

Virjiram Sutaria

Vs

Nathalal Premji Bhavadia & Other

Civil Appeal No. 1180 of 1968

(G. K. Mitter, K. S. Hegde JJ)

04.11.1968

JUDGMENT

MITTER, J. -

1. The only question raised in this appeal from a judgment and order of the High Court of Gujarat dismissing an election petition is, whether the returned candidate was not qualified to be chosen to fill seat of the State Legislative assembly inasmuch as he did not subscribe to as oath or affirmation according to the form set out for the purpose in the Third Schedule to the Constitution as prescribed under Article 173 thereof.

(2) The relevant facts may be stated as follows :

The notification of the Governor of Gujarat under Section 15 (2) of the Representation of the people Act of 1951, for the purpose of elections to the Gujarat State Legislative Assembly was issued on January 13, 1967. Nomination papers were filed by several persons including the returned candidate and the scrutiny thereof was made on January 21, 1967. The poll took place on February 18, 1967 and the result declared on February 27, 1967, showing the returned candidate winning comfortably by a margin exceeding 3,300 votes over his nearest rival. One of the grounds taken in the election petition was that immediately after the scrutiny of the nomination papers, the third respondent to the election petition had filed a written objection before the Returning Officer contending that the returned candidate had not taken oath properly and on the same ground the he along with respondents 2 and 4 were not qualified to be chosen and their nomination papers should be rejected. This contention was turned down by the Returning Officer and was also negatived by the learned Judge who heard the election petition and in this appeal the unsuccessful petitioner has only pressed this ground.

(3) The relevant portion of Article 173 of the Constitution reads as follows :-

"A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he -

(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission on oath or affirmation according to the form set out for the purpose in the Third Schedule;

#(b) and (c) XX XX XX.###

The Third Schedule contains various forms of oath or affirmation Form VII-A, the relevant form for the present purpose is, follows :

Form of oath or affirmation to be made by a candidate for election to the Legislature of a State :

"I, A.B., having been nominated as a candidate to fill seat in the Legislative Assembly (or Legislative Council), do swear in the name of God

----- that I will bear true faith and allegiance to the solemnly affirm

Constitution of India as by law established and that I will uphold the sovereignty and integrity of India."

(4) The returned candidate had filed three nomination papers with three different proposers on January 20, 1967. Each of the three nomination papers clearly mentioned that he was a candidate for election to fill a seat in the Vidhan Sabha for the Gujarat State, i.e. Legislative Assembly of the State. The nomination paper of the returned candidate contained a form of oath or affirmation which was both in Gujarati as well as in English. The English form followed word for word Form No. VII as set out in the Third Schedule, to the Constitution and the Gujarati form purported to set out the Gujarati translation of the form of oath or affirmation. The relevant difference for the purpose of this appeal between the two forms lay in this that the words "Legislative Assembly" in the form in English were translated in Gujarati form as "Rajya Sabha" and the appellant's contention before the High Court and before us rested solely on the use of this word which according to learned counsel went to show that the oath that was taken was for the purpose of filling a seat not in the Legislative Assembly of the State but in the Legislative Council of the State. At the hearing of the petition before the High Court the returned candidate gave evidence to the effect that he had taken the oath not according to the words in the Gujarati form but according to the translation of the words in the English form rendered by the Returning Officer. The Returning Officer was merely called to produce some documents but he was not put on oath nor was he asked any question to corroborate the testimony of the returned candidate. The High Court did not accept this testimony and we see no reason to come to any different conclusion.

(5) We must therefore proceed on the basis that the returned candidate took the oath according to the words of the Gujarati form. It was argued before us that 'Rajya Sabha' means the Legislative Council of the State and not the Legislative Assembly of the State and consequently the oath taken did not fulfil the requirements of Article 173 (a) of the Constitution. We were not referred to any official translation of the expression, "Legislative Assembly" in Gujarati. The word "Sabha" means a gathering or a meeting or an assembly of persons for a definite purpose. Giving the word "Sabha" the said meaning the expression 'Rajya Sabha' it would not be possible to hold that the oath was not in compliance with the form prescribed in Article 173 (a) of the Constitution. No doubt by common parlance in many of the States in Northern India the expression 'Rajya Sabha' has come to mean the Legislative Council of a State while the State Legislative Assembly is generally known as Rajya Vidhan Sabha. But in the absence of any authoritative translation of the expression "State Legislative Assembly" in Gujarati we cannot guide ourselves by the popular rendering of the expression. In this connection it is necessary to mention that in the State of Gujarat there is no Legislative Council of the State. The Legislature consists of one house only, namely, the State

Legislative Assembly. There could therefore be no misapprehension either in the person taking the oath or in the Returning Officer when he was accepting the nomination paper with the oath in Gujarati form that the candidate who afterward won the election was being nominated as a candidate to fill a seat in the Legislative Council of the State and not in the Legislative Assembly.

(6) The High Court held that there was substantial compliance with the requirements of Article 173(a) of the Constitution in the circumstances surrounding the making and the subscribing of the oath even if the compliance was not literal. We are in full agreement with that view. The essential requirement of Article 173(a) of the Constitution for our present purpose is that in order to be a qualified to be chosen to fill a seat in the Legislature of a State a person (i) must be citizen of India and (ii) must make and subscribe before a person duly authorised on oath or affirmation according to the form set out for the purpose in the Third Schedule. Form VII-A contains the following essential requirements :

(1) the person taking the oath or making the affirmation must have been nominated as a candidate to fill a seat in the Legislative Assembly or Legislative Council;

(2) that he will bear true faith and allegiance to the Constitution of India as by law established; and

(3) that he will uphold the sovereignty and integrity of India.

(7) The vital requirements, therefore, are (a) the securing of nomination, and (b) declaration of bearing true faith and allegiance to the Constitution and a promise to uphold the sovereignty and integrity of India. The securing of a nomination precedes the making of a declaration. The real purpose of the oath is that the person concerned must give an undertaking to bear true faith and allegiance to the Constitution and uphold the sovereignty and integrity of India. This is brought out by the Statement of Objects and Reasons to the Bill No. 1 of 1963, seeking to amend Article 19, 84 and 173 of the Constitution. The Statement of Objects and Reasons notes the recommendations of the Committee on National Integration and Regionalism and its view "that every candidate for the membership of a State Legislature or Parliament, and every aspirant to, and incumbent of, public officer should pledge himself to uphold the Constitution and to preserve the integrity and sovereignty of the Union and that forms of oath in the Third Schedule to the Constitution should be suitable amended for the purpose". The Bill proposed to give effect to the recommendation by amending clauses (2), (3) and (4) of Article 19 as also Article 84 and 173 and the forms of oath in the Third Schedule. The words in the form of oath in Form VII-A :

"I will uphold the sovereignty and integrity of India"

were inserted by the Constitution Fifteenth Amendment Act, 1963, giving effect to the view of the said Committee.

(8) As the essential requirements of the oath given in the form in the Third Schedule were not deviated from in the Gujarati form used in this case, we cannot hold that the oath subscribed in this case was not in compliance with Article 173 merely because of the popular meaning of the expression 'Rajya Sabha'.

(9) The real question is, whether the deviation, if any, from the form of oath in English as contained in the Third Schedule is so vital as to lead to the conclusion that no proper oath was taken by the returned candidate. There have been many instances where this Court has held that a substantial

compliance with the statute or with the rule framed thereunder is enough even if there be no literal compliance and in our view, there is no reason to adopt a different line of reasoning in the construction and interpretation of the Constitution. In all such cases, one must consider the real purpose of the provision whether statutory or constitutional, to find out whether notwithstanding the apparently mandatory form of the words used any deviation therefrom was to be struck down.

(10) One of the question which came up for consideration in *Kamaraj Nadar v. Kunja Thevan*, (1959 SCR 583) was whether the election petition ought to have been rejected merely because the deposit provided for under Section 117 of the Representation of the People Act was made in favour of the Election Commission and not in favour of the Secretary to the Election Commission as provided for in the said section. Turning down the argument advanced for rejecting the election petition it was observed :

"What is of the essence contained in Section 117 is that the petition should furnish security for the costs of the petition, and should enclose along with the petition a Government Treasury receipt showing that a deposit of one thousand rupees has been made by him either in a Government Treasury or in the Reserve Bank of India, is at the disposal of the Election Commission to be utilised by it in the manner authorised by law"

(11) In *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore*, (1964-3 SCR 573) one of the points urged against the petitioner was that there was non-compliance with the provisions of Section 81(3) of the Representation of the People Act because the copy of the election petition served on the appellant was not a true copy of the original filed before the Election Commission. Rejecting the said contention it was said :

" the word "copy" in sub-section (3) of Section 81 does not mean an absolutely exact copy, but means that the copy shall be so true that nobody can by any possibility misunderstand it."

(12) To the similar effect is the judgment in *Ch. Subbarao v. Member, Election Tribunal, Hyderabad*. (1964-6 SCR 213)

(13) In *State of U. P. v. Manbodhan Lal Srivastava*, (1958 SCR 533) one of the contentions urged on behalf of the respondent who was reduced in rank after departmental enquiry, was that the order of the Government was invalid for non-compliance with the provisions of Article 320(3)(e) of the Constitution which read literally made it obligatory for the Government of India or a Government of a State of consult the Union Public Service Commission or the State Public Service Commission on all disciplinary matters affecting a person in service of the State. In turning down the above it was observed by this Court :

" the use of the word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding, or the outcome of the proceeding, would be invalid."

(14) In *State of Punjab v. Sat Pal Dang* and *State of Punjab v. Dr. Baldev Prakash and Others*, (Civil Appeals Nos. 1427 & 1428/1968, decided on 30-6-1968) one of the points canvassed before this Court was, whether the certificate by the Deputy Speaker on a Money Bill was sufficient

compliance with Article 199 (4) of the Constitution which provides that -

"There shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under Article 193, and when it is presented to the Governor for assent under Article 200, the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill."

(15) It was contended that the provisions of the above clause were mandatory and only the Speaker of the Legislative Assembly could sign the Money Bill. It was pointed out by this Court that the Speaker was not present when the Bills were passed and under Article 180(2) the Deputy Speaker could act as the speaker when the latter was absent. This Court proceeded to examine the several tests to determine when the provisions of a statute might be treated as mandatory and when not, and emphasis was laid on one of the distinction namely, in cases where strict compliance was necessary to be a condition precedent to the validity of the Act itself, the neglect to perform it as indicated was fatal.

(16) The above cases are sufficient to show that non-compliance with the provisions of a statute or Constitution will not necessarily render a proceeding invalid if by considering its nature, its design and the consequences which follow from its non-observance one is not led to the conclusion that the Legislature or the constitution-makers intended that there should be no departure from the strict words used.

(17) In this case, as we have already noted, the essential requirement of Article 173, read with Form VII-A, was that the person taking the oath or making the affirmation would bear true faith and allegiance to the Constitution and uphold the sovereignty and integrity of India. The words which precede this portion are merely descriptive of the person and of his nomination as a candidate. It is reasonable to think that a mere mis-print in the form of the oath or a mere inaccuracy in rendering the expression "Legislative Assembly" in Gujarati would not be fatal to the election of the candidate, if otherwise valid.

(18) In the result, the appeal fails and is dismissed with costs.

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