MADHYA PRADESH HIGH COURT

Vidya Charan Shukla

Vs.

G.P. Tiwari

Misc. Petn. No. 209 of 1962
(Shiv Dayal and S.P. Bhargava, JJ.)

24.08.1962

JUDGMENT

Shiv Dayal, J.

1. In the general elections held early this year Vidya Charan Shukla, the petitioner was returned to the House of the People from the Mahasamund constituency on the Congress ticket. He polled 56,664 votes. His rival candidates, Khubchand Baghel respondent No. 2 (Praja Socialist Party) secured 53,872; Indradeo Tandon respondent No. 3 (Republican Party) 9, 138; Dharamjit Singh respondent No. 4 (Ram Rajya Parishad) 23,889; and Ramsingh respondent No. 5 (Jan Sangh) 14,532 votes.

2. Khubchand Baghel respondent No. 2 filed an Election Petition challenging the aforesaid election on the ground of a corrupt practice - publication of a pamphlet published in the name of one Tikamchand Jain, allegedly containing false and defamatory statement in respect of Khubchand Baghel. For our purposes it is unnecessary to set out the allegations contained in the Election Petition. Suffice to reproduce the prayer in verbatim :

> "The petitioner claims (1) a declaration that the election of the returned candidate Shri Vidya Charan Shukla respondent No. 1 is void; (2) any other relief that may in the circumstances of the case be deemed fit
> and proper."

3. In the Election Petition, besides Vidya Charan Shukla, all the other contesting candidates are also made parties. For the trial of that petition Mr. G. P. Tiwari, District Judge, Raipur (respondent No. 1) has been constituted the Election Tribunal under

Section 80 of the Representation of the People Act, 1951 (hereinafter to be called 'the Act'). A copy of the said petition was sent by the Election Commission to Vaidya Charan Shukla. He was also served with a notice for appearance before the said Tribunal. He entered appearance by counsel before the Tribunal on June 18, 1962.

4. On July 13, 1962, instead of filing a writ statement for which that date was fixed, he raised a preliminary objection by an application that the Election Petition could not be proceeded with inasmuch as the other contesting candidates had also been made parties which amounted to "direct violation of the mandatory provisions of Section 82 of the Act". The contention was that the Election Petition could be instituted only against the returned candidate and it was not permissible to join any of the other contesting candidates because there was no further prayer that the petitioner or any other contesting candidate be declared duly elected. It was urged in the application that because of that defect the petition was not entertainable and was liable to be dismissed under Section 90 (3) of the Act.

5. The Election Tribunal by its order of the last mentioned date refused to entertain the objection just because it was raised merely by an application without a complete written statement being filed. However, it granted further time to present a written statement in which that objection could be taken and fixed August 6, 1962, for that purpose. Adjournment costs Rs. 25/- were awarded to the other side. Aggrieved by that order, Vidya Charan Shukla has filed this petition.

6. Mr. Bobde relied on *Kamaraja Nadar v. Kunju Thevar,* [1] where the Election Tribunal in *M. R. Masani v. Election Tribunal, Ranchi, Civil* [2] had refused to decide the preliminary objection earlier and had postponed its decision saying that it was essential to decide the case as a whole and not piece-meal inasmuch as there was no easy provision for remand if its view was not accepted by the appellate authority and the High Court had also refused to interfere under Article 226 of the Constitution. Their Lordships made the following observations :

> "We are of opinion that both the Election Tribunal and the High Court were wrong in the view they took. If the preliminary objection was not entertained and a decision reached thereupon, further proceedings taken in the Election Petition would mean a full fledged trial involving examination of a large number of witnesses on behalf of the second respondent in support of the numerous allegations of corrupt practices attributed by him to the appellant, his

agents or others working on his behalf; examination of a large number of witnesses by or on behalf of the appellant controverting the allegations made against him; examination of witnesses in support of the recrimination submitted by the appellant against the second respondent; and a large number of visits by the appellant from distant places like Delhi and Bombay to Ranchi resulting in not only heavy expenses and loss of time and diversion of the appellant from his public duty in the various fields of activity including those in the House of the People. It would mean unnecessary harassment and expenses for the appellant which could certainly be avoided if the preliminary objection urged by him was decided at the initial stage by the Election Tribunal."

On the other hand, learned counsel for Khubchand placed reliance on *Veluswami Thevar v. Raja Nainar,* [3] where their Lordships observed as under :

"As the question has also been raised as to the propriety of interfering in writ petitions under Article 226 with interlocutory orders passed in the court of an enquiry before the Election Tribunal, we shall express our opinion thereon. The jurisdiction of the High Court to issue writs against orders of the Tribunal is undoubted; but then, it is well settled that where there is another remedy provided, the Court may properly exercise its discretion in declining to interfere under Article 226. It should be remembered that under the election law as it stood prior to the amendment in 1956, election petitions were dismissed on preliminary grounds and the correctness of the decision was challenged in applications under Article 226 and in further appeals to this Court, with the result that by the time the matter was finally decided, the life of the Legislature for which the election was held would have itself very nearly come to an end and the proceedings become infructuous. A single example of a case of this kind is to be found in the decision reported in *Bhikaji Keshao Joshi v. Brijlal Nandlal,* [4] It is to remedy this defect that the Legislature has now amended the law by providing a right of appeal against a decision of the Tribunal to the High Court under Section 116-A, and its intention is obviously that proceedings before the Tribunal should go on with expedition and without interruption, and that any error in its decision should be set right in an appeal under that section. In this view, it would be proper exercise of discretion under Article 226 to decline to interfere with interlocutory orders."

To say that a preliminary objection relating to non-maintainability of an election

petition must be decided promptly is not the same thing as to say that preliminary objections can be allowed to be raised by mere applications without filing a complete written statement. In M. R. Masani's case C. A. No. 48 of 1958 (See AIR 1958 Supreme Court 687 at p. 691) decided along with Kamaraja Nadar's case 1959 SCR 583 (supra) the Supreme Court has not held that the returned candidate need not file a complete written statement until and unless his preliminary objection is decided, although their Lordships have pointed out the expediency and desirability of disposing of such objections first.

Suppose an objection as to non-compliance with Section 117 of the Act is taken by an application and it is rejected; then another objection is taken by a second application that the petition is not maintainable for non-compliance with Section 81 and after that too is rejected, the maintainability of the petition is assailed by a third application on the ground that there is non-joinder of a necessary party (Section 82). Raising objections in instalments can be prevented if filing of the written statement is insisted upon so that the Tribunal can strike all such preliminary issues as may be heard and decided before evidence is recorded. This may be answered by saying that it would suffice to insist on all the preliminary objections being raised in a single application so that unnecessary delay which would be occasioned in piece-meal decisions would be avoided, and the abuse of the process pointed out above would be checked. In M. R. Masani's case, (C. A. No. 48 of 1958) (See AIR 1958 Supreme Court 687 at p. 691) (supra) a preliminary objection had been raised before the Election Tribunal under Section 90 (3) urging that the deposit under Section 117 of the Act was not in conformity with the statutory requirement. This preliminary objection was heard by the Election Tribunal but eventually it expressed the opinion that the matter was not free from doubt and it was essential that the case should be decided as a whole and not piece-meal inasmuch as there was no easy provision for its remand if its view was not accepted by the appellate authority. The Tribunal, therefore, did not consider it proper to give its decision on the preliminary objection at that stage and ordered that the trial of the election petition do proceed. It is not known to us whether in that case the objection, which was filed on the 31st July 1957, was subsequent to the filing of a written statement or prior to it.

7. We would have been required to consider with all seriousness the question whether the Tribunal should be directed to decide the point raised before it as a preliminary issue without compelling the returned candidate to file a complete written statement, but that has become unnecessary in view of the fact that both sides asked us to decide

the question on merits at this stage. When Mr. Bobde started addressing us on interpretation of Sections 82 and 90(3) of the Act, we put to him pointedly whether he was calling upon us to decide his objection on merits in this proceeding. Mr. Bobde told us that he elected to argue the preliminary objection on merits. To use his own words, he "would welcome the decision on that point right now because that would obviate the necessity of going back to the Tribunal for agitating this question there" and again coming to this Court in appeal. Learned counsel for the second respondent (Khubchand) agreed to this course. Both sides then addressed us fully on the merits of the preliminary objection raised by the returned candidate before the Election Tribunal.

8. It was urged by Mr. Bobde that the language of Section 82 of the Act left no manner of doubt that the only person who could be joined as respondent in the Election Petition was the returned candidate and that the section by necessary intendment gave a negative injunction that no one else could be joined as respondent. The proposition which the learned counsel wanted us to enunciate is that since the law prescribes a certain mode of joinder and since that is the only provision under which there can be a joinder of respondents, it necessarily follows that if any person other than those mentioned in Section 82, as the case may be, is joined, there is an infraction of the mandatory provision contained in that section. It seems to us quite clear that we are unable to give effect to this contention.

9. As enacted in Section 81 of the Act, an election can be called in question on one or more grounds specified in sub-section (1) of Section 100 and Section 101 of the Act. If there exists a ground under Section 101, the petitioner may, in addition to the declaration, claim a further relief that he or any other candidate, as the case may be, be declared to have been duly elected. In any case, this relief may or may not be claimed; it is optional, not imperative. Section 82 runs thus :

> "82. Parties to the petition. - A petitioner shall join as respondents to his petition
> (a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and
> (b) any other candidate against whom allegations of any corrupt practice are

made in the petition."

Plainly enough, the section enjoins that in an Election Petition, all the contesting candidates must be joined as respondents where the further declaration is claimed; but in a case where the further declaration is not claimed, what is required is to join all the returned candidates as respondents. This only means that in the former case not only all the returned candidates but also all the other contesting candidates must be parties to the petition; in the latter case, only the returned candidates are necessary parties but the defeated candidates are not necessary parties. It is impossible to hold that if in the latter case the defeated candidates are also joined as respondents, then Section 82 is offended. The section does not ban the defeated candidates being made parties. It is one thing to say that all the returned candidates shall be joined as respondents and another to say that no other contesting candidates shall be so joined. The distinction is too obvious to be stated. It is noteworthy that the word 'only' is not employed before, nor the words 'and no other' after, the expression 'all the returned candidates' in clause (a) of Section 82.

10. It may be mentioned here that this section was substituted for the original Section 82 by the Representation of the People (Second Amendment) Act (No. XXVII of 1956). The original section required all the 'duly nominated candidates' to be joined as respondents irrespective of whether in the Election Petition the further declaration was claimed or not. To us the intention of the amendment seems to be quite clear. In a case where the election of the returned candidate is merely sought to be declared void, the other defeated candidates are not adversely affected. They could themselves file separate petitions to call the election in question. They can come forward as witnesses and support the petitioner. In any event, they can await the outcome and, if the election is set aside, they get another opportunity to contest the bye-election. But, in the other case - where the further declaration is claimed - every other contesting candidate becomes directly interested and must as a necessity be heard so that he may, if so advised, file a recrimination, thereby to show that the petitioner was himself guilty of a corrupt practice so that the further declaration could not be made. If the further declaration is granted behind their back, they lose a very valuable right, the opportunity of contesting the fresh election. Thus, what is intended in Section 82 is to lay down who are really necessary parties in the two cases respectively. The very phraseology of the section confirms this conclusion. And, necessary respondents are only those candidates who are interested prima facie in the result of the petition. But

Section 82 does not forbid all the contesting candidates being joined as respondents even when the prayer is confined to a declaration that the election of the returned candidate is void.

11. The wording of Section 90 (3) of the Act carries the matter no further. What is more, when we turn to sub-section (4) of Section 90, the issue is clinched. That sub-section entitles every candidate as of right to be joined as a respondent if he has not been so joined by the petitioner. That right is unqualified (although he is required to make the application within 14 days of the commencement of the trial of the election petition and has to furnish such security for costs as the Tribunal may direct). It is thus transparent that no contesting candidate can be said to be an alien to an election petition. If every candidate has the right to be joined as a respondent just for the asking, it cannot by any stretch of argument be maintained that if the petitioner himself joins all other contesting candidates, the petition is liable to be dismissed on that ground alone.

12. Mr. Bobde laid a great deal of emphasis on the inclusion of Section 82 in the penal provision contained in Section 90 (3) as amended by Act No. XXVII of 1956. It is stressed that for non-compliance with Section 82 an election petition could not be dismissed under Section 90 (3) as it stood before the amendment. We do not see how this advances the petitioner's contention. It is true that before the amendment, an omission to implead the candidates who had withdrawn was a matter of controversy in several election petitions. There were conflicting decisions as to whether the defect was fatal and whether the Tribunals had jurisdiction to allow such candidates to be subsequently added as respondents by way of amendment of the petitions. This was settled by the Supreme Court in *Jagan Nath v. Jaswant Singh,* [5] There the provisions of the old Section 82 were held to be directory and not mandatory as no penalty was provided in case of its non-compliance. It appears that the framers of the law amended Section 82 with the object of dispensing with the necessity of joining such contesting candidates as parties who, prima facie, were not directly interested in the outcome of the election and confined it to those who were necessary parties being really interested in the result of the petition. It seems to us that the real purpose behind this is to avoid unnecessary delay which is bound to occasion in effecting service upon unnecessary respondents. At the same time, the provisions as contained in the new Section 82 as to joinder of necessary parties were made mandatory by providing the penalty of dismissal under Section 90 (3).

13. It was argued for the petitioner that the inclusion of respondents Nos. 3, 4 and 5 was not quite inconsequential because, to the prejudice of the petitioner, these respondents might share the burden of proof with the second respondent (Khubchand); they might allege further corrupt practices; and would have the right of appeal under Section 116-A of the Act. It was urged that the Legislature did not intend all this and that was why Section 82 was so worded. We see no substance in this argument which is answered by Section 90 (4) of the Act. There, as already said, a right is given to every candidate to be joined as a respondent and that right is unqualified so that it is not a matter in the discretion of the Tribunal to reject his request. All that is requisite is that he must make up his mind and apply within 14 days from the date of the commencement of the trial and must also furnish security for costs under Section 119 of the Act. In such an event, all the 'consequences', which are apprehended by the petitioner as 'prejudicial', will be inevitable.

14. It was then vehemently maintained by the learned counsel for the petitioner that the law of elections being a technical law, it was irrelevant to look for a rational basis behind every provisions; it had to be interpreted strictly in the technical sense. Our attention is invited to the following observations of the Supreme Court in Jagan Nath's case, 1954 SCR 892 (supra) at page 895 (of SCR) :

> "The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the Court possesses no common law power.
> It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law."

We are prepared, as we are bound, to follow with the utmost respect these observations of their Lordships. Even on a strict interpretation of the technical provisions of the Act, as the returned candidate has been joined as a respondent, the requirement of Section 82 is completely fulfilled and exhausted. We are quite unable to hold that doing something more than what is required under a mandatory requirement of the law is also 'non-compliance' with the provision, just as its non-

observance is. In the absence of any penalty having been provided in the law for joining the other contesting candidates as well, whom it was not necessary to join, the petition cannot be dismissed as not maintainable. We must recall that in *S.M. Banerji v. Sri Krishna,* [6] their Lordships have struck a note of warning :

> "Courts and Tribunals are constituted to do justice between the parties within the confines of statutory limitations and undue emphasis on technicalities or enlarging their scope would cramp their powers, diminish their effectiveness and defeat the very purpose for which they are constituted."

15. We are, therefore, of the view that an election petition does not incur dismissal under Section 90 (3) of the Act merely on the ground that the petitioner has joined as respondents not the returned candidate but also the other contesting candidates, even though he has not claimed the further declaration under Section 101 of the Act. This view finds support in a decision of the Orissa High Court reported in *Satrughan Sahu v. Bijoyanand Patnaik,* [7]

16. This petition is dismissed. The petitioner (Vidya Charan Shukla) shall pay to the second respondent (Khubchand) Rs. 200/- as costs in this Court.

Petition dismissed.

Cases Referred.

1. 1959 SCR 583
2. Appeal No. 48 of 1958 (See AIR 1958 SC 687 at p. 691)
3. AIR 1959 SC 422
4. 10 Ele. LR 357 : AIR 1955 SC 610
5. 1954 SCR 892
6. 1960 (2) SCR 289 at p. 304 : (AIR 1960 SC 368 at p. 375)
7. 1962-28 Cut LT 233