

Parkash Chand
and others.
v.
Custodian
Evacuee Property
Jullundur and
Mal Singh

two suits, I would uphold the order in each case and dismiss both the appeals but leave the parties to their own costs in this Court.

Falshaw, J.

Falshaw, J.—I agree.

B. R. T.

APPELLATE CIVIL

Before Falshaw and Dua, JJ.

SHRI GIAN CHAND,—Appellant.

versus

SHRIMATI OM PRABHA JAIN, WIFE OF SHRI KAILASH
CHAND JAIN,—Respondents.

First appeal from Order No. 183 of 1957.

1958

August, 12h

The Representation of the People Act (XLIII of 1951)—Section 98—Order dismissing the election petition on the ground of non-compliance with the provisions of Section 117—of the Act—Whether appealable—Section 117—Security deposit made on account of the election petition and on behalf of the Secretary to the Election Commission—Whether sufficient compliance with the provisions of section 117—Dismissal of election petitions on hyper-technical grounds—Whether justified.

Held, that an order, dismissing an election petition on the ground that the provisions of section 117 of the Representation of the People Act, 1951. had not been complied with, must be held to have been passed “at the conclusion of the trial of the election petition” and it clearly falls within the purview of section 98 of the said Act, with the result that the appeal against that order must be held to be competent.

Held, that where the Government treasury receipt enclosed with the petition clearly shows that the petitioner had deposited Rs. 1,000 on account of the election petition and the amount was deposited on behalf of the Secretary to the Election Commission, Delhi and the proper head of

the account was stated therein, it fully complies with the essential provisions of section 117 of the Representation of the People Act. Literal compliance with the terms of this section is not called for. Besides, the language of section 117 does not say that the receipt should in so many words 'state' that the amount has been deposited as security for costs of the petition; it is enough if on reading together all the entries in the receipt it is made reasonably clear that the deposit is by way of security for costs of the petition.

Held, that it is in the interest of justice not to throw out election petitions on hyper-technical grounds and in the trial of election petitions where the purity of elections is questioned, the most searching enquiry should be instituted and the Tribunal trying the petitions should afford every possible facility, in its power, to ensure such enquiry. At the same time it is not desirable to lightly set aside elections on inadequate, flimsy or frivolous grounds but it is of the utmost importance for the healthy growth of parliamentary system of Government and of true democracy that the purity of the election process should be jealously safeguarded and people should in no case be allowed to get elected by flagrant breaches of the law of elections and by corrupt practices. Enquiry into allegations of corrupt practices, therefore, should not be shut out or throttled by dismissing election petitions on unsubstantial or highly technical grounds.

Harish Chandra Bajpai and another v. Triloki Singh and another (1) followed. Harihar Singh vs. Singh Ganga Prasad and others (2) dissented from. Jagan Nath v. Jaswant Singh and others (3) held inapplicable. Hari Vishnu Kamath v. Election Tribunal, Jabalpur and another (4) referred to.

First Appeal from the order of Shri Harbakhsh Singh, Members, Election Tribunal, Karnal, dated the 8th November, 1957, dismissing the suit leaving the parties to bear their own costs.

D. C. GUPTA, for Appellant.

H. S. DOABIA, for Respondents.

(1) A.I.R. 1957 S. C. 444

(2) A.I.R. 1958 Pat. 287

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

(4) A.I.R. 1958 M. P. 168

JUDGMENT

Dua, J.

Dua, J.—This appeal has been preferred by Gian Chand against the decision of the Election Tribunal, Karnal, dated 8th November, 1957 by which his petition challenging the election of respondent, Shrimati Om Prabha Jain to the Punjab Legislative Assembly from Kaithal Constituency had been dismissed on the ground that the election petition did not comply with the mandatory provisions of section 117 of the Representation of the People Act, 1951.

The above election petition challenging the election of Shrimati Om Prabha Jain was filed on the 24th of April, 1957. On the 14th of October, 1957, when the case is said to have become ripe for arguments, an application on behalf of the respondent was filed alleging that Gian Chand, Petitioner had not complied with the provisions of section 117 of the Representation of the People Act, 1951, inasmuch as security for Rs. 1,000 deposited by him was not security for costs of the petition. It was prayed that the election petition be dismissed forwith under section 90(3) of the Representation of the People Act, On the following day reply to this petition was filed stating that the petitioner had closed his evidence and that, if at all, the point was allowed to be raised, it would require evidence for proper enquiry. The Tribunal, however, on the 8th of November, 1957, dismissed the petition as stated above, holding that no other evidence except the deposit receipt itself could under the law be adduced and that the receipt did not show that the provisions of section 117 of the Representation of the People Act had been complied with. Against this decision the present appeal has been preferred.

Mr. Harbans Singh Doabia counsel for the respondent has raised a preliminary objection contending that the present appeal is not competent as the impugned order does not fall under section 98 of the Representation of the People Act, 1951. He submits that section 116-A of the said Act provides an appeal only from orders passed by a Tribunal under section 98 or section 99. Section 98 reads as follows:—

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“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.”

Section 99, however, need not be reproduced as admittedly it does not arise for consideration in the present case. The argument of the learned counsel is, that dismissal of a petition under section 90(3) is not an order passed “at the conclusion of the trial of an election petition” but is an order passed before the actual trial begins. It is submitted that the Election Commission under section 85 of the Act could have dismissed the election petition for non-compliance with the provisions of section 117. Similarly if the Tribunal dismisses the election petition on this ground, such dismissal cannot be considered to be covered by section 98

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inasmuch as a petition need not be tried for giving effect to a preliminary objection based on non-compliance with the provisions of section 117. Though in the present case the objection with respect to non-compliance with the provisions of section 117 of the Act was taken on 14th October, 1957, the date fixed for final arguments on the petition, the decision of the Tribunal giving effect to this objection must nevertheless, according to Mr. Doabia, be considered to be a decision given before the conclusion of the trial. In support of his submission he has placed reliance on *Harihar Singh v. Singh Ganga Prasad and others* (1), a Division Bench decision of the Patna High Court. This decision certainly supports the counsel but for reasons to be stated hereafter I would, with the utmost respect to the learned Judges, disagree with the view expressed by them. Mr. Doabia has also relied on certain observations of the Supreme Court in *Jagan Nath v. Jaswant Singh and others* (2), Reliance has particularly been placed on the observations at page 214 of the report where it is observed—

“In that case the question arose whether the petition was duly verified and whether it was accompanied by all the necessary lists required by section 83(2). An elaborate inquiry had to be conducted to determine the point whether the petition was typed on blank paper signed by the petitioner or whether it was signed by him or some person authorised on his behalf after it had been typed. It is thus clear that it is no valid explanation to say that section 82 was omitted from the provisions of section 85 simply on the

(1) A.I.R. 1958 Pat. 287

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

ground that the Election Commission was absolved from the duty of making elaborate inquiries at the stage when it had to say whether the provisions of sections 81, 83 and 117 had been complied with. From the circumstance that section 82 does not find a place in the provisions of section 85 the conclusion follows that the directions contained in section 82 were not considered to be of such a character as to involve the dismissal of a petition 'in limine' and that the matter was such as could be dealt with by the Tribunal under the provisions of the Code of Civil Procedure specifically made "applicable to the trial of election petitions".

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The above observations of their Lordships of the Supreme Court do not, in my opinion, support the preliminary objection raised by the learned counsel.

The counsel for the appellant has, on the other hand, drawn our attention to a decision of the Madhya Pradesh High Court in *Hari Vishnu Kamath v. Election Tribunal, Jabalpur and another* (1), and also to a latter judgment of the Supreme Court in *Harish Chandra Bajpai and another v. Triloki Singh and another* (2). Their Lordships of the Supreme Court have observed, in the last cited case, that "the word 'trial' may be understood in a limited sense, as meaning the final hearing of the petition, consisting of examination of witnesses, filing documents and addressing arguments. It may also connote the entire proceedings before the Tribunal from the time that the petition is transferred to it under section 86

(1) A.I.R. 1958 M. P. 168

(2) A.I.R. 1957 S. C. 444

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of the Act until the pronouncement of the award. While the word 'trial' standing by itself is susceptible of both the narrow and the wider senses indicated above, the question is, what meaning attaches to it in section 90(2), and to decide that, one must have regard to the context and the setting up of the enactment. Now, the provisions of the Act leave one in no doubt as to in what sense the word is used in section 90(2) which is headed 'Trial of election petition'. Section 86(4) provides that if during the course of a trial any member of a Tribunal is unable to perform his functions, the Election Commission is to appoint another member, and thereupon the trial is to be continued. The provision must apply to retirement or relinquishment by a member, even before the hearing commences, and the expression 'during the course of the trial' must, therefore, include the stages prior to the hearing". Relying on these observations the counsel contends that the expression "at the conclusion of the trial" as used in section 98 of the Act should be given a wider meaning and should be interpreted to include the order in question which has both in law and in fact actually concluded the trial.

After giving my anxious thought to the points raised, I am of the view that the observations of the Supreme Court in *Harish Chandra Bajpai's case* (1), do support the appellant's contention that the order appealed against must be held to have been passed at the conclusion of the trial. In consequence I am also constrained, with due respect to the learned Judges, to doubt the correctness of the decision of the Patna High Court in *Harihar Singh's case* (2). Following *Harish Chandra Bajpai's case* (1), therefore, I would overrule the

(1) A.I.R. 1957 S. C. 444

(2) A.I.R. 1958 Pat. 287

preliminary objection and hold that the impugned order has been passed (both in fact and in law) "at the conclusion of the trial of the election petition" and it clearly falls within the purview of section 98 of Act XLIII of 1951 with the result that the present appeal must be held to be competent.

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Coming to the merits of the case, it appears to me that the learned Election Tribunal was wholly wrong in holding that the provisions of section 117 of the Representation of the People Act, 1951 were not complied with and in dismissing the election petition on this ground. The Government treasury receipt enclosed with the petition clearly shows that Gian Chand petitioner had deposited Rs. 1,000 on account of the election petition and the amount was deposited on behalf of the Secretary to the Election Commission, Delhi, which clearly means that it was deposited in his favour. The head of the account in which it was deposited is also clearly given in the receipt. It is nobody's case that this deposit of Rs. 1,000 has been made by Gian Chand petitioner-appellant for any other purpose or in any other account. The learned Election Tribunal seems to have taken a wholly unreasonable view of the receipt when it observes that although the amount of Rs. 1,000 tendered by Gian Chand petitioner has been deposited in favour of the Secretary to the Election Commission it is nowhere stated in the receipt that the amount is deposited in favour of the said Secretary; it may be observed that the law nowhere requires that it should be so stated in the receipt. I think that the entry in the receipt reasonably construed is capable of only one meaning, namely that the amount has been deposited in favour of the Secretary to the Election Commission. The Election Tribunal has then observed

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that there is nothing on the file to show that this deposit was made as a security for the costs of the petition. It may at this stage be mentioned that the Tribunal had itself ruled that no other evidence could be permitted to be adduced and that the receipt itself must show that the requirements of section 117 of the Act had been complied with. On this ground the Tribunal had refused to give any opportunity to the appellant, (though he had expressly asked for it) to adduce evidence for disproving the belated objection raised by the respondent. In taking this view the learned Tribunal has in my opinion clearly gone wrong. The Supreme Court has in a recent unreported judgment expressly ruled that 'it can be shown by evidence led before the Election Tribunal that the Government Treasury Receipt or challan which was obtained by the petitioner and enclosed by him along with the election petition was such that the Election Commission could, on a necessary application in that behalf, be in a position to realise the said sum of rupees one thousand for payment of the Costs to the successful party'. See *K. Kama-
 rajaNadar v. Kanju Thevar and two others* (1), *Mariappam v. V. R. Nedunchezhiyam and two others* (2), and *M. R. Masani v. The Member, Elec-
 tion Tribunal, Ranchi, and others* (3); heard together and decided by one judgment on 22nd April, 1958). In this view of the matter, I am also doubtful if in the circumstances of the present case the learned Tribunal was at all justified in permitting the respondent to raise the objection with respect to non-compliance of the provisions of section 117 of the Act on the date of final arguments, after the parties had closed their respective cases. It has in this connection to be borne in mind that

(1) C. A. 763 of 1957
 (2) C. A. 764 of 1957
 (3) C. A. 48 of 1958

public interest demands that election disputes deserve to be determined with despatch.

But be that as it may, I am also inclined to hold that the receipt produced in the present case fully complies with the essential provisions of section 117. and literal compliance with the terms of this section is not called for. The Supreme Court has, in the above mentioned unreported judgment, further observed as follows:—

“What is of the essence of the provision contained in section 117 is that the petitioner should furnish security for the costs of the petition, and should enclose along 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, is at the disposal of the Election Commission to be utilised by it in the manner authorised by law and is under its control and payable, on a proper application being made in that behalf, to the Election Commission or to any person duly authorised by it to receive the same”.

Their Lordships have also observed at another place in the same judgment that a literal compliance with the terms of section 117 is not at all necessary. Besides, the language of section 117 does not say that the receipt should in so many words ‘state’ that the amount has been deposited as security for costs of the petition; it is enough if on reading together all the entries in the receipt it is made reasonably clear that the deposit is by way of security for costs of the petition. And this, in my opinion, the receipt in question clearly shows. In the first column of the receipt Gian Chand (appellant) has been shown as the person paying the

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amount; in the second column the Secretary of the Election Commission, Delhi, is shown to be the person on whose behalf the amount is paid; in the third column it is shown that the remittance has been made in connection with the election petition; the fourth column shows Rs. 1,000 as the amount of deposit and the fifth column shows the head of account to be deposit for election petition. It may at this stage be stated that it was not suggested by the respondent's counsel at the Bar that this deposit was made under any other provision except section 117 of the Representation of the People Act; his only contention being that the receipt did not specifically state that the amount had been deposited as security for costs. Thus reading together the entire in the receipt, and in the circumstances of the case, I have not the least hesitation in holding that the receipt clearly shows that the amount of Rs. 1,000 was deposited by way of security for the costs of the petition. In view of what I have stated above and in view of the observations of their Lordships of the Supreme Court quoted above, I am of the opinion that the receipt in question clearly complies with the essential terms of section 117 of the Representation of the People Act and the Tribunal had taken a highly technical view and was wrong in holding to the contrary.

It has often been stressed that it is in the interest of justice not to throw out election petitions on hyper-technical grounds and in the trial of election petitions where the purity of elections is questioned, the most searching enquiry should be instituted; and the Tribunal trying the petitions should afford every possible facility, in its power, to ensure such enquiry. I am not unmindful of the undersiability of lightly setting aside elections on inadequate, flimsy or frivolous grounds; at the

same time it is, in my opinion, of the utmost importance for the healthy growth of parliamentary system of Government and of true democracy that the purity of the election process should be jealously safeguarded and people should in no case be allowed to get elected by flagrant breaches of the law of elections and by corrupt practices. Enquiry into allegations of corrupt practices, therefore, should not be shut out or throttled by dismissing election petitions on unsubstantial or highly technical grounds.

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Holding as I do that the receipt in question does show, as required by section 117 of the Representation of the People Act, that the deposit of Rs. 1,000 had been made by the petitioner in the Government treasury in favour of the Secretary to the Election Commission and that the amount was available as security for the costs of the petition, I would allow the appeal, set aside the order of the Election Tribunal dated the 8th November, 1957, and send the case back for disposal according to law in the light of the observations made above. The appellant will have his costs in this Court. The records of the case may be sent to the Tribunal without avoidable delay so that the election petition may be proceeded with expeditiously.

Falshaw, J.—I agree.

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REVISIONAL CRIMINAL.

Before Falshaw, J.

RAM RATTAN SETH AND OTHERS,—*Petitioners.*

versus

THE STATE,—*Respondent.*

Criminal Revision No. 281 of 1958

Indian Mines Act (IV of 1923)—Section 29—The Indian Metalliferous Regulations of 1926 framed under—Whether continue to be law in force in spite of the fact

1958

August, 25th