Indira Nehru Gandhi vs Raj Narain & Anr. & Vice Versa on 19 December, 1975

Equivalent citations: AIR 1977 SUPREME COURT 69, 1976 3 SCC 321

Bench: H.R. Khanna, K.K. Mathew, M.H. Beg, Y.V. Chandrachud

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           CASE NO.:
Appeal (civil)  887 of 1975

PETITIONER:
INDIRA NEHRU GANDHI

RESPONDENT:
RAJ NARAIN & ANR. & VICE VERSA

DATE OF JUDGMENT: 19/12/1975

BENCH:
A.N. RAY (CJ) & H.R. KHANNA & K.K. MATHEW & M.H. BEG & Y.V. CHANDRACHUD

JUDGMENT:
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JUDGMENT 1977 AIR 69 = 1976 (3) SCC 321 C.A. 909 of 1975 Review Petition in Civil Appeal Nos. 887 and 909 of 1975 (An application for review of Judgment and/or for clarification and/or expunging of the observations from the Judgment), decided on December 19, 1975.

The Order of the Court was as follows :

> The Order of the Court was given by JUDGMENT BEG, J. for the This application purporting to be "for review of judgment and or for clarification and /or expunging of the observations from the judgment"
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> has been filed under Order 47 of the Supreme Court Rules which indicates the inherent power of this Court.

2. The body of the petition as well as the prayers made show that the applicant has no grievance against the common conclusions of the five learned Judges of this Court, including myself, who delivered five separate judgments in the election Civil Appeal No. 887 of 1975 and the Cross Appeal No. 909 of 1975, the first by Shrimati Indira Nehru Gandhi and the second by Shri Raj Narain, who we candidates at an election held in Rae Bareli constituency in Uttar Pradesh in the first week of March, 1971. This petition of the election-petitioners sets out the issues framed in the trial Court. It then states facts showing that the Thirty-ninth Amendment of the Constitution as well as some amendments by the Elections Laws (Amendment) Act 40 of 1975, were made before the above-mentioned appeals, filed under Section 116A of taken up for hearing by this Court. Thereafter,

the petition gives an account of the hearing of the appeals by this Court in the course of which, after hearing arguments on the constitutional amendment, His Lordship the Chief Justice, speaking for this Court, directed the parties to address their arguments on merits as well as, is admitted in paragraph 12 of the petition. The petitioner states that, as one of the learned Judges, Hon'ble Mr. Justice Mathew, indicated, while Mr. A. K. Sen was arguing the appeal No. 887 of 1975 on merits and dealing with facts, that arguments should first be heard on the amendment of the election laws, and, after that, as Hon'ble Mr. Justice Khanna also indicated that arguments on the amendment of election laws should be heard first, the for the election-petitioner understood that he would have to confine his arguments to the validity of these amendments. The petition before us also contains statements showing that, so far as I was concerned, I had indicated to the parties that I regarded consideration of the merits of the case also to be essential for a just and proper decision and disposal of the appeals. Indeed, the direction given by His Lordship the Chief Justice to the parties to address their arguments on merits, after those on the constitutional amendment, necessarily meant, I think, that a consideration of merits could not be separated from questions of validity of the amendments of the election laws.

3. My own recollection of the hearing of the case is that merits, including broad questions of fact, were sufficiently, gone into to enable us to deal with all questions of law emerging out of findings of fact given by the learned Judge and that questions were also put by me to learned Counsel for the election-petition asking him to justify findings of fact on the only two questions on merits arising for consideration in Civil Appeal No. 887 of 1975. Indeed, it appeared to me that questions of fact and law were very much intertwined. It was for this reason, amongst others, than I had repeatedly tried to draw the attention of Counsel, during the hearing, to these intertwined questions of law and fact with a view of getting assistance and points of view on these questions.

4. The gravamen of the attack by the learned Counsel for the election- petitioner on the amendments was that "the rules of the game", as the learned Counsel for the election-petitioner called them, had been so altered that the party disqualified at the election, according to the law as it existed when the election petition was filed, became qualified and duly elected. This, it was vehemently urged, was completely destructive of the basis of a "free and fair" election. It was the contention of the learned Counsel for the election-petitioner that the respondent in the High Court, being in the advantageous and powerful position of the Prime Minister of the country, supported by a large majority in Parliament, had obtained a change of laws in her favour so as to convert a defeat into a victory. It was, therefore, essential for the decision of this issue raised by the learned Counsel for the election-petitioner himself to convince us that the case of the election-petitioner, according to the laws as they stood at the time when the election was held, was bound to succeed on merits. It was only if it could be shown that the amendments of election laws, by additions to them, had really altered the law, and also that this had the effect of so changing "the rules of the game"(the very words used by the Counsel for the election-petitioner), as to remove disqualifications actually incurred, that this line of argument could possibly succeed. I, at any rate, am unable to understand how this issue, raised by the learned Counsel for the election-petitioner himself, could possibly be decided satisfactorily without going into the facts of the case. And, if raised, as it was, it did call for a decision.

5. It is true that my learned brethren did not consider it necessary to go into either the above-mentioned issue or the merits of the case in such depth as I did possibly because of the concession of the learned Counsel for the election-petitioner that it was unnecessary to consider the merits at all if all the amendments of the election laws were valid and his interpretations of those amendments were not to be accepted. According to the learned Counsel for the election-petitioner, his client could not succeed if our view on the validity and meaning of amendments, was against his submissions. I, however, not only concluded, in agreement with my learned brethren, that the amendment of election laws were valid but reached that conclusion by an alternative route. I found there was no alteration of the election laws, except in one respect, and, therefore, there could be no question of an alteration of "the rules of the game" to the disadvantage of the election-petitioner. Once I had reached this conclusion, it was not possible to avoid considering findings on merits. Learned Counsel for the election-petitioner had conceded, no doubt in the interests of his client, that the findings of the learned trial Judge were unsustainable if the amendments were valid and his interpretations of these amendments were rejected. I do not think that I could possibly decide the case on this concession after reaching a conclusion, possibly not anticipated by the learned Counsel for the election-petitioner, that the election laws were not really changed except in one respect. I came to the conclusions I reached after considering the findings on merits and the law applicable at the time when the election was held.

6. I do not think that we are required, by any rule of natural justice, to intimate to learned Counsel what particular route or reasoning will finally appeal to us or be adopted by us in reaching a particular conclusion in our judgment. All I can say is that if a Counsel raises an issue which, in the opinion of any one of us, can only be answered by going into findings of fact, he should anticipate the possibility of such a view, I can also say that I gave enough indication, during the course of arguments, of the course I could and did finally adopt for reasons fully set out in my judgment.

7. The main grievance of the election-petitioner before us seems to be that his Counsel understood, from the course of the proceedings and observations made by some of us, after the Hon'ble Chief Justice had, on behalf of the whole Court, informed learned Counsel that this Court will hear arguments on merits as well, that such arguments should be confined to questions of law relating to the validity of amendments in election laws and will not touch questions of fact at all so that he did not argue on questions of fact. But, my view was that a decision on questions of law relating to the validity of the amendments themselves necessitated consideration of all the findings given and the meanings of the laws applied by the trial Court.

8. It may be difficult for learned Counsel sometimes to anticipate and meet the requirements of every learned Judge of this Court when there are five of us hearing arguments. It is, however, the duty of Counsel who raise issues, which may necessitate consideration of questions of fact and law, to satisfy the requirements of any one of us who may be of opinion, as I am, that these issues could not possibly be decided properly without considering findings of fact and the applications of law to them. It is too late now for the learned Counsel to complain that he misunderstood the position despite the efforts made by me to make clear my desire to hear arguments on facts and findings on them. Speaking for myself, I can only say that I could not possibly do full justice in this case and satisfy my conscience without a consideration of all those findings and facts which I felt bound to

consider and did consider and decide. That could not be avoided at all after the conclusion I reached - that the amendments did not amend the law except in one respect. The issues, whether the rules of the game were at all altered, and, if so, whether this had the effect of converting a defeat into a victory were raised by the Counsel for the election-petitioner himself. If, therefore, the findings and the facts of the case were examined by me to greater extent than a party or his learned Counsel relish, so as to be able to decide these issues, I am unable to do anything about it on a petition such as the one now before us. Learned Counsel had ample opportunity to make all his submissions, the case cannot be reopened particularly when nothing which could possibly affect the result is indicated even now.

9. It seems, from the petition now before us, that the greatest concern of the election-petitioner and his learned Counsel is not the result of the election petition or the common conclusions reached by all the five learned Judges, with which no fault has been found in this petition, but that the merits of the case, on facts, were examined at all by me. If this is part of a political game, I think that it is high time that it was realised by everyone that courts are not meant for political tactics or propaganda. Those who know what tactics were adopted by some people to defeat the course of justice in this Court in this particular case will not be mistaken if they hold the view that, if this Court has erred at all in dealing with these methods, it has done so on the side of leniency. It will not say anything more about this unsavoury aspect of the case here.

10. After having heard arguments of learned Counsel for the election- petitioner on the two appeals which definitely involved allegations of misuse of power by the Prime Minister of this country, I was rather amazed to hear from learned Counsel arguing the application before us that no question of bona fides or mala fides was raised by him. It may be that the learned Counsel, without using any particular label to describe the issue raised by him, made all the allegations and suggestions necessary to raise it. If he did not mean to argue such an issue seriously I do not think that learned Counsel for the petitioner was justified in taking up so much of this Court's time in arguing what could be the purpose behind and the effects of the amendments assailed by learned Counsel. I do not think that I could, after the conclusion reached by me, as I have already mentioned above, properly deal with the issues raised by learned Counsel, whatever be the term employed to describe them, without examining the validity of findings fact and law on the only two questions involved in Appeal No. 887 of 1975. It became imperative and unavoidable on the view I took. Those who asked for justice got it even though it involved doing some justice to those who did not ask for it. The judicial process does not always produce the expected.

11. Learned Counsel for the election-petitioner also seemed to complain that my judgment contained some remarks indicating that he did not discharge his professional duties towards his client satisfactorily. If that is so, I would like to remove this grievance by saying that he discharged his duty towards his client so well that he succeeded in averting a closer and more detailed scrutiny by all of us of the pleadings, the evidence, and the patently erroneous conclusions of the trial Judge in this case. I think that his client should be thankful for this success of his Counsel added to the successful attack on the relevant part of Thirty- ninth Constitutional Amendment. There is, however, also a duty towards this Court which has to be performed by trying to meet the possible point of view or requirements of every learned Judge hearing the appeals irrespective of whether

this suits the party represented by Counsel.

12. I was initially inclined even to let learned Counsel for the election- petitioner file written arguments on such other questions of law and fact as he may, have due to some misapprehension, failed to place before this Court so that I may consider these also now. But, I have, after giving the matter thought, reached the conclusion that the view of my learned brethren on this matter is correct and must be preferred to my initial desire to give learned Counsel a further opportunity. This view is that no useful purpose could be served by spending more time on this case which has already occupied enough of valuable time of this Court. The contents of the review petition also show that there is nothing overlooked which is worth considering upon any application for review. As already mentioned above, learned Counsel for the election-petitioner does not question at all the correctness of the common conclusions of all the learned Judges of the Constitution Bench.

13. The application before us seems to be only an explanation of the reasons for which learned Counsel for the election-petitioner did not advance more detailed arguments on findings of fact. I am inclined to accept that explanation as bone fide and sufficient for whatever may be the reasons for the learned Counsel's failure to submit more argument in support of the findings of the trial Court than he did offer in addition to those contained in the judgment under appeal. I am sure that the course adopted by the election-petitioner's learned Counsel has not injured his client's case or interests at all even if it did not fully succeed in completely warding off a closer scrutiny of the pleadings, the evidence, and the findings of the trial Court than that which was good for the election-petitioner's case. It is undoubtedly a feather in the cap of the learned Counsel, who conducted the case before the High Court also, that a case so flimsy as that of his client succeeded in the High Court. And, I do not think that the election-petitioner's case could have been more skillfully conducted in this Court than it was done by his Counsel Mr. Shanti Bhushan.

14. I have, however, closely gone through my judgment again as it had to, for reasons beyond our control, be dictated, typed, and cyclostyled in great hurry without sufficient opportunity for careful reading and necessary corrections of accidental slips and errors before and after it was cyclostyled. I have done so particularly because I found that a number of typing errors had crept into the cyclostyled copies of my judgment which had to be ordered by me to be corrected. I find that there are still two errors left in my judgment which call for correction. The first is at page 11 of my judgment 1975 Supp(SCC) 1, 150 (para 395)) where Section 116A(4) has been mentioned instead of Section 116B(3) due to some accidental slip or clerical error. Again, at page 23 of my judgment, (Ibid., p. 156 (para

405)) find that, while considering the provisions of Section 100(1) (d)

(iii), it has gone down that the provision "postulates : firstly, a corrupt practice which can be committed only by an agent; and, secondly, the existence of such an agent"

> . I think that the first postulate incorrectly by some error. It should be : "firstly, a corrupt practice which is committed only by an agent". I, therefore, order that my judgment be corrected in these two respects. I am unable to find any other error in

the judgment which calls for correction.

15. Subject to the correction in the two respects mentioned above, and the clarifications given above, this application is dismissed. FINAL ORDER

16. In view of the fact that one of us (Beg, J.) is of the opinion that there is no sufficient ground for reviewing the judgment, this review application is dismissed.