

Commissioner Of Income Tax, Bhopal vs Narendra Doshi on 26 July, 2001

Equivalent citations: AIRONLINE 2001 SC 984

Bench: S.P. Bharucha, Brijesh Kumar

CASE NO.:
Appeal (civil) 2053 of 2000

PETITIONER:
COMMISSIONER OF INCOME TAX, BHOPAL

Vs.

RESPONDENT:
NARENDRA DOSHI

DATE OF JUDGMENT: 26/07/2001

BENCH:
S.P. Bharucha, Y K. Sabharwal & Brijesh Kumar

JUDGMENT:

D E R The question that the High Court was called upon to answer read thus:

Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in upholding the order of Dy. CIT (A) Indore, directing to allow interest on interest, when the law points for grant of simple interest only?

It answered it in the affirmative and in favour of the assessee, relying upon judgments which laid down that interest was payable on the excess amount paid towards income tax.

The Tribunal, whose decision the High Court affirmed, had relied upon the decision of the Gujarat High Court in the case of D.J. Works vs. Deputy Commissioner of Income Tax (195 I.T.R. 227), which had been followed by the same High Court in Chimanlal S. Patel vs. Commissioner of Income Tax (210 I.T.R. 419). These decisions hold that the Revenue is liable to pay interest on the amount of interest which it should have paid to the assessee but has unjustifiably failed to do.

The Revenue has not challenged the correctness of the two decisions of the Gujarat High Court. They must, therefore, be bound by the principle laid down therein. Following that principle, the

question has, as we find, been rightly answered in the affirmative and in favour of the assessee.

The civil appeal is dismissed.

No order as to costs.

(S.P. Bharucha) (Y.K. Sabharwal) (Brijesh Kumar) July 26, 2001 IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION Civil Appeal Nos. 4396-4398 of 2000 Mulayam Singh Yadav Appellant Versus Dharampal Yadav and Ors. Respondents WITH J U D G M E N T Bharucha, J.

Civil Appeal Nos. 4396-4398/2000 :

We are concerned in these appeals with the election held on 22nd February, 1998 for the 9 Sambhal Parliamentary Constituency. The result thereof was declared on 3rd March, 1998. The appellant, Mulayam Singh Yadav, was declared elected, having secured 3,76,828 votes. His nearest rival was the first respondent, Dharampal Yadav, whom he defeated by a margin of 1,66,662 votes. The first respondent challenged the election of the appellant by filing an election petition on 17th April, 1998 before the High Court at Allahabad. Interim applications were filed on behalf of the appellant raising preliminary objections to the election petition. They were disposed of by the judgment and order under challenge, whereby the preliminary objections were rejected.

The point that we propose to decide, and which will dispose of the appeals, relates to Schedule 14 to the election petition. The election petition has 15 respondents. It contains grounds (A) to (I). In support of these grounds, 25 Schedules are filed and are, as a fact, a part of the election petition, as bound. Except Schedule 14, to which we shall presently refer, the other Schedules contain documents, such as newspaper reports, pleadings, circulars, list of polling booths, etc. Each Schedule has a verification clause and is verified by the first respondent. In respect of each Schedule, except Schedule 14, the averment in the election petition reads, .. marked as Schedule _____ to this election petition (giving the appropriate number) which forms part of the election petition. Schedule 14 is referred to in paragraph 83 of the election petition thus : But in the case of the present election of 9 Sambhal Parliamentary Constituency, though the polling was 90% and above upto 250% as stated above, coupled with the booth capturing, arson and violence in large scale and the same having been brought to the public notice by print and electronic media, which was covered by video photography by different channels including the Doordarshan, Star T.V. and Zee T.V. and the videography under the orders of the election commission is attached to this election petition as Schedule No. 14 in the form of cassette, which is filed along with this election petition under a seal cover under the signature of the election petitioner and his counsel.

To be certain about what precisely this averment meant, we asked learned counsel for the first respondent to explain it. He said that the first respondent or some person on his behalf had recorded what was shown by television channels and the videograph taken under the orders of the Election Commission and that the video cassette of such recordings was mentioned and verified in Schedule 14. The reproduction of the recording on 15 video cassettes had been filed along with the election petition for service on the respondents thereto.

Schedule 14 is filed in support of grounds A, B and C of the election petition, which deal with the improper reception of votes at polling booths which had been captured, affecting the result of the election so far as it concerned the appellant, non compliance with the Constitution and the law which also concerned the election in so far as it concerned the appellant, and ground C states:

because the petitioner is entitled for a declaration as contemplated under Section 101(b) of the Representation of Peoples Act 1951, if the votes obtained by the Returned Candidate, namely, the respondent No.1 by corrupt practice of booth capturing and other corrupt practice are excluded, the petitioner would have obtained the majority of valid voters.

Schedule 14 is also referred to in support of grounds H and I, which deal with the undue influence exercised by the appellant and its agents by directly interfering in the free and fair exercise of the electoral right of voters and the capturing of polling booths and centres. In so far as grounds H and I are concerned, material particulars are also set out in the later Schedules. As required by the Representation of People Act, 1951, the first respondent swore an affidavit verifying the allegation of the corrupt practice of booth capturing made in the various paragraphs of the election petition therein stated, including paragraph 83, and the Schedules, including Schedule 14.

On 17th April, 1998 the Registrar of the High Court made the following report in regard to the election petition :

The petition was presented today by Dharampal Yadav (D.P. Yadav) in person duly identified by Sri Prem Prakash, Advocate. It is also accompanied with security money of Rs.2,000/-

(Rupees two thousand only) in the form of tender receipt. 31 copies attested by the petitioner himself to be true copies and 15 (fifteen) video cassettes. (Emphasis supplied.) The trial of the election petition was then assigned to the learned Judge who has passed the judgment and order under challenge. He, on 13th May, 1998, directed the issue of notices to the respondents to the election petition and said, It may also be indicated in the notification to be published that the copy of the cassettes which have been referred to in the election petition are lying with the Registry of this Court and the respondents, after appearance, may collect the same from the Registry. The Registrar may keep the cassettes in proper upkeep to avoid any interference in

the versions recorded therein. On 26th October, 1998, an application was filed on behalf of the appellant for a copy of the video cassette referred to in Schedule 14. On 27th October, 1998, it was handed over to the appellants counsel in court, and the learned Judge noted the objection of appellants counsel that the sealed cover of the copy of the video cassette bore the signature of the first respondents advocate and there was no other signature or mark thereon. The learned Judge then directed the Registry to report whether, apart from the 15 copies of the video cassettes which had been filed along with the election petition, the original video cassette had been filed. On 16th November, 1998, the Registry of the High Court responded thus: In compliance with the Courts order dated 27.10.98 and 9.10.98 it is submitted that office has received only 15 (fifteen) Video Cassettes from the Chamber of the Registrar on 17.4.1998. Except 15 (fifteen) Video cassettes, office has not received any original video cassette with the Election Petition.

In November, 1998 applications were filed on behalf of the appellant raising preliminary objections to the maintainability of the election petition. On 14th December, 1998 the applications were heard. In the judgment and order thereon, the learned Judge noted the argument on behalf of the appellant that only 15 copies of the video cassette had been filed by the first respondent at the time of presentation of the election petition and that, therefore, one video cassette was short. The learned Judge held that although other annexures and Schedules were sought to be made part of the election petition, as averred, there was no such averment in respect of the video cassette in Schedule 14. He added, When these cassettes were not part of the election petition it must be held that the same were filed by way of evidence in support of allegations of the corrupt practice. The law does not require supply of copies available to the respondents and any short supply of these materials may not be described as non observance of Section 81(3) of the Act.

The principal question, therefore, that we have to decide is whether Schedule 14 and the video cassette therein referred to is an integral part of the election petition and whether the failure to file the original thereof in court along with the election petition attracts Section 81 and, therefore, Section 86(1) of the Representation of the People Act, 1951.

Section 80 of this Act states that no election shall be called in question except by an election petition presented in accordance with the provisions of Part VI thereof. Section 81 deals with the presentation of election petitions and says:

81. Presentation of petitions. (1) An election petition calling in question any election may be presented on one or more of the grounds specified in [sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates].

Explanation - In this sub-section, elector means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

Sub-section(3) thereof says, that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition. Section 83 requires that an election petition shall contain a concise statement of the material facts on which the petitioner relies, set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice, and that it be signed by the petitioner and verified in the manner laid down in the Civil Procedure Code. The proviso to Section 83 requires that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. Section 86(1) mandates that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117.

It was contended by learned counsel for the appellant that the election petition deserved dismissal under Section 86(1) because it did not comply with the requirements of Sections 81 and 83 of the Act in as much as the original of the video cassette mentioned and verified in Schedule 14 had not been filed along with the election petition, although 15 copies thereof had been filed for service upon the respondents. It was submitted that the video cassette mentioned and verified in Schedule 14 gave, according to the election petition, particulars of alleged booth capturing, arson and violence. In fact, in so far as the alleged arson and violence were concerned, there was no other statement in the election petition or in the Schedules which gave any facts or particulars.

On behalf of the first respondent, it was submitted that all the Schedules other than Schedule 14 were made part of the election petition. Schedule 14 only mentioned the video cassette that was to be used as evidence in support of the allegations of corrupt practice. This was clear from the election petition itself, wherein, in support of all Schedules other than Schedule 14, it had been expressly averred that they were a part of the election petition whereas, in respect of Schedule 14, what was averred in the election petition was that it was filed along with the election petition and not that it formed a part thereof.

Whether or not Schedule 14 is an integral part of the election petition does not depend on whether or not the draftsman of the election petition has so averred. It has to be decided objectively, taking into account all relevant facts and circumstances. Schedule 14 is one of 25 Schedules which are, as a matter of fact, part of the bound election petition. In respect of each of these Schedules, except Schedule 14, it is averred that it is a part of the election petition. Each of these Schedules, other than Schedule 14, mentions, verifies and contains some paper or document which can be placed between the leaves of paper that comprise that Schedule and be bound with the election petition. Schedule 14 mentions and verifies a video cassette which cannot be placed between two leaves and be bound with the election petition. This is the explanation for the difference in the manner in which the averments relating to Schedule 14 and the other Schedules are made in the election petition. Clearly,

the video cassette mentioned and verified in Schedule 14 is as much an integral part of the election petition as the papers and documents mentioned and verified in the other Schedules. Further, that the video cassette mentioned and verified in Schedule 14 is a part of the election petition and was intended to be such is evident from the affidavit of the first respondent verifying the allegations of corrupt practice made in the election petition. Therein, the first respondent has verified the correctness of what is stated in paragraph 83 of the election petition, which refers to Schedule 14 and which has been quoted above, and to Schedule 14 itself. Yet again, that the video cassette mentioned and verified in Schedule 14 is and was intended to be a part of the election petition is shown by the fact that 15 video cassettes which were copies of the video cassette mentioned and verified in Schedule 14 were filed in the High Court along with the election petition for being served upon the respondents thereto.

Ordinarily, what is shown upon the video cassette that is mentioned and verified in Schedule 14 would have been set out in the election petition and then that video cassette could have been said to be evidence of the allegations made in the election petition. As this election petition is drafted, there is no description of what is shown on this video cassette except to say that it shows booth capturing, violence and arson. As to booth capturing, there are particulars contained in the other Schedules but even in that regard the later paragraphs of the election petition make reference to Schedule 14 so that even in regard to booth capturing the particulars shown in the video cassette mentioned and verified in Schedule 14 are relied upon. So far as the allegations of violence and arson are concerned, there are no particulars in the election petition absent the video cassette mentioned and verified in Schedule 14.

We are, therefore, satisfied that the video cassette mentioned and verified in Schedule 14 is an integral part of the election petition and that it should have been filed in Court along with copies thereof for service upon the respondents to the election petition. Whereas 15 copies thereof were filed for service upon the respondents, the video cassette itself was not filed. The election petition as filed was, therefore, not complete.

Section 81 contemplates the presentation of an election petition that is complete and satisfies the requirements of Section 83. An election petition that is not complete must, having due regard to the imperative mandate of Section 86, be dismissed. The present election petition must, therefore, be dismissed.

The appeals are allowed. The judgment and orders under challenge is set aside. The election petition is dismissed. The first respondent shall pay to the appellant the costs thereof.

Civil Appeal No.4399 of 2000:

In view of the fact that the election petition has been dismissed by reason of our order in Civil Appeal Nos.4396-4398 of 2000, this appeal does not survive for consideration and is dismissed. No order as to costs.

.J. (S.P. Bharucha) .J. (Y.K. Sabharwal) .J. (Brijesh Kumar) New Delhi, July 24, 2001