Sucheta Kripalani

Vs

Shri S. S. Dulat, I.C.S., Chairman of the Election Tribunal, Delhi and Others

Civil Appeal No. 139 of 1955

06.9.1955

(Sayed Jafar Imam, N. H. Bhagwati, B. Jagannath Das, Vivian Bose, B. P. Sinha JJ)

JUDGMENT

BOSE, J. -

The proceedings that have given rise to this appeal arise out of an election petition before the Election Tribunal, Delhi.

The appellant Shrimati Sucheta Kripalani together with the contesting respondent Shrimati Manmohini Sahgal and others were candidates for election to the House of the People from the Parliamentary Constituency of New Delhi. The polling took place on 14th January, 1952, and when the votes were counted on 18th January, 1952, it was found that the appellant had secured the largest number of votes and that the contesting respondent Manmohini came next. The appellant was accordingly notified as the returned candidate on 24th January, 1952.

On 6th March, 1952, the appellant filed her return of election expenses. This was found to be defective, and on 17th April, 1952, the Election Commission published a notification in the Gazette of India disqualifying the appellant under Rule 114(5) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, on the ground that she had

> "failed to lodge the return of election expenses in the manner required" and that she had thereby "incurred the disqualification under clause (c) of section 7 and section 143 of the Representation of the People Act, 1951".

In view of this the appellant submitted a fresh return with an explanation under Rule 114(6) on 30th April, 1952. This was accepted by the Commission and on 7th May, 1952, it published a notification in the Gazette of India under Rule 114(7) stating that the disqualification had been removed.

In the meanwhile, on 7th April, 1952, the contesting respondent Manmohini filed an election petition praying that the appellant's election be declared void and that she (the petitioner) be declared to have been duly elected. It will be noticed that this was before 17th April 1952, the date on which the Election Commission disqualified the appellant. The validity of the election was attacked on many grounds. A number of major corrupt practices were alleged and the return which the appellant had filed on 6th March, 1952, of her election expenses was challenged as a minor corrupt practice on two grounds :

> (1) that the return was false in material particulars and (2) that it was not in accordance with the rules and so was no return at all in the eye of the law. Particulars

of the instances in which the return was challenged as false were then set out.

The appellant filed her written statement in reply on 7th October, 1952. It will be noticed that this was after she had put in her second return and after the Election Commission had removed the disqualification due to the first return. Her reply was as follows :

> (1) That as the disqualification with respect to the return of her election expenses had been removed by the Election Commission under Section 144 of the Representation of the People Act, 1951, this question could not be reopened;
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> (2) That a minor corrupt practice which cannot vitiate an election and which is not capable of materially affecting an election is wholly outside the scope of a proper election petition and so no cognisance of it can be taken by the Election Tribunal;
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> (3) That only such matters can be put in issue as are necessary to decide whether the election of the returned candidate is liable to be set aside within the meaning of section 100(2) of the Act.

The Contesting respondent Manmohini filed a replication on 15th October, 1952. In it she said :-

> (1) that the Election Commission did not and could not decide whether the return was or was not false in material particulars and so the question was still open. (This had reference to the first return dated 6th March, 1952.);
>
> (2) that in any event "even the revised return is false in material particulars and the objections with regard to the original return also apply exactly with regard to the revised return".

The broad propositions of law raised by points (2) and (3) in the appellant's written statement were also denied. Then followed an item by item reply to the allegations made by the appellant in the list which she had appended to her written statement. That list was a reply to the particulars of false return and corrupt practices furnished by the contesting respondent Manmohini. It is evident then that Manmohini attacked the second return on exactly the same grounds as the first and furnished the same particulars.

Now we have spoken of these returns as the first and the second. But counsel on both sides agreed before us that the first return was in fact no return at all in the eye of the law and that therefore the contesting respondent's real attack was on the second return which must be regarded as the only return which the law will recognise as a valid return. It was agreed that there cannot be two returns of expenses; either the one originally filed is amended or it is treated as a nullity so far as it purports to be a return. In view of this agreement, it is not necessary for us to express any opinion on the matter and we will concentrate our attention on what, for convenience, we will continue to call the second return.

The first point that now arises is whether the decision of the Election Commission to remove the disqualification attaching to the first return precludes an enquiry into the falsity of the second return simply because the respondent Manmohini alleged that the particulars of the falsity are exactly the same as before. Our answer to that is No. If the first return is no return in the eye of the law, then the only return we are concerned with is the second and that must be treated in the same way as it would have been if it had been the only return made. If there had been no other return and this

return had been challenged on the grounds now raised, it is clear that the truth of the allegations made would have to be enquired into. That enquiry cannot be shut out simply because the allegations against the second return happen to be exactly the same in the matter of its falsity as in the case of the first return. We are therefore of opinion that the jurisdiction of the Tribunal to enquire into these matters was not ousted on that account. Our reasons for this are these.

Section 76 of the Act requires every candidate to file a return of election expenses in a particular from containing certain prescribed particulars. The form and particulars are set out in the Rules. Section 143 prescribes the penalty for failure to observe those requirements. It is disqualification. This ensues if there is a "default" in making the return. It also ensues :-

> "if such a return is found..... upon the trial of an election petition under Part VI..... to be false in any material particular".

That places the matter beyond doubt. The trial of an election petition is conducted by an Election Tribunal and this section makes it incumbent on the Tribunal to enquire into the falsity of a return when that is a matter raised and placed in issue and the allegations are reasonably connected with other allegations about a major corrupt practice. The jurisdiction is that of the Tribunal and not of the Election Commission. The duty of the Election Commission is merely to decide under Rule 114(4) whether any candidate has, among other things, "failed to lodge the return of election expenses..... in the manner required by the Act and these rules".

It is a question of form and not of substance. If the return is in proper form no question of falsity can arise unless somebody raises the issue. If it is raised, the allegations will be made in some other document by some other person and the charges so preferred will be enquired into by the Tribunal.

If the return is not in proper form, disqualification ensues but the Election Commission is invested with the power to remove the disqualification under Rule 114(6). If it does, the position becomes the same as it would have been had the Election Commission decided that the form was proper in the first instance. That would still leave the question of falsity for determination by the Tribunal in cases where the issue is properly raised.

Mr. Chatterjee contended on behalf of the appellant that we were not concerned with the second return in this appeal and strongly protested against Mr. Pathak being allowed to argue this point. But that has been the main bone of contention almost from the start. When the election petition was filed, there was only one return to attack. The second had not been put in. Later, when it was put in, the contesting respondent, Manmohini, attacked both and the appellant herself said that questions about the falsity of the return could not be gone into because of the Election Commission's order removing the disqualification. That argument applies as much to the second as to the first return and raises an issue about the respective jurisdictions of the Election Commission and the Election Tribunal on this point. The Tribunal decided against the appellant on this point and held, as we do, that the Election Commission was not concerned with the issue of fact about the falsity of the return. The appellant then filed a petition under article 226 to the High Court and questioned the Tribunal's jurisdiction to enquire into the issue of falsity. The High Court upheld the Tribunal's decision and the appellant pursued the matter here both in her grounds of appeal and in her statement of the case. She cannot at this stage ask us to leave the matter open so that she can come here again and re-agitate this question. We accordingly overruled Mr. Chatterjee's objection.

The next question argued was whether an Election Tribunal can enquire into a minor corrupt

practice if it is of such a nature that, standing by itself, it could not have been made the basis of an election petition because it could not materially affect the result of the election. We need not go into that because the question is purely academic in this case. The allegation about the minor corrupt practice does not stand by itself. There are also allegations about major corrupt practices which require investigation and the minor corrupt practices alleged are reasonably connected with them. Section 143 of the Act is a complete answer to the question of the Tribunal's jurisdiction on this point when it is properly seised of the trial of an election petition on other grounds. Whether it could be properly seised of such a trial if this had been the only allegation, or if the minor corrupt practice alleged was not reasonably connected with the other allegations about major corrupt practices, does not therefore arise. As the trial is proceedings on the other matters the Tribunal is bound under section 143, now that the issue has been raised, also to enquire into the question of the falsity of the return. Without such an enquiry it cannot reach the finding which section 143 contemplates. We need not look into the other sections which were touched upon in the arguments and in the Courts below because section 143 is clear and confers the requisite jurisdiction when a trial is properly in progress.

The appellant has failed on every question of substance that she raised. There was some vagueness in the Election Tribunal's order about which of the two returns formed the basis of the enquiry on this point but even if the Tribunal intended to treat the first return as the basis, that did not really affect the substance because exactly the same allegations are made about the second return and the issue of fact would therefore have to be tried in any event. The appellant's whole endeavour was to circumvent such an enquiry and oust the Tribunal's jurisdiction. In that she has failed, so she will pay the contesting respondent's costs throughout.

The appeal fails and is dismissed with costs all through.

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