RAJASTHAN HIGH COURT

Sajjansingh

Vs.

Bhogilal Pandya

Civil Writ Case No. 161 of 1957
(K.N. Wanchoo, C.J. And I.N. Modi, J.)

07.04.1958

JUDGMENT

I. N. Modi, J.

1. This is an application for writ by Sajjansingh and Maharaval Laxmansingh under Article 226 of the Constitution and arises under the following circumstances.

2. The petitioners were respectively a voter and a candidate in and from the Aspur Assembly Constituency in this State at the general election held in early 1957. Opposite Party No. 1 Bhogilal was declared to have been duly elected as a member from the Aspur Constituency to the Legislative Assembly of the State as a result of the said election. Sajjansingh filed an election petition on 23-4-1957, before the Election Commission, praying that the election of Bhogilal Pandya be set aside and that the petitioner No. 2 Maharaval Laxmansingh the rival contesting candidate be declared as duly elected from the said constituency. Sri Sumairnath Gurtu District and Sessions Judge, Udaipur, was appointed by the Election Commission as a Tribunal to try this election petition in Tuly, 1957. The Election Commission fixed 23-7-1957, as the date for the parties to appear before the Tribunal and ordered notices to be issued accordingly. On 12-8-1957, Bhogilal Pandya filed a recriminatory petition under Section 97 of the Representation of the People Act (No. XLIII of 1951) 1951 as amended (hereinafter called the Act) before the Tribunal, and also made the security deposit on the same date. The petitioners objected to the aforesaid petition being entertained as barred by time, the ground being that the petition in question had been filed beyond 14 days from the date of the commencement of the trial, (which was said to be 23-7-1947) and further that the deposit required by Section 117 of the Act had also been made beyond the limit of 14 days as prescribed in Section 97 of the Act.

The opposite party Bhogilal Pandya met this objection in the following way. It was urged that the 14th day from the 23-7-1957, was 5-8-1957, but the single-member Tribunal did not sit at Udaipur from 5th to the 10th August 1957, and that the 10th August was a gazetted holiday and the 11th August was Sunday, and" further that the Tribunal had not appointed any one to receive petitions in its absence, and, therefore, the recriminatory application which was filed on the 12-8-1957, was properly filed. Reliance was placed on Section 10 of the General Clauses Act in support of the argument. This plea prevailed with the Election Tribunal and it found that the Tribunal did not sit at Udaipur from the 5th to 11th August, 1957, and that it sat for the first time on the 12th August and also that it had not appointed anybody to receive petitions and notices etc., on its behalf up to that time and, therefore, the recriminatory petition and the security deposit having been filed on that date were within time. The petitioners seek to challenge this order by the present writ petition.

3. It is contended on behalf of the petitioners that the order of the Election Tribunal is erroneous on the very face of it as it had no authority in law to extend the time for filing the recriminatory petition or making the deposit in that connection beyond the limit of time fixed by Section 97 of the Act, and that such an order was without jurisdiction, and consequently we should quash it by a writ of certiorari, and that we should issue a further writ prohibiting the Tribunal from proceeding with the trial of the recriminatory petition against the petitioners.

4. The main question for determination in this case is whether the recriminatory petition, to which objection is taken, was filed within the period prescribed by the proviso to Section 97 of the Act. Now, the ground which has prevailed with the Election Tribunal is that the Tribunal did not sit at the place of trial (which was fixed at Udaipur) on and from 5-8-1957, to 11-8-1957, and that no official had been appointed by the Tribunal to accept petitions or notices on its behalf up to 11-8-1957, and therefore, the recriminatory petition was filed within time on 12-8-1957. The Tribunal drew support for the conclusion at which it arrived from Section 10 of the General Clauses Act.

5. Now, so far as that aspect of the case is concerned, we have given the matter our careful and anxious consideration and do not feel disposed to uphold the view of the Tribunal. What we desire to point out is that even though the learned member of the Tribunal was not in Udaipur from 5-8-1957 to 9-8-1957, (the 10th and 11th being

holidays) and was away on official duty, the point to remember is that the Tribunal in this case was the District and Sessions Judge, Udaipur.
His office was undoubtedly at Udaipur and the Munsarim of the Court was throughout available. In fact it appears to us from a perusal of the record (which we sent for and which has been lately received) that learned counsel for both parties put in their Vakalatnamas on 23-7-1957, and handed them over to the Munsarim of the court as the learned member of the Tribunal was away on official duty on that date. Further, on that very day an application for adjournment of the case was also filed with the Munsarim by the counsel on both sides. If the parties could do all that on 23-7-1957. we see no reason why the recriminatory petition or the receipt for the security deposit could not have been filed before the Munsarim of the court, even in the absence of the learned member of the Tribunal from the place of trial. We are, therefore, of opinion that, until the Tribunal appointed any other official to accept petitions or similar other things by a specific order, any petitions or notices required to be submitted to the Tribunal should and could have been filed with the Munsarim of the court without any difficulty. We recognise that the position might be different where a non-official happens to be appointed as a Tribunal but that is not the case here.
We, therefore, hold that where the tribunal appointed is the District Judge, then any applications or notices or similar other matter required to be submitted to the tribunal may well be filed before the Munsarim of the court in the absence of any specific order of the Tribunal to the contrary. We also desire to add that any other view under such circumstances would only tend to unnecessary complexities and needless delay.

6. In this view of the matter, we consider it sufficient to say that Section 10 of the General Clauses Act does not seem to us to be attracted into application in this case.

7. It was also contended before us that the learned member of the Tribunal had resigned from his office as Election Tribunal in this case by his letter dated 29-7-1957, and that in an order passed by him on 30-7-1957, he observed that he had sent in his resignation and that the result thereof be awaited and the case be adjourned to 13-8-1957. There is nothing on this record to show what precisely happened to this resignation. Obviously it was not accepted and the learned member continued to function. On a careful consideration of this argument, we are clearly of opinion that Sri Sumair Nath Gurtu in any case continued to be a member of the Tribunal until his resignation was accepted. We have no doubt that as a rule a resignation can take effect only from the date of its acceptance and not when it is given. It seems to us that it

must have been on account of this very consideration that even the opposite party Bhogilal Pandya actually arranged to have his written statement and the recriminatory petition filed before the learned member on 12-8-1957.
We are, therefore, inclined to hold that the circumstance that Shri Sumairnath had put in his resignation on 29-7-1957, did not and could not deprive him of the jurisdiction to act as Tribunal in the case until his resignation had been accepted and that there was nothing in law which prevented him from functioning as a Tribunal for the period between the 23rd July to the 11th August, 1957. This argument is of no avail, and we consequently overrule it also.

8. That, however, does not conclude the matter and one more ground was raised before us, and that is that 23-7-1957 should not be considered to be, or treated as, the date for the commencement of the trial within the meaning of the explanation to sub-section (4) of Section 90 of the Act. It was argued in this connection that 23-7-1957 was the date fixed by the Election Commission, and not by the Election Tribunal within the meaning of Section 90 of the Act.

9. Now, Part VI of the Act deals with disputes regarding elections. Chapter I gives the definitions of certain terms. Chapter II deals with the presentation of election petitions to the Election Commission, and it is provided therein that no election shall be called in question except by an election petition to the Election Commission. Then certain provisions follow with respect to the parties to and the contents of such a petition.

Section 85 provides that if the provisions laid clown in Section 81 or Section 82, which deal with the question of parties and the contents of a petition, have not been complied with, the Election Commission shall dismiss the petition. Then we come to Chapter III which deals with the trial of election petitions.
Section 86 provides that where the Election Commission does not dismiss an election petition under Section 85, it shall cause a copy thereof to be published in the Official Gazette, and a copy to be served by post on each respondent, and shall then refer the petition to an Election Tribunal for trial. Section 88 provides that the trial shall be held at such place as the Election Commission may provide, and there is a proviso to this section with which we are not concerned.
Then Section 90 deals with the procedure before the Tribunal. Sub-section (1) of that section lays down that subject to the provisions of this Act and of any rules made there under, every election petition shall be tried by the Tribunal, as nearly as may be, in

accordance with the procedure applicable under the Code of Civil Procedure, 1908 (V of 1908), to the trial of suits. Sub-section (3) then lays down that the Tribunal shall dismiss an election petition which does not comply with the provisions of Section 81, Section 82 or Section 117 (this section relates to deposit of security) notwithstanding that it has not been dismissed by the Election Commission under Section 85. This clearly shows that the Tribunal is not a subordinate body of the Election Commission in the usual sense of the word. We then come to sub-section (4) of Section 90, and its explanation, and the main controversy before us centers round the expression "commencement of the trial" occurring therein.

10. Sub-section (4):

> "A candidate not already a respondent shall, upon application made by him to the Tribunal within fourteen days from the date of commencement of the trial and subject to the provisions of Section 119, be entitled to be joined as respondent." Explanation:
> "For the purposes of this sub-section and of Section 97. the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the Tribunal and answer the claim or claims made in the petition." We may as well quote Section 97 here:
> " 'Recrimination when seat claimed'.- (1) When in an election petition a declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election:
> Provided that the returned candidate or such other party as aforesaid shall not be entitled to give such evidence unless he has within fourteen days from the date of commencement of the trial given notice to the Tribunal of his intention to do so and has also given the security and the further security referred to in Sections 117 and 118 respectively.
> (2) ....."

11. The net effect of the aforesaid provisions is that the returned candidate has been given the right to file a recriminatory petition against the election petition asking for a declaration that the election of the candidate for whom the seat is claimed would have been void if he had been the returned candidate and a petition had been presented

calling in question his election; but this right of the successful candidate has been circumscribed by the condition that he should have given a notice to the Tribunal of his intention to file a recriminatory petition and should have also given the security under Sections 117 and 118, within fourteen days from the date of the commencement of the trial.
The question to consider, therefore, is, what is the meaning of the expression "the date of the commencement of the trial."

12. This brings us back to explanation to sub-section (4) of Section 90, which lays down that for the purpose of Section 97 the trial of a petition shall be deemed to commence on the date fixed tor the respondents to appear before the Tribunal and answer the claim or claims made in the petition.
The contention of the petitioners is that 23-7-1957 was the date fixed by the Election Commission for the purpose. It is, however, submitted on behalf of the contesting opposite party that the Election Commission could not have fixed the date for the commencement of the trial, and there was no provision under the Act which empowered them to do so. We have already referred to Section 86 occurring in Chapter III (Trial of Election Petitions) of the Act which lays down that where the election petition has not been dismissed under Section 85 the Election Commission shall cause a copy thereof to be published in the Official Gazette and a copy to be served by post on each respondent, and shall then refer the petition to an Election Tribunal for trial. There is no provision in this section or elsewhere in this Chapter that it is for the Election Commission to fix a date for the commencement of the trial. All that the Election Commission is required to and can do under Section 86 is to refer an election petition for trial to the Election Tribunal. Of course it is open to the Commission to fix a date for the first appearance of the parties before the tribunal in order to save time and avoid delay in the commencement of the trial. In order to ascertain exactly what the Commission did in this case, we sent for the record of the Tribunal and we find that all that the Commission did in this connection by its order dated 8-7-1957, was to fix the 23rd July as the date for the first appearance of the parties before the Tribunal. The question is whether this date must be taken to be the date fixed for the commencement of the trial within the meaning of Section 97 read with the explanation to sub-section (4) of Section 90.

13. Now it is indeed difficult to define the term "trial", precisely; as a definition given for the purposes of one context may not be found satisfactory for another. Broadly

speaking, however, a trial is the examination by a competent court of the facts or law in dispute or put in issue in a case. It is the judicial examination of issues between the parties whether they are of law or of fact.

The commencement of a trial, therefore, means the first date when a court or a Tribunal starts on such judicial examination. Such a date, in our opinion, is capable, ordinarily speaking, of being fixed by the Court or Tribunal itself, and not by any outside authority. The explanation to sub-section (4), however, lays down a special rule and provides, inter alia, that the trial for the purposes of filing a recriminatory application under Section 97 shall be deemed to commence on the date fixed for the respondents to appear before the Tribunal and to answer the claim or claims made in the petition. The intention of the framers of the Act in enacting the explanation seems to be to fix a definite point of time for the purpose in order to avoid delay and uncertainty, and, therefore, the provision has been made that the trial for the purpose of filing a recriminatory application (and the security in that connection) be deemed to commence on the date fixed for the respondents "to appear before the Tribunal and answer the claim or claims made in the petition."

The section, however, does not say by whom this date is to be fixed. Having given our very careful and earnest consideration to the scheme of Section 90 and the preceding provisions, we are inclined to hold the opinion that it is not really for the Election Commission to fix such a date under Section 86 or any other provisions of the Act; and we think that it is the Tribunal which can and should fix such a date immediately after a case comes up to it for being tried, even where one or all the parties have put in their first appearance before it in compliance with a direction given by the Election Commission. In the second place, we think that even if we were to assume that the commission could fix such a date according to law, the Commission never fixed it by their order of the 8-7-1957, as all that they directed was that the 23rd July was being "fixed as the date for the first appearance of the parties before the Tribunal." The correct procedure in our opinion is and should be that as soon as a case has been received for trial by the Tribunal, it should fix a short date for the respondents to answer the claim made in the petition, and when such a date is fixed by the Tribunal then the trial must be deemed to commence on that date for the purposes of Section 97 according to the provision contained in the explanation to sub-section 4 of Section 90. We may add, however, that we say nothing here of that type of cases where on the very first appearance of the parties the written statement has been filed by the respondent or respondents before the Tribunal and in such cases the trial for the purpose of Section 97 may well be deemed to have begun on that very date by virtue

of the explanation to sub-section 4 of Section 90. But where this has not been the case, the correct position in law or the proper procedure for the Tribunal to follow is the one we have indicated above and we hold accordingly.

14. Now let us see what has happened in this case. The Election Commission after taking the necessary steps as provided in Sections 86 and 88, sent the case to Shri Gurtu, District and Sessions Judge, Udaipur to try this case as a Tribunal. The Commission also fixed 23-7-1957, for the first appearance of the parties before the Tribunal. The learned member of the Tribunal was away on official duty on the last mentioned date and so the Munsarim directed that the case be put up to the learned member on his return. The case was accordingly put up to him on 24-7-1957. The learned member did not fix any date for the respondents to submit their reply on that date. He should have done that.

However, learned counsel for both parties had already made an application for adjournment on the 23rd July, and so the case was adjourned to 30-7-1957. The case was again adjourned from the 30th July to the 13th August, and no progress was made. On 12-8-1957, the contending opposite party filed his written statement as also the recriminatory petition along with the security deposit.

In these circumstances having regard to the requirements of law as propounded by us above, we are not prepared to hold that the trial did actually commence or could have commenced in law on the 23-7-1957, that date having been fixed by the Commission for the first appearance of the parties before the Tribunal. The Tribunal on its part unfortunately did not fix any date calling upon the respondents to file their reply, if any, to the claim made in the election petition.

15. Even otherwise, we do not find it possible for us to hold that the trial actually began in this case on 23-7-1957. Nothing substantial happened on the 23rd or even the 30th July, 1957. In these circumstances, it is difficult to postulate even on general principles that the trial at all began in this case in any event before the written statement was filed by the contesting opposite party on the 12th August. It is common ground that the latter filed his recriminatory petition on the same day along with the requisite security deposit. Assuming that the trial in this case began when the written statement was filed by the opposite party Bhogilal Pandya - the recriminatory petition and the deposit were made on that very day - that is at the very commencement of the trial.

16. It follows from what we have stated above that the recriminatory application filed

by the contesting opposite party was filed within time, and, therefore, we affirm the order passed by the Tribunal though for different reasons from those relied on by him.

17. Consequently, this application fails and is hereby dismissed, but without any order as to
costs.

Application dismissed.