H. H. Raja Harinder Singh

Vs

S. Karnail Singh

Civil Appeal No. 132 of 1956

(S. K. Das, N. H. Bhagwati, B. P. Sinha, T. L. Venkatarama Ayyar JJ)

20.12.1956

JUDGMENT

VENKATARAMA AIYAR J. -

The appellant was one of the candidates who stood for election to the Legislative Assembly of the Patiala and East Punjab States Union from the Faridkot Constituency in the General Elections held in 1954. He secured the largest number of votes, and was declared duly elected. The result was notified in the Official Gazette on February 27, 1954, and the return of the election expenses was published therein on May, 2, 1954. On May 18, 1954, the first respondent filed a petition under s. 81 of the Representation of the People Act No. XLIII of 1951, hereinafter referred to as the Act, and therein he prayed that the election of the appellant might be declared void on the ground that he and his agents had committed various corrupt and illegal practices, of which particulars were given. The appellant filed a written statement denying these allegations. He therein raised the further contention that the election petition had not been presented within the time limited by law, and was, therefore, liable to be dismissed. Rule 119, which prescribes the period within which election petitions have to be filed, runs, so far as it is material, as follows :

> 119. "Time within which an election petition shall be presented :- An election petition calling in question an election may, -
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> (a) in the case where such petition is against a returned candidate, be presented under section 81 at any time after the date of publication of the name of such candidate under section 67 but not later than fourteen days from the date of publication of the notice in the Official Gazette under rule 113 that the return of election expenses of such candidate and the declaration made in respect thereof have been lodged with the Returning Officer;"

The last date for filing the petition, according to this Rule, was May 16, 1954, but that happened to be a Sunday and the day following had been declared a public holiday. The first respondent accordingly presented his petition on May 18, 1954, and in paragraph 6 stated as follows :

> "The offices were closed on 16th and 17th; the petition is, therefore, well within limitation."

On this, the Election Commission passed the following order :

> "The petition was filed on 18-5-1954. But for the fact that 16-5-1954 and 17-5-1954

were holidays, the petition would have been time-barred. Admit."

The plea put forward by the appellant in his written statement based on Rule 119(a) was that whatever might have been the reason therefor, the fact was that the petition had not been filed "not later than fourteen days" from the publication of the return of the election expenses, which was on May 22, 1954, and that it was, therefore, not presented within the time prescribed. The Tribunal overruled this plea on the ground that under Rule 2(6) of the Election Rules, the General Clauses Act X of 1897 was applicable in interpreting them, and that under s. 10 of that Act, the election petition was presented within the time allowed by Rule 119(a). On the merits, the Tribunal held that of the grounds put forward in the Election Petition, one and only one had been substantiated, and that was that the appellant had employed for payment, in connection with his election, 25 persons in addition to the number of persons allowed under Rule 118 read along with Schedule VI thereto, and had thereby committed the major corupt practice mentioned in s. 123(7) of the Act. The Tribunal accordingly declared the election void under s. 100(2)(b) of the Act. It also observed that on its finding aforesaid, the appellant had incurred the disqualification enacted in ss. 140(1)(a) and 140(2) of the Act. Against this decision, the appellant has preferred this appeal by special leave.

On behalf of the appellant, two contentions have been pressed before us : (1) that the election petition was presented beyond the time prescribed by Rule 119(a), and should have been dismissed under s. 90(4) of the Act : and (2) that on the findings recorded by the Tribunal, the conclusion that Rule 118 had been contravened does not follow and is erroneous.

The first question turns on the interpretation of s. 10 of the General Clauses Act, which is as follows :

> "Where by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open."

The contention of Mr. Solicitor-General on behalf of the appellant is that this section can apply on its own terms only when the act in question is to be done "within a prescribed period", that under Rule 119(a) the petition has to be filed "not later than" fourteen days, that the two expressions do not mean the same thing, the words of the Rule being more peremptory, and that accordingly s. 10 of the General Clauses Act cannot be invoked in aid of a petition presented under Rule 119, later than fourteen days. In support of this contention, he invites our attention to some of the Rules in which the expression "the time within which" is used, as for example, Rule 123, and he argues that when a statute uses two different expressions, they must be construed as used in two different senses. He also points out that whenever the Legislature intended that if the last date on which an act could be performed fell on a holiday, it could be validly performed on the next working day, it said so, as in the proviso to s. 37 of the Act, and that there would be no need for such a provision, if s. 10 of the General Clauses Act were intended generally to apply.

This argument proceeds on an interpretation of s. 10 of the General Clauses Act which, in our opinion, is erroneous. Broadly stated, the object of the section is to enable a person to do what he could have done on a holiday, on the next working day. Where, therefore, a period is prescribed for the performance of an act in a court or office, and that period expires on a holiday, then according to

the section the act should be considered to have been done within that period, if it is done on the next day on which the court or office is open. For that section to apply, therefore, all that is requisite is that there should be period prescribed, and that period should expire on a holiday. Now, it cannot be denied that the period of fourteen days provided in Rule 119(a) for presentation of an election petition is a period prescribed, and that is its true character, whether the words used are "within fourteen days" or "not later than fourteen days". That the distinction sought to be made by the appellant between these two expressions is without substance will be clear beyond all doubt, when regard is had to s. 81 of the Act. Section 81(1) enacts that the election petition may be presented "within such time as may be prescribed", and it is under this section that Rule 119 has been framed. It is obvious that the rule-making authority could not have intended to go further than what the section itself had enacted, and if the language of the Rule is construed in conjunction with and under the coverage of the section under which it is framed, the words "not later than fourteen days" must be held to mean the same thing as "within a period of fourteen days". Reference in this connection should be made to the heading of Rule 119 which is, "Time within which an election petition shall be presented". We entertain no doubt that the legislature has used both the expressions as meaning the same thing, and there are accordingly no grounds for holding that s. 10 is not applicable to petitions falling within Rule 119.

We are also unable to read in the proviso to s. 37 of the Act an intention generally to exclude the operation of s. 10 of the General Clauses Act in the construction of the Rules, as that will be against the plain language of Rule 2(6). It should be noted that that proviso applies only to s. 30(c) of the Act, and it is possible that the Legislature might have considered it doubtful whether s. 30(c) would, having regard to its terms, fall within s. 10 of the General Clauses Act and enacted the proviso ex abundanti cautela. The operation of such a beneficent enactment as s. 10 of the General Clauses Act is not, in our opinion, to be cut down on such unsubstantial grounds as have been urged before us. We are accordingly of opinion that the petition which the respondent filed on May 18, 1954, is entitled to the protection afforded by that section and is in time.

We should add that the appellant also raised the contention that if we agreed with him that the election petition was not presented in time, we should hold that the order of the Election Commission admitting the petition was not one of condonation within the proviso to s. 85, because that proceeded on the footing that the petition was in time, and did not amount to a decision that if it was not, there were sufficient grounds for excusing the delay. We are not disposed to agree with this contention; but in the view which we have taken that the petition is in time, it is unnecessary to consider it.

Then the next question - and that is one of substance - is whether there has been contravention of Rule 118. The material facts are that the appellant is the quondam ruler of Faridkot, which enjoyed during the British regime the status of an independent State, and came in for judicial recognition as such in Sirdar Gurdyal Singh v. Rajah of Faridkote [(1894) L.R. 21 I.A. 171.], and, after Independance, became merged in the State of Pepsu. The appellant continues to retain a large staff of subordinates, and the charge of the first respondent in his petition was that as many as 54 of them were employed for purposes of election, and that Rule 118 had thus been violated. Rule 118 is as follows :

> "No person other than, or in addition to, those specified in Schedule VI shall be employed for payment by a candidate or his election agent in connection with an election."

Under Schedule VI, a candidate for election may employ for payment in connection with election (1) one election agent, (2) one counting agent, (33) one clerk and one messenger, (4) one polling agent and two relief polling agents for each polling station or where a polling station has more than one polling booth, for each polling booth and (5) one messenger for each polling station, or for each polling booth, if a polling station has more than one booth. The finding of the Tribunal on this question is as follows :

> "... it is clear that 25 persons named in the foregoing paragraphs took part of in the election campaign of respondent No. 1 apart from any duties they may have performed as polling agents. Now admittedly all these persons are paid employees of respondent No. 1. As their number exceeds the statutory number provided in Rule 118, respondent No. 1 is undoubtedly guilty of a major corrupt practice under section 123(7). A question however arises whether the fact that these persons were already in the employ of respondent No. 1 and were not specially engaged for purposes of election, would take them out of preview of Rule 118. In our judgment it would not."

Then, dealing with the question as to whether the return of election expenses made by the appellant was false in that it did not include anything on account of the services of the 25 employees, the Tribunal says :

> "We have held under Issue No. 3 that respondent No. 1 did utilise the services of 25 of his employees for furthering his election prospects. Now there is no evidence on the record to show that these employees were engaged specifically for the purposes of election. All of them had been in the service of respondent No. 1 for a long time before the election in normal course. Therefore, there is no reason why the emoluments paid should be charged to the election account. However, if any additional allowances were paid to these persons that would certainly by chargeable to the election account. But there is no evidence on the record to show that any such allowance was paid."

Now, the question is whether on these facts there is a contravention of Rule 118. The contention of Mr. Solicitor-General for the appellant is that the Rule would apply only if the employment of the persons was specifically for work in connection with the election and such employment was for payment. In other words, according to him it is only employment ad hoc for the election that is within the mischief of the Rule. On behalf of the respondent Mr. N. C. Chatterjee contents that it is not necessary for the Rule to operate that there should have been an employment specially for the purpose of the election, and that it would be sufficient if the persons who did work in connection with the election were in the employment of the candidate, and that employment carried with it payment of salary or remuneration.

In our opinion, neither of these contentions is wellfounded. Rule 118 does not require that the person engaged by a candidate to work in the election should have been specially employed for the purpose of the election. It is sufficient, on the wording of the Rule, that that person is employed in connection with the election. At the same time, the requirements of Rule 118 are not satisfied by proving merely that the person does work in connection with the election. That work must be done under a contract of employment. Thus if the candidate has been maintaining a regular staff of his own and its members have been doing personal service to him and he has been paying them and then the election supervenes, and off and on he sets them on election work but they continue to do their normal work as members of his staff, it cannot be said of them that they have been employed

in connection with the election. But if, on the other hand, he takes them out of their normal work and puts them on whole-time or substantially whole-time work in connection with the election, that would amount to converting their general employment into one in connection with the election. It will be a question of fact in each case whether what the candidate has done amounts merely to asking the members of the staff to do casual work in connection with the election in addition to their normal duties, or whether it amounts to suspending the work normally done by them and assigning to them election work instead.

Then again, it is a condition for the application of the Rule that the employment of the person must be for payment. If the members of the staff continue to do their normal work and do casual work in connection with the election, the payment of salary to them would be a payment on account of their employment as such members of the staff and not in connection with the election. Rule 118 would not apply to that case, as there is neither an employment in connection with the election, nor a payment on account of such employment. Indeed, the salary paid to the members would not even be election expenses liable to be included in the return. But if, in the above case, the members are paid extra for their works, such extra payment will have to be included in the return of election expenses, though it may be that Rule 118 itself might have no application for the reason that there is no employment for election and the payment is not in respect of such employment. If, however, the members of the staff are switched off from their normal work and turned on to election work so that it could be said that that work has been assigned to them in supersession of their normal work, then the salary paid to them could rightly be regarded as payment for work in connection with election within Rule 118. That being our view on the construction of Rule 118, we shall now proceed to consider what the position is, on the authorities cited before us.

In the Hartlepools Case [[1910] 6 O'M. & H. 1.], the question arose with reference to one Butler who was the general secretary of Mr. Furness, the returned candidate, and certain clerks in a company in which Mr. Furness had considerable influence. All these persons had taken part in the election. As regards Butler, Phillimore J. observed that if it could be held that at the time of his employment his duties included also work in elections if and when they were held, then a proportionate part of his salary should be regarded as election expenses; but, on the facts, he held that it was no part of the duties of Butler in respect of his standing employment to be election agent when called upon, and that, therefore, no part of his salary need be shown as election expenses. As put by Pickford, J., in his concurring judgment, Butler was paid "his salary as private secretary and was not paid anything as election agent". Counsel for the appellant relies on these observations, and argues that on the finding of the Tribunal that the 25 men had been in service for a long time, there could be no question of their having been employed for work in connection with election, and that they were, therefore, neither election agents nor was the salary paid to them payment on account of any employment in connection with the election. But then, considering the effect of the clerks of the company taking part in the election, Phillimore, J., observed :

> ".... I am certainly inclined to think that if a business man takes his business clerks and employs them for election work which, if he had not business clerks, would be normally done by paid clerks, he ought to return their salaries as part of his expenses."

Counsel for respondent strongly relies on these observations. But then, the point was not actually decided by Phillimore, J., as the evidence relating to the matter was incomplete, and Pickford, J., expressly reserved his opinion on the question. In view of the remarks of Sankey, J., in the Borough of Oxford Case [7 O'M. & H. 49, 56-57.], in the course of his argument, it is doubtful how far the

observations of Phillimore, J., quoted above could be accepted as good law. They were, however, adopted in two decisions of the Election Tribunals of this country, to which our attention was invited by Mr. Chatterjee.

In the Amritsar Case [[1924] Hammond's Election Cases 83.], the following observation occurs :

> "We also consider that if any man in the service of the respondent were put on election work, their wages for the period should have been shown in the return. (See Hartlepools Case) [[1910] 6 O'M. & H. 1.]".

The words "put on election work" in this passage suggest that the employees had been taken out of their original work. As there is no discussion of the present question, the authority of this decision is, in any event, little. In Farrukhabad Case [[1927] Hammond's Election Cases 349.], this passage, as also the observations of Phillimore, J., were quoted, and in accordance therewith, it was held that "the salaries of Tilakdhari Singh, Kundan Singh and Drigpal Singh for the period they worked in connection with the election of the respondent No. 1 should have been shown in the return". It was found in that case that Tilakdhari Singh worked exclusively for 30 days in connection with the election and Kundan Singh and Drigpal Singh would appear to have similarly devoted themselves to election work for certain periods. None of these cases has considered what would amount to employment in connection with election, when the persons had been previously employed on other work; and they throw no light on the present question.

The position may thus be summed up :

> (1) For Rule 118 to apply, two conditions must be satisfied, viz., there should have been an employment by the candidate of a person in connection with an election, and such employment should have been for payment.
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> (2) Where a person has been in the employment of the candidate even prior to his election and his duties do not include work in election and he takes part in election, whether he is to be regarded as employed in connection with the election will depend on the nature of the work which he performs during the election.
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> (3) When the work which he does in election is casual and is in addition to the normal work for which he has been employed, he is not within Rule 118. But if his work in connection with the election is such that he could be regarded as having been taken out of his previous work and put on election work, then he would be within Rule 118.
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> (4) Whether a person who has been previously employed by the candidate on other work should be held to have been employed in connection with election is a question of fact to be decided on the evidence in each case.

In the present case, the finding is that 25 persons belonging to the staff of the appellant had taken part in the election. It has been found that they had been in the service of the appellant for a long time and that their appointment was not colourable for election purposes. It has also been found that they were not paid anything extra for what work they might have done in connection with the election. But there is no finding that having regard to the work which they are proved to have done, they must be taken to have been relieved of their original work and put on election work. In the absence of such a finding, it cannot be held that Rule 118 had been infringed. It is possible that the

Election Tribunal did not appreciate the true legal position and has in consequence failed to record the findings requisite for a decision on Rule 118, and that would be a good ground on which we could, if the justice of the case required it, set aside the order and direct the matter to be heard afresh and disposed of any another Tribunal in accordance with law. But we do not consider that this is a fit case for passing such an order. The evidence adduced by the first respondent is very largely to the effect that the appellants's men did election work in the morning or in the evening, that is, out of office hours. That shows that the work of the staff was in addition to their normal duties, and on the principles stated above, they could not be held to have been employed in connection with the election. As the first respondent does not appear himself to have understood the true position under Rule 118 and has failed to adduce evidence requisite for a decision of the question, he must fail, the burden being on him to establish that that Rule had been infringed.

In the result, this appeal is allowed, the order of the Election Tribunal is set aside and the election petition of the first respondent will stand dismissed. As the parties have each succeeded on one issue an failed on another, they will bear their own costs throughout.

Appeal allowed.

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