

Gurbakhsh
Singh
v.
S. Partap Singh.
I.F.S., Chief
Conservator of
Forests, Punjab,
Simla
and another
Bhandari, C. J.

publication, which has for its objects to divert the course of justice is a contempt."

There can be no manner of doubt that the communication which was addressed by the Chief Secretary to Government was issued with the object of preventing Government servants from seeking redress at the hands of Courts of law at their own sweet will and pleasure and must, therefore, be deemed to have been issued with the object of diverting the course of justice.

Although the respondents are clearly guilty of an offence punishable under section 3 of the Contempt of Courts Act, I am of the opinion that they were endeavouring merely to comply with the orders of Government the legality or propriety of which they had no reason to doubt. In the circumstances I am not inclined to view their conduct too censoriously. The ends of justice would be amply served if they are directed to abandon the departmental proceedings which have been brought against the petitioner for contravening the instructions contained in the circular letter and warned against complying with the provisions of the said letter in future. Ordered accordingly.

Dulat, J.

Dulat, J.—I agree.

K. S. K.

APPELLATE CIVIL.

Before Falshaw and Dua, JJ .

PANDIT RAM NATH KALIA,—Appellant

versus

SHRI PAUL SINGH,—Respondent.

First Appeal from Order No. 138 of 1958.

1958

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Representation of the People Act (XLIII of 1951)—
Section 80—Election petition—Nature and object of—Whether a suit between two persons—Code of Civil Procedure

(V of 1908)—Order XVII Rule 3—Whether applicable to election petitions—Petitioner allowed to amend his petition on payment of costs—Petition amended but costs not paid—Tribunal, whether justified in dismissing the petition.

Held, that the scheme of the Representation of the People Act, 1951 is not to treat the disputes with respect to elections as merely private and personal disputes between the parties to the election petitions like ordinary suits in trial Courts. Election petitions are intended to safeguard and maintain the purity of election process and also to remove and disqualify from membership of legislative bodies all those persons who have been guilty of corrupt practices. This being one of the principal objects of election petitions, the entire constituency must be considered to be a party vitally interested in the result of these proceedings and it is this interest of the constituency as a whole which distinguishes the proceedings before the Election Tribunal from ordinary civil suits and invests them with a characteristic of their own. Indeed, it would be difficult for true Parliamentary democracy to successfully function and to achieve its cherished objective, if legislators could with impunity get themselves elected through corrupt practices and if enquiries into allegations of corrupt practices and illegalities are allowed to be terminated without a proper, thorough and deep probe. Once an election petition has been properly presented, then it must ensure for the benefit of the entire constituency and it cannot and should not come to an end merely because the petitioner has omitted—either deliberately or by force of circumstances—to pay costs as ordered by the Election Tribunal, just as it cannot be permitted to terminate by the mere withdrawal thereof by the petitioner or even by his death or by the withdrawal of opposition by the respondent; the petition is under the law liable to be continued by any person who might himself have been the petitioner. The provisions relating to the trial of election petitions constitute a self-contained code governing their trial and the election petitions cannot be terminated or brought to an end without a full and proper trial on the merits of the charges of corrupt practices and other allegations of illegalities committed during the course of election.

Held, that the provisions of Order XVII rule 3, Civil Procedure Code, in terms are not applicable to the trial of

election petitions. An Election Tribunal is not empowered to dismiss an election petition without holding trial on the merits, on the mere ground that certain costs ordered by the Tribunal have not been paid. The Tribunal has no power to pass an order allowing amendment of petition conditional on payment of costs and to refuse to proceed with the trial of the amended election petition merely because costs have not been paid. The provisions of Sections 117 to 122 of the Representation of the People Act, 1951 amply safeguard the interest of the party in whose favour any order as to costs has been passed during the trial of an election petition. According to this scheme, there can hardly be any legitimate occasion for the Tribunal to pass an order conditional on payment of costs because costs as ordered by the Tribunal can always be realised by the party interested without any obstacle or undue delay; if necessary, it is also open to the Tribunal to make an order for further security for costs.

Held, that the entire election petition cannot be dismissed merely because costs for amending the petition have not been paid. At worst the amendment can be disallowed and the Tribunal cannot refuse to try the unamended petition on the merits. But in a case in which the Tribunal has held that in the interests of justice the amendment should be allowed on payment of costs, mere non-payment of such costs should not stand in the way of the Tribunal from proceeding with the trial of the amended petition on merits.

First Appeal from the Order of Shri Gurdev Singh, Election Tribunal, Ludhiana, dated the 14th May, 1958, dismissing the petition under Order 17 Rule 3 of the Code of Civil Procedure and further ordering to the respondent to pay Rs. 100 as costs.

J. V. GUPTA, for D. C. GUPTA, for Petitioner.

MUNI LAL KALIA and N. N. GOSWAMI, for Respondent.

JUDGMENT

Dua, J.

DUA, J.—This appeal is directed against the order of the Election Tribunal dated 14th May, 1958 dismissing an election petition under Order XVII rule 3 of the Code of Civil Procedure.

The facts relevant for the purposes of this appeal are that Shri Ram Nath Kalia filed an election petition challenging the election of Shri Paul Singh, respondent, who had been declared elected to the Punjab Legislative Assembly from the Raikot constituency in the vacancy caused by the death of Shri Wazir Singh. The result of the election was declared and published on the 28th November, 1957 and a petition for setting aside the election was presented on 8th January, 1958. The petition was resisted on the merits and some preliminary objections were also raised to the verification of the petition and to the vague nature of the allegations of corrupt practices contained in it. The petitioner-appellant in reply offered to amend the petition which was opposed on behalf of the returned candidate. The Tribunal thereupon framed the following preliminary issues:—

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- (1) Whether the petitioner cannot be permitted to correct the verification of the petition at this stage ?
- (2) Whether all the necessary particulars required under section 83 of the Representation of the People Act have been supplied by the petitioner in his allegation regarding corrupt practices contained in para No. 9-B of the petition?
- (3) If issue No. 2 is found against the petitioner, whether the petitioner cannot be permitted to supply the missing particulars by way of amendment of the petition or amplification?

Under issue No. 1 the Tribunal held that the amendment of the verification could under the law be allowed by the Tribunal. With respect to

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issues Nos. 2 and 3 the learned Tribunal observed that all the necessary particulars required under section 83 of the Representation of the People Act had not been supplied by the petitioner, but it held that the petitioner could be allowed to amend his petition only for the purpose of supplying certain particulars necessary for making the charges specific; no fresh charge of corrupt practices could, in the opinion of the Tribunal, be permitted to be added by way of amendment. The learned Tribunal thereupon allowed the petition on 6th May, 1958, to be amended in certain particulars conditional on payment of Rs. 50 as costs to the opposite party; the amended petition was ordered to be put in on 9th May, 1958. It appears that on the 9th May, 1958 the petitioner was absent and his learned counsel prayed for further time in order to be able to comply with the orders of the Tribunal. As a matter of indulgence, an adjournment was allowed to him on payment of Rs. 16 as conditional costs for compliance with the order dated 6th May, 1958. On the 14th May, 1958 an amended petition was sought to be put in by the petitioner appellant but without paying the costs, the petitioner stating that he was not in a position to pay the costs. The learned Tribunal, observing that the orders dated 6th and 9th May, 1958 had not been complied with in spite of the fact that an adjournment had been granted to the petitioner at the express request of his counsel on the 9th May, 1958 to enable him to comply with these orders, dismissed the petition under Order XVII, rule 3, of the Code of Civil Procedure. The petitioner was also held liable to pay the costs of the proceedings amounting to Rs. 100.

On appeal the learned counsel has in the first instance submitted that the Tribunal had no jurisdiction to dismiss the petition under Order XVII,

rule 3, Civil Procedure Code; he contends that order permitting amendment could not be made conditional on payment of costs. The order of costs was capable of being executed and therefore if costs were not paid the amendment could not or at least should not have been disallowed. In any case, so the counsel argues, the entire election petition could not be dismissed on the ground of failure to pay the costs.

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There is force in the contention raised by the counsel.

The provisions of Order XVII rule 3, Civil Procedure Code, in terms are not applicable to the trial of election petitions. It is true that under section 90(1) of the Representation of the People Act (Act XLIII of 1951) every election petition has to be tried by the Tribunal as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits; but this is subject to the provisions of that very Act and of any rules made thereunder. In this connection it is helpful to refer to the scheme of the above Act in the matter of disputes regarding elections. Part VI of this Act is headed "Disputes Regarding Elections". Chapter I of this part is headed as "Interpretation". It consists of only section 79 which lays down the definitions of certain terms. Chapter II deals with the presentation of election petitions to the Election Commission. Section 85, which also falls in this chapter, lays down the circumstances in which, on receiving a petition, the Election Commission may dismiss it. Then comes Chapter III which is headed as "Trial of Election Petitions". It begins with section 86 and concludes with section 107 which last section lays down the effect of orders of the Tribunal.

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Under section 86 the Election Commission, if it does not dismiss the petition under section 85, is enjoined to cause a copy of the petition to be published in the Official Gazette and to serve a copy of the same by post on each respondent; after doing so the Election Commission is directed to refer the petition to an Election Tribunal for trial. The next relevant section of importance is section 90 which reads as follows:—

“Procedure before the Tribunal.—(1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908), to the trial of suits;

Provided * * * that the Tribunal shall have the discretion to refuse for reasons to be recorded in writing to examine any witness or witnesses if it is of the opinion that their evidence is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) The provisions of the Indian Evidence Act, 1872 (I of 1872), shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.

- (3) The tribunal shall dismiss an election petition which does not comply with the provisions of section 81, section 82 or section 117 notwithstanding that it has not been dismissed by the Election Commission under section 85.

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- (4) Any candidate not already a respondent, shall, upon application made by him to the Tribunal within fourteen days from the date of commencement of the trial and subject to the provisions of section 119, be entitled to be joined as a respondent.

Explanation.—For the purposes of this sub-section and of section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the Tribunal and answer the claim or claims in the petition.

- (5) The Tribunal may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

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(6) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of publication of the copy of the petition in the Official Gazette under sub-section (1) of section 86."

Sub-section (3) of section 90 lays down the circumstances under which the Tribunal is empowered to dismiss an election petition; it may be observed that the power of dismissing an election petition in the contingency contemplated by sub-section (3) has also been conferred on the Election Commission under section 85 which power can be exercised by the Commissioner before the petition is referred for trial to an Election Tribunal. In case, the Election Commission has, for certain reasons, omitted to exercise the power of dismissing the petition under section 85, the Parliament has, by the recent amendment of 1956, also conferred this power of dismissal on the preliminary grounds on the Election Tribunal. Sub-section (5) of section 90 deals with the power of the Tribunal to allow the particulars of any corrupt practice alleged in the petition to be amended or amplified subject to the limitation that it shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition. Under this section the Tribunal has the power to allow such amendment upon such terms as to costs and otherwise as it may deem fit. The next relevant section which is of importance is section 92. It reads as follows:—

"92. *Powers of the Tribunal.*—The Tribunal shall have the powers which are vest-

ed in a Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters:—

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- (a) discovery and inspection;
- (b) enforcing the attendance of witnesses, and requiring the deposit of their expenses;
- (c) compelling the production of documents;
- (d) examining witnesses on oath;
- (e) granting adjournments;
- (f) reception of evidence taken on affidavit; and
- (g) issuing commissions for the examination of witnesses;

and may summon and examine *suo motu* any person whose evidence appears to it to be material, and shall be deemed to be a civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (5 of 1898).

Explanation.—For the purpose of enforcing the attendance of witnesses, the local limits of the jurisdiction of the Tribunal shall be the limits of the State in which the election was held.”

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The Parliament has, it may be noticed, considered it necessary to make an express provision with respect to the powers enumerated in section 92 notwithstanding the general provisions contained in section 90(1). Section 97 deals with the subject of recrimination when the petitioner claims a declaration that any candidate other than the returned candidate has been duly elected. In such cases the returned candidate or any other party is entitled, subject to certain conditions, to lead evidence that the election of such candidate would have been void if he had been the returned candidate and if a petition had been presented calling in question his election. Then comes section 98 headed "Decision of the Tribunal". It lays down that *at the conclusion of the trial* of an election petition the Tribunal shall make an order—

- (a) dismissing the election petition; or
- (b) declaring the election of all or any of the returned candidates to be void; or
- (c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected."

It may be noticed that this section contemplates orders to be passed only *at the conclusion of the trial*. This is followed by section 99 which confers power on the Election Tribunal to make an order recording (i) findings whether or not any corrupt practice has been committed by or with the consent of any candidate or his election agent and (ii) names of the persons, if any, who have been proved to have been guilty of corrupt practices, etc. Chapter IV which contains sections 108 to 116-B deals with withdrawal and abatement of election petitions. Once an election petition has

been presented to the Election Commission the petitioner has no absolute power to withdraw it. Under section 108 it can only be withdrawn by leave of the Election Commission if withdrawal is sought before the appointment of a Tribunal for the trial of such petitions. If an application for withdrawal is made after a Tribunal has been appointed, for the trial of such petition, then under section 109 it may be withdrawn only by leave of the Tribunal and notice of the said petition for withdrawal, fixing a date for the hearing thereof, has to be given to all other parties to the petition and it has also to be published in the Official Gazette. If there are more petitioners than one, then it is not permissible to anyone of them to withdraw the petition except with the consent of all the petitioners. It has been specifically laid down in section 110 that no application for withdrawal can be granted if, in the opinion of the Election Commission or of the Tribunal, such withdrawal has been induced by any bargain or consideration which ought not to be allowed. Under sub-section (3), of section 110 if an application for withdrawal is granted, then any person, who might himself have been a petitioner, is entitled, within fourteen days of the publication of the notice of withdrawal in the Official Gazette, to apply to be substituted as petitioner in place of the party withdrawing. There are similar provisions for substitution of other persons qualified to be petitioners, to come and continue the proceedings in cases where abatement of election petition has occurred on the death of a sole petitioner or of the survivor of several petitioners.

The scheme of the Act, therefore, appears to me clearly not to treat the disputes with respect to elections as merely private and personal disputes between the parties to the election petitions

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Pandit Ram like ordinary suits in trial Courts. On the contrary
Nath Kalia this scheme indubitably shows that—

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“An election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and the Court possesses no common law power. * * * *

* * * * *

“It is always to be borne in mind that though the election of successful candidate is not to be lightly interfered with, one of the essentials of that law is also to safeguard the purity of the election process and also to see that the people do not get elected by flagrant breaches of that law or by corrupt practices.” (Vide *Jagan Nath v. Jaswant Singh and others* (1).

To similar effect are the observations in *A. Sreenivasan v. Election Tribunal, Madras* (2):—

“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 also are substantially interested in it and this is not merely in the sense that an election has news value. An election is an essential part of the democratic process.

* * * * *

“An election petition is not a suit between two persons, but is a proceeding in

(1) 1954 S.C.R. 892.

(2) (1955) 11 E.L.R. 278.

which the constituency itself is the principal party interested."

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In *Tipperary's case* (1), also it is laid down by Morris, J., that "an election petition is not a suit between two persons, but is a proceeding in which the constituency itself is the principal party interested." Election petitions, as is thus clear, are intended to safeguard and maintain the purity of election process and also to remove and disqualify from membership of legislative bodies all those persons who have been guilty of corrupt practices. This being one of the principal objects of election petitions, in my opinion, the entire constituency must be considered to be a party vitally interested in the result of these proceedings and it is this interest of the constituency as a whole which distinguishes the proceedings before the Election Tribunal from ordinary civil suits and invests them with a characteristic of their own. Indeed, it would be difficult for true Parliamentary democracy to successfully function and to achieve its cherished objective, if legislators could with impunity get themselves elected through corrupt practices and if enquiries into allegations of corrupt practices and illegalities are allowed to be terminated without a proper, thorough and deep probe. Once an election petition has been properly presented, then in my opinion, it must enure for the benefit of the entire constituency and it cannot and should not come to an end merely because the petitioner has omitted—either deliberately or by force of circumstances—to pay costs as ordered by the Election Tribunal, just as it cannot be permitted to terminate by the mere withdrawal thereof by the petitioner or even by his death or by the withdrawal of opposition by the

(1) (1875) 3 O'M and H. 19.

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respondent; the petition is under the law liable to be continued by any person who might himself have been the petitioner. I have thus no hesitation in holding that the provisions relating to the trial of election petitions constitute a self-contained code governing their trial and the election petitions cannot be terminated or brought to an end without a full and proper trial on the merits of the charges of corrupt practices and other allegations of illegalities committed during the course of election. I am fortified in my views by the reasoning of the Supreme Court in *Inamati Mallappa Basappa v. Desai Basavaraj Ayyappa and others* (1), where it has been held that, in spite of the provisions of section 90(1) of the Representation of the People Act, a Tribunal trying an election petition has no power to allow withdrawal of the petition or abandonment of a part of the petitioner's claim either by having resort to Order XXIII. rule 1 of the Code of Civil Procedure or otherwise. In this view of the matter, I have grave doubts if an Election Tribunal is at all empowered to dismiss an election petition, without holding trial on the merits, on the mere ground that certain costs ordered by the Tribunal to be paid have not been paid. Indeed I am equally doubtful if even the passing of such a conditional order by the Tribunal was at all contemplated by the Parliament. However, without expressing any final opinion on the jurisdiction or the power of the Tribunal to pass such orders I think in the present case the appeal is to be allowed on the short ground that the Tribunal was in error both in passing such a conditional order and also in not proceeding with the trial of the amended election petition merely because costs had not been paid. Chapter V of Part VI of the Representation of the People Act

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

makes provision for the costs incurred by a party during the trial of an election petition and for security and realisation of such costs. Section 117 lays down that the petitioner (filing an election petition) shall enclose with the petition a Government treasury receipt showing that a deposit of one thousand rupees has been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Secretary to the Election Commission as security for the costs of the petition. Section 118 makes a provision for further security for costs if during the course of the trial of an election petition the Tribunal so thinks fit. Section 119-A, added in 1956, contains a provision for security for costs of appeals arising out of election petitions. Under section 121 it is open to a party in whose favour an order as to costs has been made under the provisions of Part VI of the Act to make an application in writing to the Election Commission for realising the costs and he is entitled to be paid his costs in full. Under section 122 there is also a provision made for execution of orders as to costs. The above provisions amply safeguard the interest of the party in whose favour any order as to costs has been passed during the trial of an election petition. According to this scheme, I think there can hardly be any legitimate occasion for the Tribunal to pass an order conditional on payment of costs because costs as ordered by the Tribunal can always be realised by the party interested without any obstacle or undue delay; if necessary, it is also open to the Tribunal to make an order for further security for costs.

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In the instant case, what I have not been able to understand is as to how the entire election petition could be dismissed merely because costs for amending the petition had not been paid. At

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worst the learned Tribunal could have disallowed the amendment, but certainly there was no occasion for refusing to try the unamended petition on the merits. However in the light of what has been stated above I am inclined to take the view that even the amendment could not be disallowed in the present case. Having held that in the interests of justice the amendment should be allowed on payment of costs, mere non-payment of such costs should not have stood in the way of the learned Tribunal from proceeding with the trial of the amended petition on the merits; the respondent had sufficient security for realising his costs and the trial of the petition on the merits should have proceeded notwithstanding non-payment of the costs.

Before concluding I might also in passing refer to the scope of Order XVII rule 3 of the Code of Civil Procedure. This rule reads thus—

“3. Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.”

It is obvious that apart from failure to produce evidence or to cause the attendance of witnesses, if a party fails “to perform any other act necessary to the further progress of the suit, for which time has been allowed” the Court has power notwithstanding such default, “to decide the suit forthwith”. It does not say that the Court must decide

the suit against the party in default; the decision has to be on the merits. It also contemplates that the act referred to in the rule must be necessary to the further progress of the suit. In the present case the amendment of the petition was hardly necessary for the further progress of the trial of the original election petition; the trial of the unamended petition could in any case proceed without the amendment. In the second place, the learned Tribunal had to decide the election petition on merits and not necessarily to dismiss it merely because the costs had not been paid. (See in this connection *Rahman v. Ahmad Din* (1).

In view of what has been stated above, the appeal must be allowed and the order of the learned Election Tribunal dismissing the election petition set aside. The trial of the election petition as amended, will have to proceed from the stage when it was dismissed by the learned Election Tribunal. The appellant is entitled to have his costs in this Court.

The appellant is said to have deposited security for costs of this appeal under section 119-A of Act No. 43 of 1951. He is entitled to get back the security in accordance with law.

FALSHAW, J.—I agree.

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APPELLATE CIVIL

Before D. Falshaw and I. D. Dua, JJ.

FIRM TIJARATI HINDU JOINT FAMILY KESAR DAS
RAJAN SINGH,—*Defendants-Appellants.*

versus

SETH PARMA NAND,—*Plaintiff-Respondent.*

Regular First Appeal No. 60 of 1951.

*Code of Civil Procedure (V of 1908)—Section 13(b)—
“Where it has not been given on merits of the case”—
Interpretation of—Suit dismissed in a foreign Court for non-
production of document—Whether constitutes decision on*

1958

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(1) A.I.R. 1926 Lah. 571.