Shyam Sunder

Vs

Satya Ketu & Ors.

Civil Appeal No. 204 of 1966

(K. N. Wanchoo, J. M. Shelat, G. K. Mitter JJ)

05.10.1966

JUDGMENT

WANCHOO, J.

This is an appeal on a certificate granted by the Allahabad High Court and arises in the following circumstances. An election was held for one seat to the U.P. Legislative Council from the Rohilkhand Graduates Constituency on April 22, 1962. There were 14 candidates, and election was held in accordance with the system of proportional representation by means of single transferable vote. Total number of votes case were 4412 and 2207 first preference votes were required to secure the return of any candidate at the first count. As no candidate secured the minimum votes at the first count, subsequent counts had to be made excluding the candidate who had received the lowest number of votes on each count. Eventually, Satya Ketu, respondent, got the highest number of votes after the last count and he was declared elected by a margin of 47 votes. Thereupon the appellant filed an election petition claiming that a declaration be made that the election of Satya Ketu was void and that the appellant was duly elected from this constituency. The basis of the appellant's claim was that invalid votes had been counted in favour of Satya Ketu inasmuch ballot papers on which figure 1 was not marked were counted as valid when they should have been counted as invalid in view of r. 73(2) of the Conduct of Election Rules, 1961, (hereinafter referred to as the Rules). Satya Ketu contended in reply that all the votes counted in his favour were valid votes and therefore prayed that the petition should be dismissed.

Thus the main question for decision before the Election Tribunal (hereinafter referred to as the Tribunal) was whether votes which should have been declared invalid in view of the provision of r. 73(2) of the Rules had been counted as valid in favour of Satya Ketu. The Tribunal scrutinised the ballot papers and divided them into a number of categories. It held that certain ballot papers bore the Roman numeral I instead of the Arabic numeral 1. It therefore held that ballot papers marked with the Roman numeral I were invalid under r. 73(2) of the Rules as they did not bear the Arabic figure 1. It thus came to the conclusion that 491 votes cast in favour of Satya Ketu were invalid. It therefore allowed the petition and declared the election of Satya Ketu, respondent, void and further declared the appellant to be duly elected from that constituency.

Satya Ketu then went in appeal to the High Court, and his contention was that the Tribunal was wrong in holding that ballot papers which had been marked by Roman numeral I were invalid. He therefore contended that 491 votes rejected by the Tribunal were validly cast and the petition should have been dismissed. The appellant on the other hand contended that the Tribunal's view was correct. In addition, the appellant raised a preliminary objection, namely, that the appeal should be dismissed as it was not accompanied by a copy of the decree. The High Court over-ruled the

preliminary objection and held that no copy of decree was necessary in view of the provisions of s. 98 and s. 116-A of the Representation of the People Act, No. 43 of 1951, (hereinafter referred to as the Act). On the merits it held that r. 73(2) did not mean that preference expressed by writing down the Roman numeral I in place of the Arabic numeral 1 would make the ballot paper on which the Roman numeral I was written invalid. It therefore counted as valid votes which bore the Roman numeral I. Thus out of 491 votes which were declared invalid by the Tribunal, the High Court was of the view that 460 votes were valid and as Satya Ketu had won by 47 votes and would still win by 16 votes, it allowed the appeal and dismissed the petition. The present appeal has been filed by the appellant with a certificate granted by the High Court.

The first contention on behalf of the appellant is that the appeal before the High Court was not maintainable as a copy of the decree was not filed along with the judgment of the Tribunal. It appears that a direction was given by the Tribunal to the effect that a decree containing the details of cost should be prepared, though no such decree was actually prepared at any time. The question that falls for decision therefore is whether a decree is required to be prepared in accordance with the judgment of the tribunal in an election petition, and if so, whether it is necessary to file a copy of such decree along with a copy of the judgment of the tribunal when filing on appeal under s. 116-A of the Act.

It is necessary for this purpose to examine briefly the scheme of the Act with respect to election petitions contained in Part VI thereof. That part begins with s. 79 which defines certain words in the context of Parts VI, VII and VIII. Section 80 provides that no election shall be called in question except by an election petition presented in accordance with the provisions of Part VI. Section 81 provides for presentation of petitions before the Election Commission, s. 82 for parties to the petition and s. 83 for contents of the petition. Section 84 provides for relief to be claimed by the petitioner, s. 85 for procedure by the Election Commission on receipt of an election petition and s. 86 for appointment of election tribunals and reference of election petitions to the tribunal. Section 88 provides for the place of trial, and then comes s. 90 which provides for the procedure for trial. Sub-section (1) thereof lays down that -

> "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."

Sections 91 to 97 provide for certain other matters to which reference is unnecessary. Section 98 provides for the decision of the tribunal, and 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
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> (b) declaring the election of all or any of the returned candidates to be void; or
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> (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 is unnecessary to refer to ss. 99 to 116 which provide for certain matters. Then comes s. 116-A which provides for appeals against orders of election tribunals. Sub-section (1) thereof lays down-

"An appeal shall lie from every order made by a tribunal under section 98 or section 99 to the High Court of the State in which the Tribunal is situated." Sub-section (2) thereof provides that -

"The High Court shall, subject to the provisions of this Act, have the same powers, jurisdiction and authority, and follow the same procedure, with respect to an appeal under this Chapter as if the appeal were an appeal from an original decree passed by a civil court situated within the local limits of its civil appellate jurisdiction."

Section 120 provides for costs and lays down that costs including pleaders' fees shall be in the discretion of the tribunal. Section 122 provides for execution of orders as to costs and lays down that "any order as to costs under the provisions of this Part may be produced before the principal civil court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or where such place is within a presidency town, before the court of small causes having jurisdiction there, and such court shall execute the order or cause the same to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit."

It will be seen from this brief review of the provisions of Part VI of the Act that there is no provision therein for passing a decree by the election tribunal. Section 98 which refers to the decision of the tribunal says in specific terms that the tribunal shall make an order at the conclusion of the trial and indicates the three types of orders that the tribunal is entitled to make. If the Act intended that tribunals shall pass a decree, there was nothing to prevent the legislature from saying so in terms in s. 98. Further s. 120 lays down that costs will be in the discretion of the tribunal, and s. 122 shows that any order as to costs shall be executed as if it were a money decree. Now if the Act intended that there should be a decree following the judgment of an election tribunal it would not have been necessary to say in s. 122 that an order passed by the tribunal with respect to costs shall be executed as if it were a money decree of a civil court. It may be that the Tribunal in this case passed an order to the effect that a decree for costs be prepared; but the use of the word "decree" by the Tribunal was in our opinion an error and what may be prepared on the basis of an order for costs passed by a tribunal would be a memorandum of costs which can be executed, if necessary, under s. 122 of the Act. Therefore, when the Tribunal ordered that a decree containing the details of costs should be prepared all that it means is that a memorandum of costs should be prepared in case any party wanted it for purposes of execution under s. 122 of the Act. Further it is not disputed that there is no provision in any rule framed under the Act for the preparation of a decree by the election tribunal. What is urged is that under s. 90(1), an election petition has to be tried as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits and that, it is urged, necessarily means that a decree should be prepared by the tribunal in the same manner as a decree prepared by a civil court at the end of the trial of a suit. We are of opinion that this conclusion does not follow from the language of s. 90. In the first place, s. 90 begins with the words "subject to the provisions of this Act and of any rules made thereunder", and in the next place, it enjoins that the procedure for the trial of suits should be followed as nearly as may be. Therefore the scheme of Part VI with respect to election petitions and their trial shows that it is not necessary to draw up a decree at all, and that is undoubtedly so as we have already indicated above. The fact that the trial has to be in accordance with the procedure laid down for the trial of suits would not bring in those provisions of the Code of Civil Procedure, which require the preparation of a decree at the conclusion of trial of a suit, for s. 90(1) itself indicates that

the procedure should be as nearly as may be of the Code of Civil Procedure. We are therefore of opinion that in view of the provisions of the Act it is unnecessary to prepare a decree after the conclusion of the trial of an election petition; section 90(1) would not make those provisions of the Code of Civil Procedure which require the preparation of a decree applicable to the trial of an election petition, for the Code of Civil Procedure has to be applied to such trial as nearly as may be and subject to the provisions of the Act. Further we have no doubt that preparation of a decree is not necessary after the conclusion of the trial of an election petition.

Let us then turn to s. 116-A of the Act to see if there is anything in that section which requires the filing of a decree along with copy of the judgment of the tribunal. Section 116-A inter alia provides for appeals against orders made by a tribunal, under s. 98. We have already referred to the fact that s. 98 does not speak of a decree. Section 116-A provides for an appeal not from a decree of the tribunal but from an order passed by it inter alia under s. 98. It is true that sub-s. (2) of s. 116-A lays down that the High Court shall follow the same procedure with respect to such an appeal as if the appeal were an appeal from an original decree passed by a civil court. But that in our opinion does not mean that a copy of decree is necessary before an appeal under s. 116-A is maintainable, for the simple reason that the scheme of the Act shows that no decree is necessary to be prepared by the tribunal at all and the appeal under s. 116-A(1) is also from an order and not from a decree. In this connection we may refer to s. 96 of the Code of Civil Procedure which provides for an appeal from an original decree. That section inter alia provides that an appeal shall lie from every decree passed by any court exercising original jurisdiction to the court authorised to hear appeals from the decisions of such court. It will be seen that s. 96 of the Code of Civil Procedure provides for appeal from a decree in a suit, and that is why it is necessary to prepare a decree; the same is also provided in s. 33 of the Code of Civil Procedure which in terms lays down that "the court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow". We have no corresponding words in ss. 98 and 116-A of the Act, and that shows that it is not necessary to prepare a decree at the conclusion of the trial of an election petition and in consequence no copy of decree is necessary to be filed when an appeal is filed under s. 116-A of the Act.

In this connection our attention is drawn to the Rules of the Court, 1952, framed by the Allahabad High Court under Art. 225 of the Constitution, relating to appeals. Rule 8 of Chap. IX inter alia lays down that the memorandum of appeal shall be accompanied by a copy of the decree against which the appeal is directed and a copy of the judgment upon which such decree is founded. This rule is in accordance with what the Code of Civil Procedure requires. But Chapter XIV - A of the Rules of the Court was framed by the Allahabad High Court specifically with respect to appeals from orders of election tribunals, and r. 2 thereof lays down that every memorandum of appeal shall be accompanied by a certified copy of the order against which the appeal is directed, this is in accordance with the scheme of the Act, for the Act contemplates an appeal against an order of the election tribunal under s. 116-A of the Act. Further r. 14 of Chap. XIV - A makes it clear that other rules relating to first appeals contained in Chapters IX, X, XI, XII and XIII will apply subject to the provisions of Chap. XIV-A. Therefore so far as the Rules of Court are concerned, they do not provide for filing of a copy of the decree and rightly so, for no decree is required to be prepared at the conclusion of the trial of an election petition by the tribunal.

Reference is also made to O. XLI r. 1 of the Code of Civil Procedure, which provides that a memorandum of appeal shall be accompanied by a copy of the decree appealed from and, unless the appellate court dispenses therewith, of the judgment on which it is founded. That rule however cannot apply in full in the case of an appeal from an order of the election tribunal in an election petition, for, if the Act does not contemplate the framing of a decree and does not provide for an

appeal from a decree, that part of O. XLI r. 1 which requires the filing of a copy of the decree appealed from, cannot in the very nature of things apply to an appeal under s. 116-A of the Act. We are therefore of opinion that in an appeal under s. 116-A, all that is necessary to be filed is a copy of the judgment of the tribunal, and no more. The preliminary objection therefore fails.

Coming now to the merits of the appeal, the whole argument of the appellant is based on r. 73(2) of the Rules, which is in these terms :-

> "(2) A ballot paper shall be invalid on which -
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> (a) the figure 1 is not marked; or
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> (b) the figure 1 is set opposite the name of more than one candidate or is so placed as to render it doubtful to which candidate it is intended to apply; or
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> (c) the figure 1 and some other figures are set opposite the name of the same candidate; or
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> (d) there is any mark or writing by which the elector can be identified."

What is contended is that r. 73(2)(a) requires that figures 1 must be marked on the ballot paper, and if that is not marked, the ballot paper would be invalid. That is undoubtedly so. But the rule does not say that figure 1 which has to be marked must be marked in what are called Arabic numerals or the International form of Indian numerals. If that was the intention we should have found it specifically mentioned in the rule. It is true that in r. 73(2)(a), the figure 1 is shown in the form of Arabic numeral, but that does not mean that the rule intended that figure 1 on the ballot paper can only be marked in the Arabic form and in no other. It would in our opinion not be right to read cl. (a) as laying down that figure 1 has to be marked in Arabic notation and if that is not so, the ballot paper would be invalid. It seems to us that what the rule provides is that the ballot paper has to be marked with figure 1 to show first preference. Therefore, if there is figure 1, first preference would be shown irrespective of whether the figure was put down in the form of Arabic numerals or in any other form. So long as it is clear that figure 1 is marked on the ballot paper, the ballot paper would be valid and it is only when figure 1 is not marked at all in any form whatsoever that it can be said that the ballot paper is invalid. We may mention that the view we are taking has now been made clear beyond doubt by the addition of an Explanation to s. 73(2), which reads thus :-

> "The figures referred to in clauses (a), (b) and (c) of this sub-rule may be marked in the international form of Indian numerals or in Roman form or in the form used in any Indian language, but shall not be indicated in words."

We are of opinion that this must have been in intention of the rule as it stood before the Explanation was added, for the marking of figure 1 on the ballot paper was necessary to indicate the first preference without which the ballot paper would be invalid. If first preference is indicated by marking the figure 1 in one form or other, that would in our opinion be in full compliance with r. 73(2)(a), and the ballot paper would not be invalid. It is only if figure 1 is not marked at all in any form that the ballot paper would be invalid under r. 73(2)(a). We agree with the High Court that marking of figure 1 in Roman form is in full compliance with r. 73(2)(a). To say that Roman figures are composed of letters of the alphabet is in our opinion no answer to the argument, for it is well known how figures are marked in Roman form, and there is no dispute as to the Roman form of the figure 1. We are therefore of opinion, where figure 1 is marked on the ballot paper, whether it be in

one form or other including the Roman form, that is in full compliance with the rule, and the ballot paper would not be invalid in the circumstances.

Then it is urged that besides the Roman figure I, some other words were added in some cases. Even if that were so, we are of opinion that r. 73(2)(a) would not justify declaration of a ballot paper as invalid so long as the figure 1 is marked. If any otherword is put down, like "st", after the Roman figure I or the word "one" in brackets thereafter, that would not invalidate the vote for the figure "1" would be there to show the first preference, and those words can be ignored. We are therefore of opinion that the view taken by the High Court is correct.

The appeal fails and is hereby dismissed with costs.

R.K.P.S

Appeal dismissed.

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