

Aeltemesh Rein

Vs

Chandulal Chandrakar and Others

Civil Appeal No. 931 of 1980

(CJI Y.V. Chandrachud, A.P. Sen JJ)

10.03.1981

JUDGMENT

CHANDRACHUD, C. J. -

1. The appellant, Aeltemesh Rein, was candidate for election to the Lok Sabha from the Durg parliamentary Constituency in the General Elections held in January 1980. Respondent 1 having been declared as successful candidate in the aforesaid election, the petitioner filed an election petition in the High court of Madhya Pradesh under Section 81 of the Representation of the People Act, 1951 ('The Act'). The appellant stated expressly in the election petition that the security amount of 2,000 was being deposited along with the petition as required by Section 117 of the Act - but, in fact, no such deposit was made. The High Court dismissed the petition for non-compliance with the provisions of Section 117 and hence this appeal.

2. It is urged by the appellant who appeared in person before us that Sections 86 and 117 of the Representation of the People Act, 1951 are ultra vires Article 329(b) of the Constitution and, therefore, the High Court was in error in dismissing the election petition for the reason that the provisions of Section 117 were not complied with. We see no substance in this contention. Article 329(b) of the Constitution provides, insofar as material, that no election to either House of Parliament 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". It is an pursuance of this provision that the Parliament provided by Section 117 of the Act that at the time of presenting an election petition, the petition shall deposit in the High court, in accordance with the rules of the High Court, a sum of Rs. 2,000 as security for the costs of the respondent. We are unable to accept the petitioner's argument that the words "in such manner" which occur in Article 329(b) are limited in their operation to procedural and not substantive requirements. The Constitution, by the aforesaid clause, has conferred authority on the appropriate legislature to pass a law providing for the authority to which the election petition may be presented and the manner of providing it. The provision of law which prescribed that an election petition shall be accompanied by the payment of security amount pertains to the area covered by the manner of the making of the election petition and is, therefore, within the authority of the Parliament.

3. The only question which survives is as to what is the consequence of non-compliance with Section 117 of the Act. That question has been settled by the decision of this Court in Charan Lal Sahu v. Nandkishore Bhatt wherein it was held that the High Court has no option but to reject an election petition which is not accompanied by the payment of security amount as provided in Section 117 of the Act. Section 86(1) of the Act provides that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81, 82 or 117. In that view of

the matter, the High Court was right in dismissing the election petition summarily.

4. The appellant contended that he could not pay the deposit because he was burgled on way to the court. This plea is as irrelevant as it seems untrue.

5. Accordingly, we uphold the judgment of the High Court and dismiss this appeal. There will no order as to costs.

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