

Satya Narain

Vs

Dhuja Ram and Others

Civil Appeal No. 419 of 1973

(P. Jagmohan Reddy, S. N. Dwivedi, P. K. Goswami JJ)

21.12.1973

JUDGMENT

GOSWAMI, J. (for himself and Jaganmohan Reddy, J) -

1. This appeal under Section 116A of the Representation of the People Act, 1951, (briefly the Act) is directed against the judgment and order passed by the High Court of Punjab and Haryana in Election Petition No. 2 of 1972 dismissing it on the preliminary ground that the appellant had failed to comply with the mandatory requirement of Section 81(3) of the Act inasmuch as the requisite number of spare copies of the petition for the respondents were not filed along with the petition in High Court.

It was further held by the High Court that the said defect could not be cured subsequently even within the period of limitation prescribed for filing the election petition. The High Court further held that the spare copies were actually filed beyond the period of limitation

2. The facts may be briefly stated. In the general election to the Haryana Legislative Assembly held on March 11, 1972, the appellant and the four respondents were the contesting candidates for the Safidon Assembly Constituency No. 30; two candidates having already withdrawn from the contest. The counting of votes took place on March 12, 1972, and the following day. The counting disclosed that the first respondent obtained 19,570 votes as against 19,462 votes secured by the appellant. The first respondent was, therefore, declared elected on March 13, 1972. The appellant filed an election petition in the High Court challenging the election of the first respondent on several grounds of corrupt practice within the meaning of Section 123 of the Act. It is not necessary for the purpose of this case even to detail these. The election petition was presented by Mr. R. S. Mittal, Advocate in-charge, to the Deputy Registrar (Judicial) of the High Court on April 18, 1972, The same was ordered to be put up for scrutiny on April 24, 1972, It is admitted that the application was filed on April 18, 1972, without the requisite spare copies and was, therefore, incomplete on the date of presentation. No schedules were also filed along with the petition but that point is not pressed before us by the respondent's counsel. It is also admitted that the limitation for filing the election petition was up to April 27, 1972. According to the appellant the spare copies were filed with the Superintendent of the Election Branch in the afternoon of April 24, 1972, well within the period of limitation.

3. It may be necessary to briefly note the sequence of events for the purpose of appreciating the controversy raised between the parties. As noted earlier, the election petition was presented personally by Mr. Mittal without the spare copies on April 18, 1972, and the Deputy Registrar had ordered it to be put up on April 24, 1972, for scrutiny according to the rules of the High Court.

When the petition came up for scrutiny before the Deputy Register on April 24, 1972, Mr. Mittal appeared and requested for time to remove the defects pointed out by the office. It may be appropriate to extract that particular order :

"Present : Shri R. S. Mittal, Advocate. He has requested time to remove the defects pointed out by the office. Let it be refixed on 28. 4. 72, after the defects had been removed as agreed to by the counsel.

Sd/ D. D. Khanna 24.4.72."##

The next order passed by the Deputy Registrar on April 28, 1972, runs as follows :

"Shri R. S. Mittal has informed me on the phone that he is indisposed and as such the case may not be taken up for scrutiny today. Put up tomorrow, the 29th April, 1972 for orders. Counsel may be informed.

Sd/ D. D. Khanna 28.4.72."##

The High Court has observed that it is common case of both of side that by the time the case was placed before the Deputy Registrar on April 29, 1972 the spare copies of the petition had been filed by the petitioner and the other defects had also been removed. The final order of scrutiny passed by the Deputy Registrar on April 29, 1972, is in the following terms :

"Present Shri R. S. Mittal, Advocate for petitioner.

The petition was filed on 18.4.72 and the result in this case was declared on 13.3.72; hence it is within time. The petition is accompanied with the security receipt in the sum of Rs. 2000 deposited in this Court before filing of the petition under the rules. The petition was scrutinised and as the defects pointed out on the previous date have been removed, it is now prima facie in order. Issue for notice of scrutiny of service for 22nd May, 1972, and for settlement of issued for 26th May, 1972.

Sd/ D. D. Khanna 29.4.72."##

The matter ultimately came up for hearing before the learned single Judge to whom this election petition was assigned. Several preliminary objections were taken by the sole contesting first respondent. The other respondents did not enter appearance. We are concerned with only one preliminary objection, namely, that the petition was not in conformity with Section 81 (3) of the Act inasmuch as the requisite spare copies thereof were not enclosed with the petition when it was originally presented on April 18, 1972, and that the election petition was liable to be dismissed.

4. The learned Counsel for the appellant Mr. Hardayal Hardy, has made only the following two submissions before us :

(1) The requirement under Section 81(3) of Representation of the People Act, 1951 that spare copies of an election petition shall accompany the petition, is directory and not mandatory.

(2) It is substantial compliance with the said directory provision if the spare copies of an election petition, instead of accompanying the petition, are filed before the

petition is laid before the Judge for orders or even within the time may be granted by the Judge for the purpose.

5. Before the High Court both sides examined witnesses. To establish his case, the appellant examined himself as PW 6, the Election Assistant, Shri O. P. Popli (PW 3), Deputy Registrar, Shri D. D. Khanna (PW 4), Shri R. S. Mittal, Advocate (PW5), Shri Adish Chand Jain, Advocate (PW 7), Shri Jai Singh Dhillon, Advocate (PW 9) and Shri Jaswant Rai, Advocate (PW 10). All the Advocates except Shri Mittal were from Jind. Shri Mittal is an Advocate practising in the High Court. Although the appellant summoned Shri Harsukh Rai Mantroo, Superintendent of the Election Branch, and was present in Court on July 20, 1972, when the first four witnesses were also examined, Shri Mittal, whom was conducting the case on behalf of the appellant, made a statement before the Court that he gave up Shri Harsukh Rai Mantroo "as Unnecessary". The respondent's Counsel, however, submitted that he should be examined as a Court witness and Court ordered for his examination on that very day observing that "in the interest of justice that the Superintendent of the Election Branch who was the only other official working between the Deputy Registrar (Judicial) on the one side and PW 3 on the other, should also be examined to clarify the matters so far as possible" The respondent examined himself and RW 1, Ch. Hari Ram, Senior Subordinate Judge cum Chief Judicial Magistrate, Jind.

6. The appellant sought to establish before the High Court that the spare copies were submitted on April 24, 1972, by relying upon the endorsement of Shri Mittal, "objection removed, R. S. Mittal" (Ext. PW 5/1), Below the order of the Deputy Registrar of April 24, 1972, which we have already set out. There is no date given by Shri. Mittal when he made his endorsement in the order sheet of the Registry. PW 3, who had initially scrutinised the petition and found the defects, was on leave on April 24, 1972, and the Superintendent (CW 1) was only present. According to Shri Mittal he went to the Election Office along with the appellant and his clerk, Manphool Sharma, and filed these papers at 2.00 p.m. on April 24, 1972, and made also the above endorsement (Ext. PW 5/1). Although, however, Shri Mittal was conscious that the papers had to be filed within time to save the defective petition from being dismissed, curiously enough, he did not take the necessary care to get any official endorsement in the order sheet by the Deputy Registrar or even by the Superintendent of the Election Branch to the effect that the documents were filed and defects were removed on that day, namely, on April 24, 1972, notwithstanding the further fact that he had earlier at 11.00 a.m. on the same day requested the Deputy Registrar for time to remove the defects and the next date was fixed on April 28, 1972. In face of the order of the Deputy Registrar of April 24, Shri Mittal's responsibility as Counsel was greater than he seemed to have thought. On April 28, 1972, Shri Mittal informed the Deputy Registrar over the phone that he was indisposed and requested for time till the next day which was given. He deposed that he had even informed the Deputy Registrar that scrutiny could be made in his absence since the defects had already been removed. On this particular aspect of the matter, the Deputy Registrar was silent in his evidence and although it was Shri. Mittal again who personally examined the Deputy Registrar in Court, He never put this question to him with regard to his informing him over the Phone about removal of defects on April 24. Again, from Shri. Mittal's evidence it appears that, although he was feverish, he actually came to the Election Office on April 28, 1972, in connection with Election Case No. 3, of 1972, (Sagar Ram v. Banarsi Das and others) and removed certain defects in that case on that day, namely, April 28, 1972, although that case was set down for April 29, 1972, which date had been fixed by the Deputy Registrar in his presence on April 24, 1972. There is an endorsement in that case by Shri Mittal, this time, with date April 28, 1972, below the order of the Deputy Registrar dated April 24, 1972, to the effect "Objection removed". The records of that case were also called for in the High Court and were also shown to us here. It is pointed out that the endorsement in that case with date and the

endorsement in Ext. PW 5/1 of Shri Mittal are with the same pen and ink as is even admitted by Shri Mittal. The respondent, therefore, attaches great significance on the omission of the date in Ext. PW 5/1, and describes the endorsement as a suspicious entry. It is strenuously submitted by the respondent that the papers were not submitted on April, 24, 1972, as alleged. Since Shri Mittal asserted in his evidence that he along with the appellant filed the spare copies of the petition in the afternoon of April 24, 1972, the respondent by examining the Subordinate Judge (RW 1) sought to establish that the appellant as Advocate actually appeared in his Court at Jind on April 24, 1972, in a contested civil suit (Kali Ram v. Ram Tirath, etc. - Civil Suit No. 422 of 1967) on behalf of the plaintiff where the defendant was cross-examined by him. The appellant denied this and stated that and stated that his junior, Shri Jai Singh Dhillon (PW 9) actually conducted the case on that day. This point was also sought to be supported by examining two other Advocates appearing on behalf of the defendant in that suit, namely, Adish Chand Jain (PW 7) and Jaswant Rai (PW 10). It appears that Shri Dhillon even did not file his vakalatnama in that suit and at one stage when he had appeared on behalf of the appellant in that suit, it was recorded in the order sheet, as was the practice of that Court, that he was appearing as proxy for the original Counsel. There was, however, on such entry in the order sheet that he appeared on behalf of the appellant on April 24, 1972. From the evidence of RW 1, who deposed from the records of the suit produced in the Court and gave some convincing reasons, the High Court was reasonably and, in our opinion, rightly satisfied that the appellant appeared in the Court of the Subordinate Judge, Jind, on April 24, 1972. The High Court has also rightly held that PWs 7 and 10 gave hazy evidence from their memory with regard to the appearance of the appellant in the suit on April 24, 1972. The High Court also found several infirmities and contradictions in the evidence of Shri Mittal. It is nobody's case that if the appellant appeared in the suit at Jind on April 24, he could be present in the Election Branch at Chandigarh at 2.00 p.m. on that day. PW 3 has correctly deposed that "the words 'objections removed' in the handwriting of Shri R. S. Mittal, Advocate and the signature of Shri R. S. Mittal thereunder were not there when he made the endorsement 'informed' (Ext. PW 3/1) on April 28, 1972". Even the Deputy Registrar has admitted in his evidence that the endorsement "objections removed" in the handwriting of and above the signature of Mr. R. S. Mittal was not made in his presence. He also stated that "I do not recollect having seen this endorsement at the time I passed my order, dated April 28, 1972". The evidence of the Deputy Registrar consistent with that of PW 3 is rightly preferred by the High Court to the evidence of Shri Mittal, of the appellant and even of the Superintendent of the Election Branch who also deposed from memory. After again carefully examining the evidence of all the witnesses on this point, we have no reason to differ from the conclusion of the High Court that the requisite spare copies of the election petition were not submitted by the appellant on April 24, 1972.

7. We will, therefore, have to decide the first submission of the learned Counsel for the appellant on the basis that the spare copies were not filed within the period of limitation.

8. The short question is whether Section 81(3) of the Act is mandatory and, if so, whether non-compliance with the same will visit the election petitioner with the penalty of dismissal of his petition under Section 86(1) of the Act. This question was mooted in *Jagat Kishore Prasad Narain Singh v. Rajendra Kumar Poddar* ((1971) 1 SCR 821 : (1970) 2 SCC 411) but the Court did not find it necessary to decide the same.

9. Whether a particular provision in a statute is mandatory or directory has to be construed from the scheme and object of the provisions. This Court observed in *Raza Buland Sugar Co. Ltd v. Municipal Board, Rampur*, ((1965) 1 SCR 970, 975 : AIR 1965 SC 895) as follows :

"The question whether a particular provision of a statute which on the face of it appears mandatory, inasmuch as it uses the word 'shall' - as in the present case - is merely directory cannot be resolved by laying down any general rule and depends upon the facts of each case and for that purpose the object of the statute in making the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provision dealing with the same subject and other considerations which may arise on the facts of the particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory."

The Privy Council also in *Montreal Street Railway Company v. Normandin* ((1917) LR AC 170 : 116 LT 162 : quoted in (1965) 1 SCR 970, 975-976) observed to the same effect :

"The question whether provision in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at"

10. Now, there are two parts in Section 81(3). The first part provides that "every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition" The second part relates to the manner in which "such copy shall be attested by the petitioner under his own signature to be a true copy of the petition", We are concerned only with the first part in this appeal.

11. Part VI of Act deals with disputes regarding election. Chapter II therein provides for presentation of election petitions while Chapter III for trial of election petitions. The right to challenge an election is conferred under the Act which is made in conformity with the provisions of Article 329(b) of the Constitution. It is well settled that it is a special right conferred under a self-contained special law and the Court will have to seek answer to questions raised within the four corners of the Act and the powers of the Court are circumscribed by its provision. It is not a common law right and an election petition cannot be equated with a plaint in a civil suit.

12. We may, therefore, immediately read the material section 80, 81(1), 81(3) and 86(1) which run as follows :

Section 80 : "No election shall be called in question except by an election petition presented in accordance with the provisions of this Part."

Section 81(1) : "An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not later than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates."

Section 81(3) : "Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition, and every such copy

shall be attested by the petitioner under his own signature to be a true copy of the petition."

Section 86(1) : "The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117.

Explanation :- An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of Section 98."

Section 86(1) refers to three sections, namely, Section 81, Section 82, which deals with parties to the petition and Section 117 of the Act providing for security for costs. While dealing with Section 117 of the Act this Court spoke through one of us (Jaganmohan Reddy, J) in Charan Lal Sahu v. Nandkishore Bhatt, ((1973) 2 SCC 530, 533) held as follows :

"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 of 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 civil right but is a creature of statute or special law and must be subject to the limitations imposed by it. In N. P. Poonuswami v. Returning Officer, Namakkal Constituency and Others, (1952 SCR 218 : AIR 1952 SC 64 : 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 law which creates it."

Similarly in Krishan Chander v. Ram Lal, ((1973) 2 SCC 759,769) dealing with Section 82(b) of the Act and examining the scheme and the object of the provisions, this Court again held the same as mandatory. This Court observed :

"The provisions of Section 82(b) would avoid any such delay as they make obligatory for a person filing an election petition when he makes an allegation of corrupt practice against any candidate to make him a party on pain of the petition being dismissed under Section 86(1) if he omits to do This then is the rationale underlying the mandatory requirements of Section 82(b)."

It is true in Ch. Subba Rao v. Member, Election Tribunal, Hyderabad, ((1964) 6 SCR 213 : AIR 1964 SC 1027 : 26 ELR 1) reiterating two earlier decisions viz. Kamaraja Nadar v. Kunju Thevar (1959 SCR 583 : AIR 1958 SC 687 : 14 ELR 270) and Murarka v. Roop Singh, ((1964) 3 SCR 573 : AIR 1964 SC 1545 : (1965) 1 SCJ 153) the Court in view of the peculiar facts and circumstances

of that case and the nature of the defect held that Section 81(3) was substantially complied with and left open the wider question whether Section 81(3) or any part thereof is mandatory or directory. In a later decision in *Dr. Anup Singh v. Shri Abdul Ghani and Another*, ((1965) 1 SCR 38, 41 : AIR 1965 SC 815 : 26 ELR 396) which followed Subba Rao's case (*supra*), this Court observed :

"An exactly similar matter came to be considered by this Court in *Ch. Subba Rao v. Member, Election Tribunal* (*supra*). In that case also the copies were signed by the petitioner but there was no attestation in the sense that the words 'true copy' were omitted above the signature of the petitioner. This Court held that as the signature in original was there in the copy, the presence of such original signature in the copy was sufficient to indicate that the copy was attested as a true copy, even though the words 'true copy' were not written above the signature in the copies. This Court further held that there was substantial compliance with Section 81(3) of the Act and the petition could not be dismissed under Section 90(3)."

13. Keeping in the forefront the proper functioning of democracy, the principal object of the Act is purity of election. When, therefore, an election of a returned candidate is challenged under the Act, expeditious trial of the election dispute is sought to be enforced by the Legislature making all safeguards against delay. Trial has to be necessarily expedited to rid the candidate as well as the constituency interested in the result of the election, of any taint or suspicion of corrupt practices which are again clearly enumerated in the Act. To take, therefore, another important object of the Act, viz., expeditious disposal of an election petition, by Section 86(b) "the trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day unit its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded". Again under Section 86(7), "every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial". Further Section 87(1) introduces the Civil Procedure Code only subject to the provisions of the Act and of any rules made thereunder. Section 87(2) makes a deeming provision for application of the Evidence Act only subject to the Acts. Therefore, there is no scope for free play in the application of the provisions of those two Acts. The very object of expeditious trial will be defeated if the presentation of the election petition should be treated casually and lightly permitting all kinds of devices to delay the ultimate trial. The purpose of enclosing the copies of the election petition for all the respondents is to enable quick dispatch of the notice with the contents of the allegations for service on the respondent or respondents so that there is no delay in the trial at this very initial stage when the election petition is presented. If there is any halt or arrest in progress of the case, the object of the Act will be completely frustrated. We are, therefore, clearly of opinion that the first part of Section 81(3) with which we are mainly concerned in this appeal is a peremptory provision and total non-compliance with the same will entail dismissal of the election petition under Section 86 of the Act.

14. We are, therefore, not required to consider the second submission of the learned Counsel for the appellant with regard to substantial compliance made on the basis of the provisions of Section 81(3) being directory. We may only add here that, in the absence of any provision under the Act or the rules made thereunder, the High Court Rules cannot confer upon the Registrar or the Deputy Registrar any power to permit correction or removal of defects in an election petition presented in the High Court beyond the period of limitation provided for under the Act. It may be noted that Section 169 of the Act provides that the Central Government is the authority to make rules after consulting the Election Commission and in sub-section (3) thereof the rules have to be laid before

each House of Parliament in the manner provided therein. The only reference to the High Court Rules is found in section 117 of the Act. At any rate, we do not feel called upon to pass on the High Court Rules referred to in the judgment of the High Court in this case.

15. In the result we find no reason to interfere with the decision of the High Court dismissing the election petition. The appeal is dismissed with costs.

DWIVEDI, J. (concurring) -

I agree with my brethren that the requisite copies of the election petition were not filed in Court within the period of limitation by the appellants. I am constrained also to agree that for this procedural fault his election petition is liable to be dismissed in view of the decision of the Court in Jagat Kishore Prasad Narain Singh v. Rajendra Kumar Poddar (supra). In that case Hegde, J., said :

"The law required that a true copy of the election petition should be served on the respondents. That requirement has not been either fully or substantially complied with. Therefore, we have no doubt in our mind that the election petition is liable to be dismissed under Section 86 of the Act."

17. It makes me sad to read this requiem for this election petition. Over a century ago a slip in procedure by a litigant meant denial of justice to him. "(R)ight down to the nineteenth century, the choice of the wrong writ involved the loss of the action, even though all the merits were with the plaintiff." (Holdsworth : A History of English Law, 9th edn., p. 248) Gradually, however, courts subordinated procedure to the claims of justice. In Ma Shwe Mya v. Maung Mo Hnaung, (AIR 1922 PC 249, 250 : 48 IA 214 : 63 IC 914) Lord Buckmaster said : "All rules of court are nothing but provisions intended to secure proper administration of justice. It is therefore essential that they should be made to serve and be subordinate to that purpose".

18. Speaking in the same vein Justice Ameer Ali said : "Rules of procedure are not made for the purpose of hindering justice". (See Raja Indrajit Pratap Bahadur Sahi v. Amar Singh.) (AIR 1923 PC 128, 135 : 50 IA 183 : 74 IC 747)

19. Our decision restores the primacy of procedure over justice. It makes Section 86(1) a tyrannical master. The rigidity of a the rule of precedent ties me to its chains. My only hope now is that Parliament would make a just choice between the social interest in the supply of copies by the election petitioner along with his election petition and the social interest in the purity of election by excluding Section 81(3) from the purview of Section 86(1) of the Act.

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