

Mohd. Ayub Khan

Vs

Bhim Singh and others

Civil Appeal No. 4970 of 1992

(K. Ramaswamy, S. P. Bharucha, K. S. Paripoornan JJ)

14.03.1996

JUDGMENT

1. The Election Commission had issued notification on May 16, 1988 for holding bye-elections to the 5-Udhampur Parliamentary Constituency in the State of Jammu and Kashmir and the result of the election was declared. Counting of the votes commenced on June 20, 1992. On a reference by Returning Officer of June 21, 1988, the Election Commission directed repoll at certain polling stations. Accordingly, repoll was done in those booths. The result of the election was challenged in the Election Petition No. 1 of 1988. The High Court in the impugned order dated October 13, 1992 has set aside the election on the grounds that under Section 64-A of the Representation of the People, 1951, the Election Commission had no power to order repoll and that, therefore, the election was void. The High Court, however noted that since the previous Parliament stood dissolved and new Parliament was constituted, no order for repoll could be made.

2. Shri M. C. Bhandare, learned senior counsel appearing for the appellant, contended that the Election Commission has got power to order repoll and, therefore, the order of the High Court is clearly illegal. It is not necessary for us at this stage to go into that question since it is only an academic issue. The High Court having noticed that the previous Parliament to which the election came to be held stood dissolved and that a new Parliament was constituted, should have declined to go into the question. Nonetheless, the High Court has given its declaration which has only an academic value. We need not go into the said academic question since no substantial relief could be given, if the matter is to be heard on merits.

3. We are not expressing any opinion on merits since we have already held that the view expressed by the High Court is an academic issue. The findings recorded therein would not be treated as a binding precedent.

4. The appeal is dismissed accordingly. No costs. Appeal dismissed.