

Charan Lal Sahu

Vs

Nandkishore Bhatt and Others

Civil Appeal No. 2411 of 1972

(P. Jaganmohan Reddy, S. N. Dwivedi JJ)

01.08.1973

JUDGMENT

JAGANMOHAN REDDY, J. -

1. This appeal is against an order of the High Court of Madhya Pradesh by which the election petition filed by the appellant was dismissed for failure to deposit the security as required under Section 117 of the Representation of the People Act, 1951 - hereinafter called 'the Act'. The facts in brief are, that for the elections held in 1972 Respondents 1 to 5 were elected as members of the Legislative Council of Madhya Pradesh. The appellant presented an election petition on June 26, 1972, but did not deposit Rs. 2,000/- security as required under Section 117 of the Act, which inter alia provides as follows :

"117. Security for costs. - (1) At the time of presenting an election petition, the petitioner shall deposit in the High Court in accordance with the rules of the High Court a sum of two thousand rupees as security for the cost of the petition.

(2) During the course of the trial of an election petition, the High Court may, at any time, call upon the petitioner to give such further security for costs as it may direct."

It was contended before the High Court by the petitioner/appellant that the trial had not started; that Section 117 of the Act is only directory and not mandatory and that the deposit of Rs. 2,000/- is only to secure the costs in the course of the trial of the election petition, as such dismissal of the petition for non-compliance with it is a penalty which is not one of the penalties prescribed under Section 118 of the Act. The High Court rejected all these contentions holding that it was mandatory for the petitioner when filing an election petition to deposit the amount of Rs. 2,000/- under Section 117 of the Act and there is no provision under which a discretion was conferred on the High Court to reduce the amount of security deposit a prayed for by him. The High Court referred to sub-Section (2) of Section 117 under which the High Court has been empowered to call upon the petitioner to give such further security for costs as it may direct, which clearly indicates that while there is a provision empowering the High Court to call upon the petitioner to give such further security for costs, there is no provision similarly empowering it to absolve the petitioner from making any security deposit or to reduce the amount required to be deposited under the Act. We think the High Court was right in holding that it is not competent to reduce the amount of security deposit or to dispense with it.

2. It was contended before us that the petition can only be dismissed after the trial commenced and the trial commences only after notices are issued to the respondents. In support of this proposition,

provisions of the repealed Section 85 of the Act are referred to. We are unable to appreciate how the repealed Section 85 of the Act furthers the submission of the petitioner or has any relevance. It is apparent that prior to repeal by Act 47 of 1966, Section 81 provided for the presentation of the election petition by any candidate aggrieved by the result of the election to the Election Commission; Section 83 prescribed what the contents of the petition should be; and Section 85 provided :

"If the provisions of Section 81, Section 83 or Section 117 are not complied with, the Election Commission shall dismiss the petition :

Provided that if a person making the petition satisfies the Election Commission that sufficient cause existed for his failure to present the petition within the period prescribed therefor, the Election Commission may in its discretion condone such failure."

Presentation of the petition under the repealed Section 81, beyond the period prescribed for its presentation could be condoned by the Election Commission in its discretion under the proviso to the repealed Section 85 of the Act, but there is nothing in Section 85 which permits the Election Commission to condone the non-compliance with the provisions of Section 117. Before the amendment of the Act in 1966, once the Election Commission finds the election petition to be in order and does not dismiss it under Section 85 for non-compliance with the requirements of Sections 81, 83 and 117, it has to appoint an Election tribunal for the trial of the petition. The trial by the Tribunal therefore is only after compliance with the mandatory provisions prescribed in Sections 81, 83 and 117 so that the trial is unrelated to the non-compliance by the petitioner with the requirements of Section 117. After the amendment, the jurisdiction of both the Election Commission and the Tribunal in respect of election disputes has been abolished and the High Courts of respective States have been vested with the jurisdiction in this regard. But the conferment of jurisdiction to entertain, try and determine an election petition has not in any way materially affected the position stated by us, as will be presently indicated.

3. The right to challenge an election is a right provided by Article 329(b) of the Constitution of India, which provides that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature. The right conferred being a statutory right, the terms of that statute had to be complied with. There is no question of any common law right to challenge an election. Any discretion to condone the delay in presentation of the petition or to absolve the petitioner from payment of security for costs can only be provided under the statute governing election disputes. If no discretion is conferred in respect of any of these matters, none can be exercised under any general law or on any principle of equity. This Court has held that the right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it. In *N. P. Ponnuswami v. Returning Officer, Namakkal Constituency and Others* (1952 SCR 218 : AIR 1952 SC 64 : 1952 SCJ 100 : 1 ELR 133.) it was pointed out that strictly speaking, it is the sole right of the Legislature to examine and determine all matters relating to the election of its own members, and if the Legislature takes it out of its own hands and vests in a special tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it.

4. On behalf of the appellant the case of *K. Kamaraja Nadar v. Kunju Thevar and Others* (1959 SCR

583 : AIR 1958 SC 687 : 1958 SCJ 680 : 14 ELR 270.), has been relied upon in support of the submission that the provisions of Section 117 of the Act are directory and not mandatory in their character. An examination of this decision does not support this contention of the appellant. That was a case under the unamended Section 117 of the Act under which the petitioner was required to enclose with the petition a Government Treasury receipt showing that a deposit of one thousand rupees had been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Secretary to the Election Commission as security for the costs of the petition. The petitioner therein had deposited Rs. 1000/- but had not mentioned the complete head of account in the Government Treasury receipt nor was the deposit made in favour of the Secretary to the Election Commission as laid down in the aforesaid section. The Election Commission discussed this defect and left the question to the Tribunal to decide after hearing the parties whether the defect could be treated as fatal or one that could be cured by fresh deposit or otherwise so as to secure the costs of the candidate if eventually awarded to him. The Tribunal held that there was no defect in the matter of the head of account and was further of opinion that non-mention of the fact that the deposit was made in favour of the Secretary to the Election Commission was immaterial in that it was taken to have been made in favour of the Election Commission at whose disposal the fund was placed, and accordingly there was sufficient compliance with the requirements of Section 117 of the Act. In that case this Court after examining in detail the procedure relating to the filing of the election petition observed at p. 606 :

"It would be absurd to imagine that a deposit made either in a Government Treasury or in the Reserve Bank of India in favour of the Election Commission itself would not be sufficient compliance with the provisions of Section 117 and would involve a dismissal of the petition under Section 85 or Section 90(3). The above illustration is sufficient to demonstrate that the words "in favour of the Secretary to the Election Commission" used in Section 117 are directory and not mandatory in their character. What is of the essence of the provision contained in Section 117 is that the petitioner 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 and is under its control and payable on a proper application being made in that behalf to the Election Commission or to any person duly authorised by it to receive the same, by the Secretary to the Election Commission or any one else."

This decision, therefore, cannot come to the rescue of a petitioner who has failed to deposit the security as required under Section 117 of the Act or has paid less than the amount specified therein. The decision in *Lalaram v. The Supreme Court of India and Others* ((1967) 2 SCR 14 : AIR 1967 SC 847 : (1967) 2 SCJ 225.) has no relevance to the matter in issue because as pointed out by the High Court that case relates to security being furnished for filing a review petition under the Supreme Court Rules, which stands on a different footing.

5. The argument of the appellant's advocate that in view of the marginal note to Section 86 election can only be dismissed after the trial has commenced by the issue of a notice to the respondent is equally without substance. Amended Section 86 apart from sub-section (1) provides for several matters in sub-section (2) to (7) such as for reference of the election petition or election petitions, where there is more than one in respect of the same election, to a Judge, the ordering of security for costs in case of the application by a candidate who is not already a respondent being made a

respondent, the permission to amend or amplify particulars of any corrupt practice alleged in the petition, the continuance of the trial of the election petition from day to day and its expeditions trial to be concluded as far as possible within six months from the presentation of the petition to the High Court. The reference to trial is in a larger sense and deals with the steps in a trial rather than in a narrower sense of a trial commencing after the notice of the petition is directed to be served on the respondent. The marginal note of Section 86, namely, "Trial of Election Petitions" does not indicate that under sub-section (1) of Section 86 an election petition cannot be dismissed for non-compliance with the provisions set out therein, unless notice is issued to the respondent. Where the language is clear and can admit of no other meaning such as is evidence from sub-section (1) of Section 86, the marginal note cannot be read to control that power.

6. We are clearly of the view that the non-deposit of the security along with election petition as required under Section 117 of the Act leaves no option to the court but to reject it. The appeal is accordingly dismissed with costs.

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