produced was insufficient to allow the petition [see Fazilka M.R. 1948 (S.N.P.) 307]:

It is true that in certain eventualities even if the petitioner fails to prosecute his petition, the Court may be in a position to proceed with its trial if there is any respondent who is prepared to continue it and get himself either transposed to the array of petitioners or adduce evidence in support of the petition. But supposing there is no such respondent or even if there are more than one respondent, none of whom is prepared to prosecute the petition or incur the expense of adducing evidence on behalf of the petitioner, the Court will have no option but to dismiss the petition for non-prosecution. It is noteworthy that provision has been made in section 116 of the Act that if the sole respondent gives notice that he does not intend to oppose the petition or any of the respondents 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 14 days of such publication, apply to be substituted in place of such respondent to oppose the petition. But there is no provision whatsoever by which a respondent who might have been a petitioner can be compelled or forced by the Court to prosecute the petition or adduce evidence in support of it owing to the default of the original petitioner and on his refusal to do so notice of such event can be published in the Official Gazette to enable some one, who might have been a petitioner, to apply and get substituted and then prosecute the petition. Nor can the Court give any decision on the merits worth the name in a petition which is not being prosecuted in the absence of any evidence which might have been adduced by the parties. It is difficult to believe that the Legislature intended that the Court in such circumstances should embark *suo motu* on an enquiry which it will be impossible to successfully complete unless some one is prepared to provide the material and the evidence and incur the expense. In Halsbury's Laws of England, Third Edition, Volume 14, it has been stated at pages 289 290, that there is a duty on the election court to investigate any allegation of any corrupt or illegal practices brought to its notice. If there are any indications of impurity in the election, it is impossible to shorten the case by concessions between the parties. The Court must sit as long as there is anything which can be brought

before it by the parties or the Director of Public Prosecutions relating to these allegations. It is the office of the Director of Public Prosecutions which assumes importance in this connection. When information is given to the Director of Public Prosecutions that any corrupt or illegal practice has occurred in relation to any election, it is his duty to make such enquiries and institute such prosecutions as the circumstances of the case appear to him to require. He must attend the trial of every election petition by himself or by his assistant or by a representative who must be a barrister or a solicitor and must be nominated by him, with the approval of the Attorney General. He is to obey the instructions which may be given by the election court with regard to the summoning and examination of any witness to give evidence at the trial with respect to the prosecution by him of any offenders and with respect to any person to whom notice is given to attend with a view to reporting him as guilty of any corrupt or illegal practice. Moreover, if it seems to the Director of Public Prosecutions that any person is able to give material evidence as to the subject of the trial, it becomes his duty, without any direction from the election court, to cause that person to attend the trial, and, with leave of the court, to examine that person as a witness. It has further been stated at page 291 that it is no part of the duties of the Director of Public Prosecutions to call evidence with respect to matters at issue between the parties, though if there should be, in his opinion, a collusive withholding of evidence it would be his duty to call that evidence himself.

There is no such authority or officer in India who has been entrusted with the task which is being performed by the Director of Public Prosecutions in England in the matter of election petitions and election offences and unless such an agency is set up, it is not possible to see how the real purpose of the election petitions can be fully achieved where a petitioner after filing the election petition decides for some reason or the other to make persistent defaults in its prosecution, or even to deliberately withhold all the material evidence.

I would now advert to another glaring anomaly in our law of elections. As has been stated before, under section 110 of the Act 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. If a petitioner has

entered into any bargain of the nature mentioned or if he colludes with the respondent who is the returned candidate while the election petition is proceeding, he can file an application for withdrawal in which case an enquiry will be held whether his application should be declined on the ground that it has been induced by any bargain or consideration. If the result of the enquiry is that the application has not been so induced, then leave can be granted in exercise of discretion of the High Court after taking into consideration all the circumstances of the case. If, however, it is found that his application was in fact induced by a bargain or consideration or it is collusive, then leave to withdraw must be declined. In that event he will be compelled to prosecute the petition but there is no power or machinery by which he can be compelled to produce the entire material or evidence relevant to the issues arising out of the petition. To give a simple illustration, if the petitioner has alleged that the returned candidate has been guilty of the corrupt practice or bribery of which particulars have been given he may have within his knowledge very good evidence to prove his allegation but if he has colluded with the respondent, he can simply produce some flimsy evidence which may carry no conviction and withhold really good and credible evidence. It is unthinkable that the Court, unless some one chooses to supply the information, can dig up the material evidence which has been withheld and which is within the special knowledge of the petitioner. The result will be that the decision will go in favour of the respondent (the returned candidate), although if proper evidence had been produced, the petition would have succeeded and he would have been unseated, apart from the other consequences which he would have to suffer by reason of a finding being given that he has been found guilty of commission of a corrupt practice. There is yet another situation that can well arise. The petitioner, after his application to withdraw has been dismissed on the ground that it has been induced by a bargain or consideration or that it is collusive, can simply choose to absent himself, withhold instructions from counsel and produce no evidence whatsoever, with the result that either the petition will have to be dismissed for non-prosecution or it will have to be dismissed on the finding of "non-proven" in respect of each issue. Therefore, the purpose for which the Legislature intended that the application for withdrawal should be declined would be fully achieved by reason of the aforesaid lacuna in the Act no procedure having been provided for a case of non-prosecution similar to the one contained

sections 110 and 116 of publication in the Official Gazette so as to notify that any one who might be interested in prosecuting the petition might apply and get himself substituted in place of the party concerned to prosecute the petition to the conclusion if its trial.

It is for those responsible for legislation to remedy the defects and remove the lacuna if my views find some measure of agreement.

D. K. MAHAJAN, J.—I have nothing to add to what has been observed by my learned brother Grover, J., and Harbans Singh, J. In the circumstances of this case leave to withdraw the election petition should be declined with costs, which have been assessed at Rs. 200.

B. R. T.

FULL BENCH

Before A. N. Grover, Harbans Singh and Daya Krishan Mahajan, JJ.

UMRAO SINGH—*Petitioner*

versus

DARBARA SINGH AND OTHERS,—*Respondents*

Election Petition No. 28 of 1967.

September 19, 1967

Constitution of India (1950)—*Art.* 191— *Chairman of Panchayat Samiti receiving a consolidated allowance of Rs.* 100 *per mensem—Whether holds an office of profit—Such office—Whether held under the State of Punjab—Punjab Panchayat Samitis and Zila Parishads Act* (*III of* 1961)—*Ss.* 95 *and* 115—*The Punjab Panchayat Samitis and Zila Parishads Non-Official Members* (*Payment of Allowance*) *Rules*, 1961 *as amended in* 1965—*Rules* 3 *to* 6—*Nature of the allowance provided under—Whether profit to the Chairman.*

Held, that the combined reading of the 1961 and 1965 Rules [The Punjab Panchayat Samitis and Zila Parishads Non-Official Members (Payment of Allowance) Rules] discloses that the Chairman was to be paid a consolidated amount towards his daily allowance and travelling allowance for performing