

Krishan Gopal

Vs

Shri Prakashchandra and Others

Civil Appeal No. 1555 of 1973

(CJI A. N. Ray, H. R. Khanna, P. N. Bhagwati)

08.11.1973

JUDGMENT

KHANNA, J. –

1. Whether a person sitting and acting as a Judge of the High Court under Article 224-A of the Constitution can exercise the jurisdiction to try an election petition under Section 80-A of the Representation of the People Act, 1951 (Act 43 of 1951) (hereinafter referred to as the Act) and whether the Chief Justice of the High Court can after entrusting an election petition to one judge allocate it at his request to another judge, are the two main questions which arise for determination in this appeal filed on certificate against the judgment of the Madhya Pradesh High Court.

2. The appellant and respondents Nos. 1 to 4 were candidates in the election to the Madhya Pradesh Legislative Assembly from Mhow constituency in Indore district in March 1972. Respondent No. 4 withdrew his candidature and the contest took place between the appellant and respondents Nos. 1 to 3. The result of the election was declared on March 12, 1972 and respondent No. 1 was declared elected. On April 25, 1972 the appellant presented an election petition under Section 81 of the Act to the Madhya Pradesh High Court challenging the election of respondent No. 1 on various grounds. This election petition, which was numbered Election Petition 11 of 1972, and some other election petitions were entrusted by the then Chief Justice (Bishambhar Dayal, C.J.) to Vyas, J. The date of the order of the Chief Justice in this respect is not on the record before us; but it has been stated during the hearing that the order was made some time in July or August 1972. Vyas, J., in those days was sitting on the Indore Bench of the Madhya Pradesh High Court.

3. Surajbhan, J., of the Madhya Pradesh High Court retired on February 2, 1971. After obtaining the previous consent of the President, the Chief Justice of Madhya Pradesh High Court requested Surajbhan, J., to sit and act as a judge of that Court under Article 224-A of the Constitution. Surajbhan J. has been thereafter sitting and acting as a judge of that Court with effect from April 28, 1971. His last appointment was by virtue of the consent of the President issued under Article 224-A of the Constitution as per notification dated November 23, 1972. The appointment was to last for a period of one year or till the disposal of election petitions entrusted to him, whichever was earlier.

4. Vyas, J., dealt with the election petition filed by the appellant and some other election petitions entrusted to him till June 1973. On June 2, 1973 the present Chief Justice directed that Vyas, J., should sit on the Gwalior Bench of the Madhya Pradesh High Court. It may be mentioned that apart from Jabalpur where there is the principal seat of the Madhya Pradesh High Court, two Benches of the High Court function, one at Gwalior and the other at Indore. After Vyas, J., was ordered to sit on the Gwalior Bench, he came from Gwalior to Indore for the trial of election petitions assigned to

him. On June 20, 1973 Vyas, J., addressed a letter to the Chief Justice setting out the stage at which were the different election petitions entrusted to him. A letter was thereafter addressed by the Chief Justice to Vyas, J., on July 19, 1973. In reply thereto Vyas, J., sent letter dated August 5, 1973 to the Chief Justice. The material part of that letter reads as under :

"Regarding E.P. No. 4/72 Vimal Kumar v. Thakur Virendra Singh, E.P. No. 9/72 Mannalal v. Kanhaiyalal Nagori and E.P. No. 11/12 Krishna Gopal v. G. F. Sethi, I have to say that as I have been posted here it would be better that they are heard by some one at Indore. This would avoid my visits to Indore and will be in the interest of their early disposal. I request accordingly."

On the margin of that letter the Chief Justice made an endorsement "He has to try them". The Chief Justice thereafter appears to have changed his mind. On August 20, 1973 the Chief Justice passed the following order :

"In exercise of the powers conferred under Section 80-A (2) of the Representation of the People Act, 1951, I, Chief Justice, direct that Election Petition No. 11 of 1972 (Krishna Gopal v. P. C. Sethi) shall be tried by the Hon. Shri Justice Surajbhan Grover at the Indore Bench of the Madhya Pradesh High Court.

In exercise of the said powers it is hereby further ordered that Election Petition No. 5 of 1972 (Rana Natwarsingh v. Haribhau Joshi) and Election Petition No. 12 of 1972 (Satyanarayan v. Madhukar Marmat) shall be tried by the Hon'ble Shri Justice Surajbhan Grover at the Indore Bench of the Madhya Pradesh High Court. This order is in supersession of the earlier order dated 9th July, 1972.

Election Petition No. 4 of 1972 (Vimal Kumar v. Thakur Virendrasingh) and Election Petition No. 9 of 1972 (Mannalal v. Kanhaiyalal Nagori) shall continue to be tried by the Hon'ble Shri Justice S. R. Vyas at the Indore Bench of the Madhya Pradesh High Court.

# Sd./ P. K. Tare Chief Justice 20-8-73"###

5. In the meantime, proceedings in the election petition filed by the appellant continued before Vyas, J. The last date of hearing in the petition before Vyas., was August 22, 1973 when he made a formal order for filing reply to some interim applications and also issued directions that the record of the case be sent to the Registry at Jabalpur for being placed before the Chief Justice. It may be stated that issues have been framed on merit in this election petition be no evidence has so far been recorded on those issues.

6. On August 27, 1973 the Deputy Registrar of the High Court sent intimation to the appellant's Counsel that the hearing of the election petition filed by the appellant and another election would take place at Indore and that arguments on the two interim applications would be heard on September 10, 1973 instead of on September 17, 1973. On September 10, 1973 an application was filed on behalf of the appellant stating that as his election petition had been allocated to Vyas, J., for trial, the same could not be withdrawn from him. It was stated that Surajbhan, J., had no jurisdiction to try the petition and the same should be tried by Vyas, J., On September 11, 1973 Surajbhan J. passed an order dismissing the above application. It was stated in the order that as Vyas, J., had released the election petition in question for trial of the election petition by another judge whom he

considered proper. On September 13, 1973 an application was filed by the appellant stating that he had not been heard on his application about the lack of jurisdiction of Surajbhan, J., as per order dated October 9, 1973 Surajbhan, J., held that he had jurisdiction to hear the election petition and that the order of the Chief Justice directing that it be heard by Surajbhan, J., did not suffer from any infirmity.

7. In the meantime on September 27, 1973 the appellant filed a petition under Article 226 of the Constitution for the issuance of a writ of mandamus directing Surajbhan, J., to forbear from giving effect to the order dated August 20, 1973 of the Chief Justice entrusting the trial of the election petition filed by the appellant to him and to direct Vyas, J., to complete the trial of the petition. This petition came up for preliminary hearing before a Division Bench (Sen and Soni, JJ.) of Madhya Pradesh High Court. Four contentions were advanced on behalf of the appellant at the hearing of the writ petition but we are now concerned with only two of them. The first contention was that a person sitting and acting as a Judge of the High Court under Article 224-A of the Constitution was not "a judge of the High Court under" for the purpose of Section 80-A (2) of the Act. The second contention was that once the trial of an election petition had begun, the Chief Justice had no power under Section 80-A (2) of the Act to reallocate that petition to another judge. Both these contentions as well as the other two contentions, with which we are not concerned, were repelled by the High Court. In the result, the writ petition filed by the appellant was dismissed.

8. On an application filed by the appellant, the High Court granted a certificate of fitness under Article 132 of the Constitution because, in its opinion, the case involved a substantial question of law as to the interpretation of Article 224-A of the Constitution.

9. At the hearing of the appeal Mr. Sen has contended on behalf of the appellant, as was done in the High Court, that a person requested to sit and act as a Judge of the High Court under Article 224-A of the Constitution is not a Judge of the High Court for the purpose of Section 80-A of the Act and, as such, Surajbhan, J., has no jurisdiction to try the election petition. It is further argued that, even if it may be assumed that Surajbhan, J., is a Judge of the High Court for the purpose of Section 80-A of the Act, the election petition filed by the appellant could not, after it had been entrusted to Vyas, J., be allocated by the Chief Justice to Surajbhan, J. So far as the latter contention is concerned, We may state that the certificate of fitness which was granted under Article 132 of the Constitution by the High Court related to the interpretation of Article 224-A of the Constitution. We have, however, permitted Mr. Sen under Article 132 (3) to raise the second contention also.

10. The contentions of Mr. Sen have been controverted by Mr. Setalvad on behalf of respondent No. 1 as well as by learned Additional Solicitor-General on behalf of the Union of India and they have canvassed for the correctness of the view taken by the High Court.

11. Before examining the merits of the contention advanced on behalf of the appellant, it would be apposite to reproduce Article 224-A of the Constitution and Section 80-A of the Act :

"Article 224-A. Notwithstanding anything in this Chapter, the Chief Justice of a High Court for any State may at any time, with the previous consent of the President, request any person who has held the office of a Judge of that Court or of any other High Court to sit and act as a Judge of the High Court for that State, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that High Court :

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that High Court unless he consents so to do."

"Section 80-A. High Court to try election petitions. - (1) The Court having jurisdiction to try an election petition shall be the High Court.

(2) Such jurisdiction shall be exercised ordinarily by a single Judge of the High Court and the Chief Justice shall, from time to time, assign one or more Judges for that purpose :

Provided that where the High Court consists only of one Judge, he shall try all election petitions presented to that Court.

(3) The High Court in its discretion may, in the interests of justice or convenience, try an election petition, wholly or partly, at a place other than the place of seat of the High Court."

12. An election petition calling in question any election has under Section 81 of the Act to be presented to the High Court. Sub-section (1) of Section 80-A of the Act makes it clear that the Court which has jurisdiction to try an election petition shall be the High Court. "High Court" has been defined in [clause (e) of Section 79 of the Act to mean a High Court within the local limits of whose jurisdiction the election to which the election petition relates has been held. Sub-section (2) of Section 80-A of the Act provides that the jurisdiction which the High Court has to try an election petition shall be exercised ordinarily by a single Judge of the High Court and the Chief Justice shall from time to time assign one or more judges for the purpose. It is plain that sub-section (2) does not confer jurisdiction to try an election petition. Such jurisdiction is conferred by sub-section (1) of Section 80-A upon the High Court. Sub-section (2) merely specifies the instrumentality through which the jurisdiction which is vested in the High Court shall be exercised. The sub-section thus relates to the procedure for the exercise of the jurisdiction and provides that the jurisdiction shall be exercised ordinarily by a single Judge of the High Court who has been assigned for the purpose by the Chief Justice. Perusal of sub-section (2) of Section 80-A makes it manifest that it is only a judge of the High Court assigned for the purpose by the Chief Justice who can exercise the jurisdiction which is vested in the High Court to try an election petition by sub-section (1) of that Section. The provisions of sub-section (2) are mandatory and a person who is not a Judge of the High Court concerned and who has not been assigned for the purpose by the Chief Justice cannot exercise the jurisdiction which is vested in the High Court by sub-section (1) of Section 80-A of the Act. The word "ordinarily" does not indicate that the provisions of sub-section (2) of Section 80-A are not mandatory and that relaxation in compliance with those provisions is permissible. The word "ordinarily" only qualifies the number of judges who can exercise the jurisdiction which is vested in the High Court to try an election petition. The said word indicates that normally it would be a single Judge of the High Court who can exercise the jurisdiction which is vested in the High Court, but in appropriate cases, such jurisdiction can also be exercised by two or more judges.

13. It has not been disputed before us that the learned Chief Justice of the High Court has assigned Surajbhan. J., for the purpose of the trial of the election petition filed by the appellant and some other petitions, but what has been contended by Mr. Sen is that Surajbhan. J., is not a Judge of the Madhya Pradesh High Court. Surajbhan, J., it is urged, was requested by the Chief Justice to sit and act as a Judge of the Madhya Pradesh High Court under Article 224-A of the Constitution and though Surajbhan, J., has consented so to do, he does not thereby become a Judge of that High

Court. As Surajbhan, J., according to Mr. Sen lacks the requisite attribute of being a Judge of the High Court, he cannot exercise under sub-section (2) of Section 80-A of the Act the jurisdiction which is vested by sub-section (1) of that Section in the High Court. This contention, in our opinion, is devoid of force.

14. Article 224-A starts with the non obstante clause and provides that notwithstanding anything contained in Chapter V of Part VI of the Constitution, the Chief Justice of a High Court for any State may at any time, with the previous consent of the President, request any person who has held the office of a judge of that Court or any other High Court to sit and act as a Judge of the High Court for that State. It is further provided that every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be a judge of that High Court. According to the proviso to the Article, no person would be required to sit and act as a Judge of the High Court unless he consents so to do. It is manifest from a reading of Article 224-A that the request made by the Chief Justice to the person who has held the office of a judge of that Court or any other High Court is to sit and act as a Judge of the High Court for that State. The Article further makes it clear that the person while so sitting and acting shall have all the jurisdiction, powers and privileges of a Judge of the High Court but shall not otherwise be deemed to be a judge of that Court.

15. Analysing Article 224-A, it would follow that the request which is made by the Chief Justice of the High Court for any State under that Article to a person who has held the office of a High Court Judge is to sit and act as a Judge of the High Court for that State. Such a request has to be made by the Chief Justice after obtaining the previous consent of the President. The person requested while so sitting and acting shall have all the jurisdiction, powers and privileges of a Judge of the High Court. The words "while so sitting and acting" show that the person requested not merely has the jurisdiction, powers and privileges of a Judge of the High Court, he also sits and acts as a judge of that Court. Question then arises as to what is the significance of the concluding words "but shall not otherwise be deemed to be a judge of that Court". These words, in our opinion, indicate that in matters not relating to jurisdiction, powers and privileges the person so requested shall not be deemed to be a judge of that Court. The dictionary meaning of the word "otherwise" is "in other ways", "in other circumstances", "in other respects". The word is "otherwise" would, therefore, point to the conclusion that for the purpose of jurisdiction, powers and privileges the person requested shall be a judge of the concerned High Court and for purposes other than those of jurisdiction, powers and privileges, the person requested shall not be deemed to be a judge of that Court. It would, for example, be not permissible to transfer him under Article 222 of the Constitution. The use of the word "deemed" shows that the person who sits and acts as a Judge of the High Court for purposes other than those relating to jurisdiction, powers and privileges. The words "but shall not otherwise be deemed to be a judge of that High Court", in our opinion, by necessary implication emphasise and highlight the fact that for purposes of jurisdiction, powers and privileges the person requested under Article 224-A is a Judge of the High Court concerned.

16. The words "while so sitting and acting" in Article 224-A do not contemplate that the person requested has the powers, privileges and jurisdiction only when he sits in court during hours. The effect of those words is that during the period for which a person has been requested to sit and act as a Judge of the High Court, he has the jurisdiction, powers and privileges of a judge of that Court.

17. The language of Article 224-A, but for the difference in the marginal note, is similar to that employed in Article 128 which relates to the attendance of retired judges at the sittings of the

Supreme Court. Indeed, Article 224-A was a part of the Constitution as originally framed. It was then numbered as Article 224. The language of the Article was identical but its marginal note at that time read as "Attendance of Retired Judges at Sittings of High Court". Article 224-A was inserted by the Constitution (Fifteenth Amendment) Act, 1962 and the marginal note of the Article since then is "Appointment of Retired Judges at Sittings of the High Court". Both Articles 128 and 224-A have been modelled on Section 8 of the Supreme Court of Judicature (Consolidation) Act, 1925 which relates to the Supreme Court of Judicature in England. According to Section 8 of the English Act, the Lord Chancellor may at any time, subject to the provisions of this Section, request any person who has held the office of a Judge of the Court of Appeal or of a Judge of the High Court to sit and act as a Judge of the Court of Appeal, and every such person so requested shall, while so sitting and acting, have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of the Court of Appeal : Provided that nothing in this Section shall be deemed to require any such person as aforesaid to sit and act as a Judge of the Court of Appeal unless he consents so to do.

18. Mr. Sen has pointed to the difference in the language of Articles 224 and 224-A. It is urged that under Article 224, a person is appointed by the President as an additional or acting Judge of the High Court, while under Article 224-A the person requested by the Chief Justice is only to sit and act as a Judge of the High Court. In our opinion, the difference in the language of the two Article 224-A sits and acts as a Judge of the High Court for the purpose of exercising jurisdiction, powers and privileges. Articles 224 and 224-A deal with different matters. If the language of Article 224-A warrants the requested is a Judge of the High Court, the said conclusion cannot be affected by the fact that in another article dealing with a different matter the language employed is not identical but has been couched in different words.

19. According to Article 216 of the Constitution, every High Court shall consist of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint. It is not necessary for the purpose of the present case to decide whether a person requested under Article 224-A falls within the category of "such other judges as the President may from time to time deem it necessary to appoint" under Article 216 because the provisions of Article 224-A have an overriding effect. This is made clear by the non obstante clause at the beginning of Article 224-A. The effect of that clause is that notwithstanding the other provisions of Chapter V of Part VI of the Constitution, the person requested under Article 224-A would sit and act as a Judge of the High Court and would have the jurisdiction, powers and privileges of a judge of that Court.

20. Apart from the above, we find that if the contention advanced on behalf of the appellant were to be accepted, it would render Article 224-A to be a dead letter because the jurisdiction of the High Court can under the Letter Patent of the various High Courts as well as the other enactments which have been made in this connection can be exercised only through a judge of that High Court. If a person appointed under Article 224-A cannot be considered to be a Judge of the High Court for the purpose of jurisdiction, powers and privileges, the question of appointing such a person would never arise. No one can obviously be asked to sit and act as a Judge of the High Court if after being so requested, he would not be able to hear any cases. It is inconceivable that the framers of the Constitution inserted an article in the Constitution which was in the nature of a dead letter. Any construction of Article 224-A which would have the effect of rendering that Article to be ineffective and purposeless must, in our opinion, be rejected. As observed on page 36 of Maxwell on the Interpretation of Statutes, Twelfth Edition, a construction which would leave without effect any part of the language of a statute will normally be rejected.

21. We are, therefore, of the view that a person requested to sit and act as a Judge of the High Court under Article 224-A is a judge of that Court for the purpose of sub-section (2) of Section 80-A of the Act.

22. We may now deal with the second contention advanced on behalf of the appellant that after the election petition filed by him had been entrusted to Vyas, J., the same could not be allocated to Surajbhan, J. In this context we find that after Vyas, J., had been directed by the Chief Justice to sit on the Gwalior Bench of the High Court, Vyas, J., himself made a request in letter dated August 5, 1973 to the Chief Justice that the election petition filed by the appellant should be heard by someone at Indore. It was further mentioned by Vyas, J. that this would avoid his visits to Indore and would be in the interest of the early disposal of the petition. The Chief Justice acceded to this request of Vyas, J., and entrusted the election petition filed by the appellant to Surajbhan, J. There was, in our opinion, no legal infirmity in the order made by the Chief Justice in this respect. There is nothing in the language of Section 80-A of the Act which stood in the way of the learned Chief Justice relieving Vyas, J., at his request from the task of trying the election petition which had been earlier entrusted to him. We have also not been referred to any other provision which prevented the Chief Justice from making the impugned order dated August 20, 1973. The case of Zikar v. The State to which reference has been made on behalf of the appellant, can hardly be of any help to him. What was laid down in that case was that the Chief Justice of a High Court has no power to withdraw and transfer a case of which a Division Bench is properly seized to another Bench without the concurrence of the former. There is nothing in that case to indicate that a Chief Justice is powerless to withdraw a case from a Judge of the High Court even though a request for that purpose is made by that judge.

23. The two legal contentions which have been advanced on behalf of the appellant, in our opinion, are not well founded, and we have no hesitation to repel them. All the same, looking to the special facts and circumstances of this case, we are of the opinion that it is fit and proper and in the interest of justice that the election petition filed by the appellant be tried by another learned Judge of the High Court who may be assigned for the purpose by the Chief Justice of that Court. It seems indeed desirable that election petitions should ordinarily, if possible, be entrusted for trial to a permanent judge of the High Court even though we find that additional or acting Judges or those requested under Article 224-A of the Constitution to sit and act as Judges of the High Court, if assigned for the purpose by the Chief Justice are legally competent to hear those matters. We, therefore, set aside the order dated August 20, 1973. The election petition filed by the appellant shall now be heard by a permanent judge who may be assigned for the purpose by the learned Chief Justice. The case may, therefore, be placed before the learned Chief Justice for necessary orders. The appeal is accepted accordingly. The parties in the circumstances shall bear their own costs of this Court and in the High Court.

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