

PATNA HIGH COURT

Harihar Singh

Vs

Singh Ganga Prasad

A.F.O.D. No. 319 of 1957

(Ramaswami, C.J. and Choudhary, J.)

08.01.1958

JUDGMENT

Ramaswami, C.J.

1. This appeal is brought on behalf of Sardar Harihar Singh alias Singh Sardar Harihar, against the judgment of the Election Tribunal of Shahabad, dated 26-7-1957, in Election Case No. 356 of 1957, dismissing the election petition of the appellant for non-compliance of the provisions of section 117 of the Representation of the People Act, 1951. It appears that the respondent No. 1 was elected to the Bihar Legislative Assembly from the electoral constituency of Dumraon on 14-3-1957 and the result was published in the Bihar Gazette of 25-3-1957. On 28-3-1957, the election petition along with the treasury chalan was presented on behalf of the petitioner to the Election Commission at New Delhi. In its order dated 16-5-1957, the Election Commission pointed out the defect in the chalan, namely, that the deposit was not in favor of the Secretary of the Election Commission. The petition was not dismissed by the Election Commission under section 85 of the Representation of the People Act. On the other hand, the petition was admitted and orders were made for the publication of the petition in the official Gazette and also for issue of notice on the respondent. Subsequently Sri Sachchidanand, District Judge of Shahabad, was appointed the sole member of the Election Tribunal for hearing the election petition. A preliminary objection was raised before the Election Tribunal on behalf of the respondent, Sri Ganga Prasad Singh, that the petition should be dismissed on the ground that the mandatory provision of Section 117 of the Representation of the People Act, had not been complied with. This contention of the respondent was accepted by the Election Tribunal and the election petition was dismissed on the ground that the treasury chalan was defective and the requirements of section 117 of the Representation of the People Act, had not been complied with. The election petition was dismissed by the Tribunal under Section 90 (3) of the Representation of the People Act.

2. In support of this appeal, the argument put forward by Mr. Baldeva Sahai on behalf of the appellant is that there was compliance with the provisions of section 117 and the Election Tribunal was wrong in dismissing the election petition on the ground that the provisions of section 117 had not been complied with. It is necessary at this stage to reproduce the language of

section 117 of the Statute:

"117. Deposit of security. The petitioner shall enclose with the petition a Government Treasury receipt showing that a deposit of one thousand rupees has been made by him either in a Government Treasury or in the Reserve Bank of India in favor of the Secretary to the Election Commission as security for the costs of the petition". Section 90 (3) of the statute is also important. JW is in the following terms:

"90. Procedure before the Tribunal

(3) the Tribunal shall dismiss an election petition which does not comply with the provisions of section 81, section 82 or section 117 notwithstanding that it has not been dismissed by the Election Commission under section 85".

The chalan which was filed by the appellant along with the election petition is printed at page 13 of the paper-book and the columns of the chalan have been filled up as follows : "Chalan No. 29. Chalan of cash paid into the State Bank of India at Patna.

3. On a perusal of this chalan it is manifest that there has been no compliance with the provisions of section 117 of the Representation of the People Act and that the chalan does not show on the face of it that the deposit has been made in favor of the Secretary to the Election Commission. Column 3 of the chalan merely states that the deposit has been made "for filing election petition for the Dumrawan State Assembly Constituency". It was submitted by Mr. Baldeva Sahai during the course of the argument that in point of fact this deposit has been credited in the books of the Treasury Officer, Patna, in favor of the Secretary to the Election Commission, New Delhi. A certificate to this effect dated 6-1-1958, from the Treasury Officer of Patna was produced before us by learned Counsel on behalf of the appellant in the course of the argument of this appeal. Even so, we are of opinion that there has been no compliance with the terms of section 117 of the Representation of the People Act.

The question is not in what manner the Treasury officer of Patna has credited the amount of deposit in his official books; the question, on the contrary, is whether the chalan enclosed by the petitioner along with his petition shows that the deposit has been made in the Government Treasury in favor of the Secretary to the Election Commission. If the petitioner has not complied with the terms of section 117 and if the chalan does not show on the face of it that the deposit has been made in favor of the Secretary to the Election Commission, the defect will not be cured by showing that subsequently the Treasury Officer has credited the amount in his books in favor of the Secretary to the Election Commission, New Delhi. In our opinion, the provisions of section 117 are mandatory in character and if the provisions of that section are not complied with, the Election Tribunal is bound under section 90 (3) of that Act to dismiss the election petition. If section 117 is read in the context of section 90 (3) of the statute, it appears clear to us that the non-compliance of the provisions of section 117 is fatal to the election petition, and the defect of non-compliance cannot be cured by showing that in actual point of fact the amount of deposit has been credited by the Treasury Officer in his books in favour of the Secretary to the Election Commission. It was not contended by learned Counsel on behalf of the appellant that the provisions of section 117 are directory and not mandatory in character. Indeed learned Counsel conceded that the provisions of section 117 are mandatory in character, but the point put forward by learned Counsel is that we have got to look to the substance and not to the form and there was material to show that the amount of deposit was credited in favor of the Secretary to the Election

Commission in the books of the Treasury Officer of Patna. We do not agree with this argument. The provisions of section 117 are unmistakable in character, and read in the context of section 90(3) it is clear that the non-compliance of the provisions of section 117 necessarily involves a dismissal of the election petition. In this connection we should state the principle 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, and the requirements imposed by the statute must be peremptorily followed. That is the view expressed by the Supreme Court in *Jagan Nath v. Jaswant Singh*¹ in which Mahajan C.J. has observed as follows:-

"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".

4. In an earlier case, *N. P. Ponnuswami v. Returning Officer, Namakkal Constituency*² Pazi Ali J. has pointed out that the right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it, and that it was 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 hand and vests in a special tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it At page 235 (of SCR) : (at pp. 70 and 71 of AIR) of the report, Fazl Ali, J. quoted with approval the following passage of the judgment of Lord Cairns in *Theberge v. Laundry*³,

"These two Acts of Parliament, the Acts of 1872 and 1875, are Acts peculiar in their character. They are not Acts constituting or providing for the decision of mere ordinary civil rights; they are Acts creating an entirely new, and up to that time unknown, jurisdiction in a particular court.....for the purpose of taking out, with its own consent, of the Legislative Assembly, and vesting in that court, that very peculiar jurisdiction which, up to that time, had existed in the Legislative Assembly of deciding election petitions, and determining the status of those who claimed to be members of the Legislative Assembly. A jurisdiction of that kind is extremely special, and one of the obvious incidents or consequences of such a jurisdiction must be that the jurisdiction, by whomsoever it is to be exercised, should be exercised in a way that should as soon as possible become conclusive; and enable the constitution of the Legislative Assembly to be distinctly and speedily known".

We are, therefore, of opinion that the Tribunal is bound to strictly observe the requirements of section 117 of the Representation of the People Act, both in form and in substance. We have got therefore to look both to the substance and to the form; and if the requirements of section 17 are not complied with, the Tribunal is bound under section 90 (3), as a

matter of law, to dismiss the election petition. It was observed by Mr. Baldeva Sahai on behalf of the appellant that there is no column in the form providing that the deposit should be made in favor of any particular authority. But column 3 of the form states that "full particulars of the remittance" should be given, and there was no difficulty in stating in column 3 of the form that the deposit was made in favor of the Secretary to the Election Commission, New Delhi, as security for costs of the election petition. It is manifest, therefore, that there has been non-compliance on the part of the petitioner of the requirements of Section 117 of the statute. It follows, therefore, that the election petition has been correctly dismissed by the Election Tribunal under section 90 (3) of the statute for non-compliance of the provisions of section 117. In our opinion, the action of the Election Tribunal in dismissing the election petition is legally correct.

5. We have so far proceeded upon the assumption that the appeal is competent from the order of the Election Commission in this case. But the argument on behalf of the respondents is that there is no appeal under the statute provided from an order of the Election Commission dismissing the petition under section 90 (3) of the Representation of the People Act. Learned Counsel for the respondents referred in this connection to section 116A, which provides for appeals against the order of the Election Tribunals, also to section 116B, which provides for the finality of orders and decisions of the Tribunals. Section 116A is in the following terms:

"116A. Appeals against orders of Election Tribunals. (1) An appeal shall lie from every order made by a Tribunal under section 98 or section 99 to the High Court of the State in which Tribunal is situated.

(2) The High Court shall subject to the provisions of this Act, have the same powers, jurisdiction and authority and follow the same Procedure, with respect to an appeal under this chapter as if the appeal were an appeal from an original decree passed by a civil Court situated within the local limits of its civil appellate Jurisdiction:

Provided that where the High Court consists of more than two judges every appeal under this Chapter shall be heard by a bench of not less than two judges.

X X X X X

Section 116B is to the following effect:

"116B. Finality of orders and decisions: The decision of the High Court on appeal under this Chapter and subject only to such decision, the order of the Tribunal under section 98 or section 99 shall be final and conclusive". Section 98 reads as follows:

"98. Decision of the Tribunal. At the conclusion of the trial of an election petition the Tribunal shall make an order-

(a) dismissing the election petition; or

(b) declaring the election of all or any of the returned candidates to be void; o

(c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected".

Section 99 is to the following effect:

"99. Other orders to be made by the Tribunal-(1) At the time of making an order under section 98 the Tribunal shall also make an order -

(a) Where any charge is made in the petition of any corrupt practice having been committed at the election recording:

(1) a finding whether any corrupt practice has or has not been proved to have been committed by, or with the consent of, any candidate or his agent at the election, and the nature of that corrupt practice; and

(ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice, and

(b) fixing the total amount of costs payable, and specifying the persons by and to whom costs shall be paid:

Provided that a person who is not a party to the petition shall not be named in the order under sub-clause (ii) of clause (a) unless-

(a) he has been given notice to appear before the Tribunal and to show cause why he should not be so named; and

(b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by the Tribunal and has given evidence against him, of calling evidence in his defense and of being heard.

(2) In this section and in section 100, the expression 'agent' has the same meaning as in section 123".

It was contended by learned Counsel on behalf of the appellant that the order of the Election Tribunal in this case fails under section 98(a) of the Act and, therefore, the order is appealable under section 116A. We do not accept this argument as correct. The order of the Election Tribunal is expressly made under section 90 (3) of the Act, which empowers the Election Tribunal to dismiss an election petition which does not comply with section 117. Section 98, however, refers to a different class of orders, namely, the orders of the Election Tribunal dismissing the election petition at the conclusion of the trial. It is obvious that in the present case the order of dismissal has been made by the Election Tribunal not under section 98 (a) but under section 90 (3). If this view is right, the provisions of section 116A, do not apply to this case and there is no right of appeal granted to the appellant by the statute from the order of the Election Tribunal in this case. We accordingly hold that the appeal preferred by the appellant in this case is incompetent.

6. For the reasons we have expressed above, we hold that this appeal has no substance and must be dismissed. There will be no order as to costs in the special circumstances of this case.

Appeal dismissed.

Cases Referred.

¹ AIR 1954 S. C. 210

² 1952; SCR 218

³(1876) 2 AC 102