

## Saiyid Alimuddin vs Saeed Ahmad on 9 September, 1955

**Equivalent citations: AIR1955SC761, AIR 1955 SUPREME COURT 761**

### JUDGMENT

Das, Actg. C.J.

1. This is an appeal by special leave granted by this Court on 24-1-1955, on a limited point hereinafter mentioned against the judgment of the Election Tribunal, Meerut, dated 10-10-1954, whereby the Tribunal set aside the election of the appellant as Chairman of the Town Area Committee, Phalaoda, District Meerut, and declared the respondent as the duly elected Chairman.

2. Under the U. P. Town Areas Act, 1914 the Chairman of a Town Area Committee is elected directly by the electorates of the Town Area at an election held simultaneously with the general election of the members of the Committee. The election of the Chairman of the Town Area Committee, Phalaoda, District Meerut, was held on 28-10-1953. The appellant and the respondent were the only contesting candidates. On counting of votes the appellant was found to have secured 1,980 votes as against 1,280 votes polled, by the respondent. The appellant was accordingly declared to have been elected as the Chairman. On 11-11-1954, the present respondent presented an election petition under Sub-section (4-a) of Section 8-A of the U. P. Town, Areas Act, 1914, as amended, challenging the election of the appellant on various grounds. The present appellant contested that petition. He denied and refuted the various grounds on which his election was challenged.

On the allegations made against the appellant the Tribunal held (i) that the appellant had got 19 votes recorded in the names of persons who were not present at Phalaoda at the time when the voting took place, (ii) that the appellant had procured by personation the vote in the name of one Srimati Hafizam who was dead at the time of the election and (iii) that the appellant had procured one Ramji Lal, M. L. A., a Harijan leader, to address a meeting of Harijans in favour of the appellant's candidature wherein threats were held out to Harijans that if they did not vote for the appellant they would be ejected from their lands. In the result, the Tribunal held that the election of the appellant as Chairman was void and, consequently, the Tribunal set his election aside. Further, the Tribunal by the same order declared the respondent to have been duly elected.

3. On 16-11-1954, the appellant filed before this Court a petition for special leave to appeal to this Court. Special leave was granted by this Court on 24-1-1955, limited to ground of appeal No. (ix) of the petition, namely, "That in the circumstances of the present case the order of the Tribunal declaring the respondent to be duly elected is illegal." In view of this limited nature of the leave the appellant has to accept the position that the three charges have been brought home to him and that his election has been properly set aside. The only point available to him is that the order of the Tribunal declaring the respondent to be duly elected was illegal.

4. In declaring the respondent to be duly elected as Chairman the Tribunal evidently acted under Rule 53 of the rules framed under Section 8-A of the U. P. Town Areas Act, 1914. That rule runs as

follows: --

"53. (i) If the judicial officer finds, in respect of any person whose election is called in question by petition that he was not disqualified for election and that his election was valid, he shall dismiss the petition as against such person.

(ii) If the judicial officer finds that any person whose election is impugned was not qualified for election or that his election was invalid he shall either.

(a) declare duly elected in his stead the successful candidate in whose favour is recorded the highest number of votes next after all successful candidates or in the case of election for chairmanship, next after the candidates whose election has been challenged as the case may be, or

(d) declare a casual vacancy to have been created whichever course appears to him the more appropriate."

5. Clause (ii) empowers the judicial officer, on his arriving at the findings referred to therein, to adopt one of two courses whichever may appear to him the more appropriate. In this case, evidently the Tribunal considered the first course to be the more appropriate.

6. The appellant contends that this rule vests the judicial officer with a discretion which like all judicial discretions must be exercised according to common sense and according to justice and it must not be arbitrary, vague and fanciful but legal and regular. Reference is made to Craies on Statute Law, Fifth Edition, page 252 as showing the principles laid down by the Courts for the exercise of discretion vested in Judicial Tribunals. The complaint of the appellant is (1) that the Tribunal did not at all exercise its discretion and (2) that, in any event, it has not done so judicially, but simply declared the respondent as duly elected as if it were a corollary flowing from the setting aside of the election of the appellant.

In the statement of case filed on behalf of the appellant, however, the grievance has not been formulated in the way it has been done before us. There, the grievance made was that the Tribunal could not declare the respondent as duly elected unless it found (a) that in fact the respondent had received a majority of the valid votes or (b) that but for the votes obtained by the appellant by corrupt or illegal practices the respondent would have obtained a majority of the valid votes. The objection as formulated there is clearly founded on principles which govern parliamentary elections under the Representation of the People Act and the Rules framed thereunder. Those rules, however, did not govern the election in question which is, governed by the special rule quoted above.

The Tribunal found that the election of the appellant was invalid on account of very serious misconduct on his part, namely, that the appellant procured undue influence to be exercised on the electorates and there was impersonation of absent voters and of even a dead voter. Further, there was tampering with the Death Register which could only be in the interest of the appellant. These findings indicate that the appellant had committed corrupt practice under Rule 49 and made

himself liable to the penalties prescribed by Rule 54, under which the Magistrate "may declare him to be disqualified for a period not exceeding five years from being an elector of town area or for being appointed to or retained in any office or place in the gift or disposal of the Committee." There was no other candidate contesting the election besides the appellant and the respondent.

In these circumstances the appellant's election being set aside, the Tribunal adopted the first course that was open to it to take under Rule 53(ii)(a) which evidently appeared to be the more appropriate course to take. Having regard to the language of the rule under which the Tribunal acted and the circumstances alluded to above we are not prepared to say that the Tribunal acted wrongly in exercise of its powers under the rule referred to above.

7. The result, therefore, is that there is no substance in this appeal and it must stand dismissed with costs.