**SUPREME COURT OF INDIA**

Vidya Sagar Joshi

Vs.

Surrinder Nath Gautam

C.A.No.853 of 1968

(M. Hidayatullah, C.J.I. and G. K. Mitter, J.)

18.09.1968

**JUDGEMENT**

**HIDAYATULLAH, C. J.:-**

1. This is an appeal against the judgment, dated January 15, 1968, of the High Court of Delhi (Himachal Bench) setting aside the election of the appellant to the Santokhgarh Assembly Constituency of Himachal Pradesh. The election has been set aside on the ground of corrupt practice under Section 123 (6) of the Representation of the People Act read with S. 98 (b) of the Act.

2. By a notification dated January 13, 1967 the electors of this constituency were invited to elect a member to the Assembly. The last date for filing of nomination papers was January 20, 1967. Scrutiny of the nomination papers was held the following day and the last date of withdrawal was January 23, 1967. Three candidates contested the election. The appellant was an independent candidate opposed by the respondent who was a Congress nominee and one Shanti Swarup, Jansangh candidate. The poll took place throughout the constituency on February 18, 1967. Votes were counted four days later at Una and the result was declared as follows:

Vidya Sagar Joshi

(Appellant) 8437 votes

Surinder Nath Gautam

(Election Petitioner) 7695 votes

Shanti Swarup 2067 votes

1267 ballots were rejected as invalid. Thus the present appellant was returned with a margin of 742 votes. The returned candidate filed his return of election expenses showing an expenditure of Rs. 1862.05 P. The limit of expenditure in this constituency was Rs. 2000. One of the contentions of the election petitioner was that he had filed a false return of his election expenses, that he had spent and amount exceeding Rs. 2000 in the aggregate and therefore contravened the provisions of Sec. 77 (3) of the Representation of the People Act 1951 and therefore committed corrupt practice under Section 123 (6) of the Act. The election petitioner therefore asked that his election be declared void. There were other grounds also on which the election was challenged, but we need not refer to them since no point has been made before us.

3. The main item on which the expenses were said to be false was a deposit of Rs. 500 as security and Rs. 200 as application fee which the returned candidate had made with the Congress party on or before January 2, 1967. The fee was not returnable, but as this payment was made before the notification calling upon the voters to elect a member to the Assembly nothing turns upon it. The returned candidate was denied the Congress ticket on or about January 10, 1967. This was also before the said notification. According to the rules of the Congress Party the security deposit was refundable to a candidate if he or she was not selected. It was however provided in the same rules that if the candidate contested the election against the official Congress candidate, the security deposit would be forfeited. The returned candidate chose to stand as an independent candidate against the official Congress nominee and incurred the penalty of forfeiture. This was after the date or the filing of the nomination paper (January 20, 1967). He had time till January 23, 1967 to withdraw from the contest. If he had done so the deposit would have presumably been returned to him. As he became a contesting candidate the forfeiture of the deposit became a fact.

4. The case of the election petitioner was that if this deposit were added to the election expenses, the limit of Rs. 2000 was exceeded dud therefore this amounted to a corrupt practice under S. 123 (6) read with Sec. 77 (3) of the Representation of the People Act. The High Court held in favour of the election petitioner and hence the appeal.

5. Section 77 of the Representation of the People Act provides as follows:

Section 77. Account of election expenses and maximum thereof -

(1) Every candidate at an election shall either by himself or by his election agent keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof, both dates inclusive.

(2)The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed.

6. The third sub-section creates a bar against expenditure in excess of the prescribed amount. In this case the prescribed amount was Rs. 2000. Section 123 (6) provides that "the incurring or authorising of expenditure in contravention of Section 77 is a corrupt practice." Therefore, if the amount of Rs. 500 was added to the election expenses as declared by the returned candidate he would be guilty of a corrupt practice, under the two sections quoted above. The question, therefore, is whether this amount can be regarded as an election expense.

7. The first sub-section of Section 77 discloses that the candidate has to declare as part of his election expenses. It speaks of "all expenditure in connection with the election incurred or authorised by him or by his election agent between the data of publication of the notification calling the election and the date of declaration of the result thereof, both dates inclusive." In the present case, therefore, the critical dates were January 13, 1967 and February 22, 1967. The amount in question was paid before the first date. It was liable for confiscation not on the date on which the Congress ticket was refused to the returned candidate but on January 23, 1967 when he did not withdraw from the contest and offered himself as a contesting candidate against the official Congress candidate. In other words, the payment was made before the period marked out by Section 77 (1) but the expenditure became a fact between the two dates. The contention of the returned candidate was that this was not an expenditure within the meaning of Sec. 77 (1) of the Representation of the People Act and this is the short question which falls for consideration in the present case.

8. Section 77 as framed now departs in language from the earlier provision on the subject which was rule 117. It read:

"117. Maximum election expenses- No expense shall be incurred or authorised by a candidate or his election agent on account of or in inspect of the conduct and management of an election in any one constituency in a State in excess of the maximum amount specified in respect of that constituency in Schedule V."

The words "conduct and management of election" are not as wide as the words "all expenditure in connection with election incurred or authorised by him," which now finds place in section 77. The question thus is what meaning must be given to the words used in Section 77. The critical words of Section 77 are 'expenditure' 'in connection with election' and 'incurred or authorised'. 'Expenditure' means the amount expended and 'expended means to pay away, lay out or spend. It really represents money out of pocket, a going out. Now the amount paid away or paid out need not be all money which a man spends on himself during this time. It is money 'in connection with' his election. These words mean not so much as 'consequent upon' as 'having to do with'. All money laid out and having to do with the election is contemplated. But here again money which is liable to be refunded is not to be taken note of. The word 'incurred' shows a finality. It has the sense of rendering oneself liable for the amount. Therefore the section regards everything for which the candidate has rendered himself liable and of which he is out of pocket in connection with his election that is to say having to do with his election.

9. The candidate here put out this money for his election since he was trying to obtain a Congress ticket. If he had got the ticket and the money was refunded to him, this would not have counted as an expenditure since the expense would not have been incurred. When the candidate knowing that the money would be lost went on to stand as an independent candidate, he was willing to let the money go and take a chance independently. The case of the appellant is that this money was not used in furthering the prospect of his election. On the other hand, it was in fact used against him by the Congress Party as he was opposed to that party's candidate. He contends that such an expense cannot be regarded as expense in connection with the election. According to him the connection must be a connection of utility and not something which is of no use but rather against the chances of victory. In this connection the learned counsel draws our attention to Halsbury's 'Laws of England' Third Edition Volume 14, at page 177 paragraph 314. It is stated there as follows:

"While no attempt has been made by judges to define exhaustively the meaning of expenses incurred in the conduct or management of an election, it has been said that if expenses are, primarily or principally, expenses incurred for the promotion of the interests of the candidate, they are election expenses."

10. It will be seen that the above passage refers to expenses incurred in the conduct or management of an election.

11. The learned counsel for the appellant and respondent relied upon two decisions of this Court.

Reliance was also placed upon two decisions of the Election Tribunal. The decisions of the Election Tribunal are of the same Bench and concern Rule 117. They need not be considered. The two cases of this Court may be noticed.

12. In Haji Aziz and Abdul Shakoor Bros. v. Commissioner of Income Tax, Bombay City, (1961) 2 SCR 651 = (AIR 1961 SC 663) the question arose under the Indian Income-tax Act. A firm importing dates was found to have breached some law and a penalty was imposed on it under the Sea Customs Act. The firm sought to treat the penalty as expenses and they were disallowed by this Court. Learned Counsel for the appellant relied on this case and claimed that the same principle applies and this penalty cannot be said to be an expenditure in connection with the election. The analogy is not apt because not only the prescriptions of the two laws are different but the underlying principle is different also. In Income-tax laws the expenditure must be laid out wholly or exclusively for the purpose of the business etc. Breaking laws and incurring penalty is not carrying on business and therefore, the loss is not for the purposes of business. Here the expenditure is to be included if it is incurred in connection with the election and the payment to secure the seat is an expenditure in connection with the election. The ruling, therefore, does not apply.

13. In the second case a Congress candidate had paid a sum of Rs. 500 of which Rs. 100 were subscription for membership and Rs. 400 were a deposit. Later he paid Rs. 500 as donation to the Congress. He failed to include the two sums of Rs. 500 each in his return of expenses. The Tribunal found that both the sums were spent in connection with the election and by including them the limit was exceeded. This Court affirmed the decision of the Tribunal. The case was decided under R. 117. The two sums were considered separately. The contention was that under S. 123 (7) and R. l17 the candidate was nominated only on November 16, 1951 and the first sum was paid on September 12, 1951. The question then arose when the candidate became a candidate for the application of the Rule and S. 123 (7). It was held that the candidate became a candidate when he unequivocally expressed his intention by making the payment.

14. The question of commencement of the candidature is now obviated by prescribing the two terminii between which the expense it to be counted. In so far as the case goes it supports our view. It is risky to quote the decision because the terms of the law on which it was declared were entirely different. We can only say that there is nothing in it which militates against the view taken by us here.

15. On the whole, therefore, the judgment under appear is correct. The appeal fails and will be dismissed with costs.

Appeal dismissed.