

PUNJAB AND HARYANA HIGH COURT

S. Gurmej Singh and Hira Singh

Vs

The Election Tribunal

(Inder Dev Dua, J)

13.03.1964

JUDGEMENT

Inder Dev Dua, J.

(1.) THE circumstances leading to this reference to Full Bench are fully stated in the referring order dated 30 -1 -1964, and need not be re-stated in detail. Indeed the arguments pro and con on the points raised on Letters Patent Appeal have also been stated almost in full in the same order. Only a brief reference may, therefore, be made to the facts so as to appreciate the points raised. During the course of hearing of an election petition challenging the election of Gurmej Singh (Appellant in this appeal) he desired to exercise his right of recrimination under Section 97(1), Representation of the People Act, 1951 (hereinafter called the Act) to give evidence to prove that the election of Joginder Singh (Petitioner in the election petition) would have been void if he had been the returned candidate and a petition had been presented calling in question his election. Needless to point out that Joginder Singh had claimed the seat for himself. The Appellant had, in order to be entitled to give such evidence, to give notice to the Election Tribunal within 14 days from the date of commencement of the trial of the election petition of his intention to do so and to take some other steps with which we are not concerned at this stage. This notice in accordance with the provisions of the Act has been described in some decisions as recriminatory petition and this petition, it is common ground, was filed on 16 -7 -1962. It is also common ground that by means of a notification issued by this Court, vacation in the Court of the District Judge, who was appointed Election Tribunal to try the petition in question, commenced from 15 -6 -1962 and lasted till 14 -7 -1962. and that 15 -7 -1962 was a Sunday. The period of 14 days within which the notice under Section 97 was required to be given, it is agreed, is to be counted from) 14 -6 -1962. The learned Election; Tribunal by means of an order dated 5 -1 -1963 dismissed the recriminatory petition as time -barred. The Appellant approached this Court on 30 -5 -1963 under Articles 226 and 227 of the Constitution challenging the order of the Election Tribunal dismissing his recriminatory petition.

(2.) THE learned Single Judge went into the merits of the impugned order and, after considering *Suraj Bhan v. Randhir Singh* ¹; *Kaushalendra Prashad Narayan Singh v. R.P. Singh* ²; and *Harinder Singh v. Karnail Singh (S)* ³., appeared to be of the view that Section 10 of the General Clauses Act was applicable to the proceedings before an Election Tribunal and proceeded to

observe that the contention that the Tribunal was in error in holding the petition to be barred by time is sound and that the decision of the Tribunal to the contrary is liable to be quashed. After expressing this opinion, the learned Single judge following *Gandhinagar Motor Transport Society v. State of Bombay*⁴ and *Kundan v. State of Punjab*⁵ came to the conclusion that though the impugned order was wrong and could be quashed, the petition must be dismissed as belated. Before us, the Appellant's learned Counsel has repeated his arguments urged before the Division Bench and has submitted that mere delay is by itself not conclusive and a writ petition should not be dismissed solely on account of delay if other considerations justify interference, for, delay is only one of the several circumstances which have to be taken into account. It has also been contended that delay of 4 months and 25 days from the date of the impugned order in the circumstances of the present case should not be considered to be itself fatal. He has also tried to explain the delay by submitting that since the Tribunal was to deal with some of his other preliminary objections as well, he thought that he had better wait for the order of the Tribunal on his other objections, because in case he succeeded on those objections, it would have been unnecessary for him to bring the matter to this Court on writ side. In support of his contention that delay is not an absolute bar, he has relied on *Cantonment Board, Ambala Cantonment v. Lachhman Das Hari : Ram*⁶ *Bhagwant Singh v. Union of India*⁷; *Madhaji Lakhirara v. Mashrubhai Mahadev bhai*⁸; *Mangat Ram Kuthiala v. Commr. of Income Tax*⁹) and *Bashesar Nath v. Commr. of Income Tax*¹⁰: In so far as the decisions in the cases of *Gandhinagar Motor Transport Society*¹¹;) are concerned, the learned Counsel has submitted that in both these cases the petitions had also failed on merits and were not refused only on ground of delay. In regard to Kundan's case, 57 Pun LR 506 : ((S) : AIR 1956 P&H92) he has further submitted that the delay there was of no less than 2 years which, in any event, could not but be held to amount to laches. I may here point out that in *Gandhinagar Motor Transport Society's* case : AIR 1954 Bom 202 the Court did not throw out the petition on the merits. There were two preliminary objections raised and both of them prevailed. The other preliminary objection was founded on the ground that the plea of want of jurisdiction in the authority whose order was challenged on writ side had not been taken before the department and, therefore, could not; be urged in writ proceedings. This objection was also upheld. Incidentally, it may be mentioned that in so far as the legal position relating to this objection is concerned, a Full Bench of this Court in *Devinder Singh v. Deputy Secy*¹². has had occasion to consider it and the Bombay view has not been approved without qualifications. In Kundan's case : 57 Pun LR 506: ((S) AIR 1956 P&H 92) of course, the Bench went into the merits also but the petition did not completely fail on the merits. Notice required by the statute was held not to have been given in accordance with law to the aggrieved party, but on the facts and circumstances of that case, silence of more than 2 years on the part of the Petitioner, who remained in possession of the land in defiance of the orders passed by the Collector, was held to disentitle the Petitioner to relief under Article 226.

(3.) ON behalf of the Respondents, the learned Counsel, Shri Hoshiarpuri, has submitted that the delay in the case in hand is undue because though the impugned order was passed on 5 -1 - 1963, the writ petition in this Court was not presented till 30 -5 -1963, when it is stressed, the Court was going to close for the summer vacation. It has been emphasised that the Appellant has been trying to delay the disposal of the election petition because being a returned candidate he wants to postpone the final disposal of the election petition for as long as possible. It has also been pointed out that though the learned District Judge took leave from 23 -6 -1962 to 15 -7 -

1962, he had in fact been working as Election Tribunal from 14 -6 -1962 to 22 -6 -1962, and it is pointed out that if the Appellant was really genuine and serious he should have been prompt and vigilant enough to give the required notice within this period. The learned, counsel has also argued that the other preliminary objections raised by the Appellant were disposed of by the Tribunal on 16 -4 -1963 and the writ petition against those objections was dismissed on 18 -9 -11963. The explanation, therefore, that the Appellant was waiting for decision on those objections is, according to the Respondents' learned Counsel, untenable. The decisions in the cases of Gandhinagar Motor Transport Society : AIR 1954 Bom 202 and Kundan, 57 Pun LR 506: ((S) AIR 1956 Punj 92) are, it is submitted, fully applicable to the case in hand and the principle that undue delay in approaching the writ Court should entail dismissal of the writ petition' is applicable to the case in hand. Reference has in addition been made to *Sikri Brothers v. State of Punjab*¹³ : *New Punjab Calcutta Transport Co. Ltd. v. Commr. of Police, Calcutta*¹⁴ and *British India Corporation Ltd. v. State of Uttar Pradesh*¹⁵ in support of the contention that a writ petition is liable to fail on account of unexplained delay or laches. ;

Cases Referred.

1AIR 1958 P&H 483

2AIR 1958 Pat 196

3AIR 1957 SC 271

4 AIR 1954 Bom. 202

5 57 Pun LR 506: ((S) AIR 1956 P&H 92)

664 Pun LR 456 : (AIR 1962 P&H 490)

764 Pun LR 804 : (AIR 1962 P&H503)

8AIR 1962 Guj 235

9(1960) 38 ITR I (Punj)

10AIR 1959 SC 149

11AIR 1954 Bom 202 and Kundan, 57 Pun LR 506 : (S) : AIR 1956 P&H 92

12Civil Writ No. 1670 of 1962, D/ - 3 (7?) -2 -1964 : (AIR 1964 P&H 291)(FB)

1359 Pun LR 259: (AIR 1957 P&H 220)

1466 Cal WN 1029

15(1962) 13 STC 459 (All)