Ravindra Nath

Vs

Raghbir Singh & Anr

Civil Appeal No. 520 of 1967

(CJI K. N. Wanchoo, R. S. Bachawat, V. Ramaswami- I , G. K. Mitter,K. S. Hegde JJ)

04.08.1967

JUDGMENT

BACHAWAT, J. –

On March 28, 1966 the election of four members to the Council of States (Rajya Sabha) by the members of the Punjab Legislative Assembly (Vidhan Sabha) was held, and as a result of the election, respondent No. 1, Raghbir Singh and one Narinder Singh were declared elected. Appellant Ravindra Nath was one of the unsuccessful candidates. On May 10, 1966, the appellant filed an election petition asking for a declaration that the election of respondent No. 1 and Narinder Singh was void and for a further declaration that he be declared duly elected as a member of the Rajya Sabha to one of those seats. On July 1, 1966, the date fixed for the respondents to the petition to appear before the Tribunal and answer the claims made in the petition, respondent No. 1 filed a written statement in reply to the election petition and gave a written notice under the proviso to s. 97(1) of the Representation of the People Act, 1951 of his intention to give evidence to prove that the election of the appellant would have been void if he had been the returned candidate and if a petition had been presented calling in question his election. The notice under s. 97(1) was accompanied by the prescribed statement and particulars and a treasury receipt evidencing the deposit of Rs. 1,000 as security under s. 117 of the Act. An objection was taken on behalf of the appellant that the amount of security deposited by respondent No. 1 was insufficient and consequently the notice under the proviso to s. 97(1) was invalid. On this objection, the Tribunal raised the following preliminary issue being issue No. 10 : "Whether the notice under section 97 of the Representation of the People Act, 1951, given and the recrimination statement filed on behalf of respondent No. 1 are invalid because of the insufficiency, if any, of the security deposit made by respondent No. 1 within the time allowed, if any ?".

It is now common case that under the law as it stood at the relevant time respondent No. 1 was required to deposit a sum of Rs. 2,000 as security under s. 117 of the Representation of the People Act, 1951. On October 7, 1966, the date fixed for argument on the preliminary issues, respondent No. 1 deposited a further sum of Rs. 1,000 as security and produced the relevant treasury receipt before the Tribunal. By its order dated October 11, 1966 the Tribunal held that as the production of a receipt showing the deposit of Rs. 2,000 as security alone with the notice was the condition precedent to the right of respondent No. 1 under s. 97(1) to lead evidence, this right was lost by his omission to file with the notice the treasury receipt showing a deposit of Rs. 2,000 and the subsequent deposit of Rs. 1,000 by him did not entitle him to lead any evidence under s. 97(1). The Tribunal answered the preliminary issue accordingly. On or about October 24, 1966, respondent No. 1 filed in the High Court for the States of Punjab and Haryana at Chandigarh a petition under Art. 227 of the Constitution asking for an order quashing the order of the Election Tribunal dated

October 11, 1966 and a direction that respondent No. 1 be allowed to lead evidence under s. 97(1). Several preliminary objections to the maintainability of the petition under Art. 227 of the Constitution were raised before the High Court, but they were subsequently abandoned and counsel for the appellant agreed that the High Court should deal with the order of the Tribunal on the merits. By its order dated December 19, 1966, the High Court held that it is only in cases in which the provisions of ss. 117 and 118 with regard to security of deposit were not complied with before the date fixed for recording evidence under s. 97(1) that the Tribunal could refuse to admit the evidence, and where, as in the present case, the entire amount of the security had been deposited before the date fixed for recording evidence, the Tribunal must admit the evidence. On this finding, the High Court allowed the petition under Art. 227 and quashed the order of the Election Tribunal dated October 11, 1966 in so far as it related to issue No. 10. From this order of the High Court, the present appeal has been filed by certificate.

The question in this appeal is what time limit, if any, is prescribed for furnishing the security referred to in the proviso to s. 97(1) read with ss. 117 and 118 of the Representation of the People Act, 1951 as it stood before its amendment by the Representation of the People (Amendment) Act, 1966. Section 97 is in these terms :

> "97(1). When in an election petition a declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election.
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> Provided that the returned candidate or such other party as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of commencement of the trial, given notice to the Tribunal of his intention to do so and has also given the security and the further security referred to in sections 117 and 118 respectively.
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> (2) Every notice referred to in sub-section I shall be accompanied by the statement and particulars required by section 83 in the case of an election petition and shall be signed and verified in like manner".

The Explanation to sub-s. (4) of s. 90 provided that for purposes of that sub-section and of s. 97 the trial of a petition would be deemed to commence on the date fixed for the respondents to appear before the Tribunal to answer the claim or claims made in the petition. Sections 117 and 118 read :

> "117. The petitioner shall enclose with the petition a Government Treasury receipt showing that a deposit of two thousand rupees has been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Election Commission as security for the costs of the petition.
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> 118. During the course of the trial of an election petition the Tribunal may at any time call upon the petitioner to give such further security for costs as it may direct, and may, if he fails to do so, dismiss the petition."

It is to be noticed that the words "within fourteen days from the date of commencement of the trial" in the proviso to s. 97(1) govern the giving of the notice and not the giving of the security.

Moreover, the period of fourteen days from the date of commencement of the trial cannot be the time limit for giving the further security under s. 118. The amount of the further security under s. 118 and the time for giving it must be fixed by the Tribunal before it can be given by the recriminator. He may be asked to furnish the further security at any time during the course of the trial if the original security is found to be insufficient. We have to examine the provisions of ss. 117 and 118 more closely to see if there is any time limit for the giving of security under the proviso to s. 97(1).

The object of s. 97 is to enable recrimination when a seat is claimed for the petitioner filing the election petition or any other candidate. In his election petition the petitioner may claim a declaration that the election of all or any of the returned candidates is void on one or more of the grounds specified in sub-s. (1) of s. 100 and may additionally claim a further declaration that he himself or any other candidate has been duly elected on the rounds specified in s. 101 (see ss. 81, 84, 98, 100 and 101). It is only when the election petition claims a declaration that any candidate other than the returned candidate has been duly elected that s. 97 comes into play. If the respondent desires to contest this claim by leading evidence to prove that the election of the other candidate would have been void if he had been the returned candidate and an election petition had been presented calling in question his election, the respondent must give a formal notice of recrimination and satisfy the other conditions specified in the proviso to s. 97. The notice of recrimination is thus in substance a counter petition calling in question the claim that the other candidate has been duly elected. In this background, it is not surprising that the legislature provided that notice of recrimination must be accompanied by the statement and particulars required by s. 83 in the case of an election petition and signed and verified in like manner and the recriminator must give the security and the further security for costs required under ss. 117 and 118 in the case of an election petition.

Looking at the object and scheme of s. 97 it is manifest that the provisions of ss. 117 and 118 must be applied mutatis mutandis to a proceeding under s. 297. The recriminator must produce a government treasury receipt showing that a deposit of Rs. 2,000 has been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Election Commissioner as costs of the recrimination. As the notice of recrimination cannot be sent by post, it must be filed before the Tribunal, and reading s. 117 with consequential adaptations for the purposes of the proviso to s. 97(1), it will appear that the treasury receipt showing the deposit of the security must be produced before the Tribunal along with the notice of recrimination. It follows that the recriminator must give the security referred to in s. 117 by producing the treasury receipt showing the deposit of the security at the time of the giving of the notice under the proviso to s. 97(1).

If the recriminator fails to give the requisite security under s. 117 at the time of giving the notice of recrimination, he loses the right to lead evidence under s. 97 and the notice of recrimination stands virtually rejected. It was suggested that as under s. 90(3) the Tribunal could not dismiss an election petition for non-compliance with the provisions of s. 117, the legislature could not have intended that the notice of recrimination would stand rejected for failure to give the security under s. 117. This argument overlooks the fact that under s. 85 it is the duty of the Election Commission to dismiss the election petition for non-compliance with the provisions of s. 117.

Likewise, reading s. 118 with the proviso to s. 97(1) it will appear that during the course of the trial of the recrimination the Tribunal may at any time call upon the recriminator to give such further security for costs as it may direct and may, if he fails to do so, reject the notice of recrimination given under the proviso to s. 97(1). It was suggested that the proviso to s. 97(1) having enacted that

the forfeiture of the right to lead evidence would be the penalty for failure to give the further security under s. 118, the legislatures could not have intended that the rejection of the notice of recrimination would be an additional penalty for this default. This suggestion is based on fallacious assumptions. The only right conferred on the recriminator satisfying the conditions of the proviso to s. 97(1) is the right to lead evidence that the election of the other candidate would have been void if he had been the returned candidate. If the recriminator fails to fulfill the conditions of the proviso, he loses this right, and the Tribunal is entitled to record an order to this effect. An order recording that the recriminator has no right to give evidence under s. 97 is tantamount to an order rejecting the notice of recrimination. There is thus no substantial difference between the penalty prescribed by the proviso to s. 97(1) and the penalty prescribed by s. 118 for the default in giving the further security.

The High Court held that the recriminator loses his right to lead evidence under s. 97 for failure to give security only in cases in which the provisions of ss. 117 and 118 are not complied with before the date fixed for recording evidence. In N. R. Shikshak v. R. P. Dikshit ([1965] A.L.J. 25, 4142), a Full Bench of the Allahabad High Court also held that since no period is fixed within which the security is to be given, the security may be given at any time before the recriminator gives evidence. We are unable to agree with this decision on this point or with the judgment under appeal. We have already seen that the time for giving the initial security for the recrimination is fixed on a combined reading of the proviso to s. 97(1) and s. 117 and the initial security must be given at the time of giving the notice of recrimination. Other considerations also show that the date fixed for recording the evidence cannot be the date within which the security referred to in ss. 117 and 118 is to be given under the proviso to s. 97(1). The recrimination starts on the giving of the notice under the proviso. Though the taking of the recriminatory evidence may be postponed, preliminary directions for discovery, inspection and other matters are given long before the evidence is taken. It is therefore, desirable that the initial security referred to in s. 117 should be given along with the notice of recrimination at the very commencement of the recrimination proceeding. Moreover, the date fixed for recording the evidence cannot be the time limit for giving further security under s. 118. The Tribunal may demand the further security under s. 118 at any time in course of the trial of the recrimination even after the evidence has been partly taken.

The High Court thought that the decision in Kumaranand v. Brij Mohan ([1965] I.S.C.R. 116) lends support to its conclusion that the Tribunal could not refuse to admit the evidence under s. 97 if the security under s. 117 is given before the date fixed for recording the evidence. That decision turned on the construction of s. 119-A and is not relevant on the questions under consideration in this appeal. As s. 119-A did not expressly provide the penalty for failure to furnish the security for costs of an appeal at the time of filing the memorandum of appeal, the failure to furnish the security did not automatically result in dismissal of the appeal, and it was for the High Court to decide having regard to the circumstances of each case whether it should decline to proceed with the hearing of the appeal. But the proviso to s. 97(1) expressly provides that the recriminator shall not be entitled to give evidence unless inter alia he gives the security referred to in s. 117.

The Tribunal rightly held that the respondent No. 1 was required to produce with the notice under the proviso to s. 97(1) a government treasury receipt showing a deposit of Rs. 2,000 as security for costs of the recrimination. The High Court was in error in quashing this order.

In the result, the appeal is allowed with costs, the judgment and order of the High Court are set aside, and the petition under Art. 227 of the Constitution is dismissed.

Appeal allowed.

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