Harish Chandra Bajpai And Anr. vs Triloki Singh And Ors. on 27 September, 1954

Equivalent citations: AIR1955ALL74, AIR 1955 ALLAHABAD 74

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This is a very simple matter.

2. An election petition was filed on 10-6-1952 and in that petition certain allegations were made in paragraph 7C the first portion of which alone need be quoted:

> "That the respondents Nos. 1 and 2 could in furtherance of their election enlist the support of certain government servants."

The rest of the paragraph deals with two incidents of 16th December and 27th December, 1951, with which we are not concerned.

3. On 27-2-1953, the petitioners filed an application for amendment in which the relevant prayer was as follows:

> "Therefore the petitioners pray that under Section 83 (3) he be allowed to amend the details of para. 7C by adding the words 'village headman' with their names and the fact that they worked and issued appeal and subsequently they became polling agents of respondents Nos. 1 and 2 and for this the petitioners shall ever feel grateful."

This application was granted by an order dated 28-11-1953, by the majority, the advocate member and the Chairman agreeing to the amendment, while the third member was of the opinion that the amendment application should be rejected. The advocate member held that the amendment sought amounted to furnishing further particulars and such an amendment could be allowed under Section 83(3), Representation of the People Act, 1951. In the alternative he held that even if the amend-ment went beyond furnishing other and further particulars, the application could be granted under Order 6, Rule 17, Civil P. C. The Chairman did not express any definite opinion but held that the petition could be granted as it came either under one provision or the other. The third member, however, held that the petition -could not be granted either under Section 83(3) of the Act, as by it certain

new grounds were being introduced, or under Order 6, Rule 17, Civil P. C.

4. Certain previous proceedings were referred to at the Bar, though we do not see much relevancy or bearing of those proceedings. The election petition was filed on 10-6-1952 and one of the opposite parties to the petition was Balbhadra Singh who had stood for election but had lost. He filed a written statement in which he mentioned certain new facts for invalidating the election. They were that certain Government Officers had helped in the election of the returned candidate. When the petitioner came to file his replication on 16-1-1953, he borrowed the allegations from Balbhadra Singh's written statement and put them in the replication.

On 31-10-1953, the replication came up for consideration before the Tribunal and all the members were unanimously of the opinion that the replication must be confined to the allegations made in the written statement and new matter could not be introduced in it. An alternative argument that it amounted to furnishing better and further particulars was also rejected. On 13-11-1953, by a majority it was held that the opposite party No. 10 could not in his written statement raise new grounds for unseating the returned candidate. It is not urged that either of the two orders debarred the Tribunal from considering the application dated 27-2-1953, and passing the order dated 28-11-1953.

5. What, however, is urged is that the Election Tribunal has no power to allow new grounds to be introduced in the election petition by way of an amendment under Order 6, Rule 17, Civil P. C. and under Section 83(3), of the Act the petitioner can only be allowed to amend the particulars or give such further and better particulars in regard to any matter referred to in the petition, as may be necessary in the opinion of the Tribunal for ensuring a fair and effectual trial of the petition. Reference has also been made to a decision of this Court in -- 'Audesh Pratap Singh v. Brij Narain', AIR 1954 All 245 (A), where an argument was advanced by the learned Counsel for the petitioner that the Tribunal had allowed new allegations to be made after the period of limitation had expired so as to make it a new petition. It was held that the amendments permitted by the Tribunal could not be said to have so radically changed the petition as to make it a new one. While dismissing the application, however, the learned Judges expressed an opinion that "no amendment of the petition was sought and the Tribunal would have had no power to allow it if it had been asked for."

6. In the case before us, the petition for amendment purported to be under Section 83(3) of the Act and the advocate member of the Tribunal held that it did come under Section 83(3) though he expressed an alternative opinion also. The Chairman placed it in the alternative without expressing any preference for either of the two grounds. It is, therefore, urged that the decision of the majority is based on the finding that the amendment sought amounts merely to furnishing further particulars, as the allegations in paragraph 7C of the original petition were vague and indefinite and no details were furnished about the Government servants whose support had been onlisted by the returned candidate. Learned counsel's argument that a village headman is not a Government servant is met by the provisions of Section 123(8), Clause (b) of the Act under which a village headman is included in the category of persons serving under the State Government.

7. It has been held by their Lordships of the Supreme Court as also by this Court that the jurisdiction of this Court under Article 226 of the Constitution is discretionary and that this Court would not issue a writ of certiorari unless the Tribunal has acted without jurisdiction or the decision is palpably erroneous. The law has been discussed at some length in the latest decision of the Supreme Court in -- 'T. C. Basappa v. T. Nagappa', AIR 1954 SC 440 (B). Their Lordships have made it clear that the High Courts cannot constitute themselves Courts of appeal either on questions of fact or on questions of law. A mere wrong decision cannot be corrected by a writ of certiorari. It must be a patent error before we can interfere.

8. The application was made under Section 83(3), Representation of the People Act, 1951. The claim made was that by that application no fresh grounds were being introduced in the elect-ion petition but only further particulars regarding points already raised were being given. The tri bunal had the right to decide whether the petition did or did not come under Section 83(3). It took the view that it did and that there was no material change in the election petition and the amendments sought were merely in the list of particulars. The tribunal may have been right or the Tribunal may have been wrong, but this writ application neither raises a question of jurisdiction nor can it be said that it is such a patent error or the decision is so palpably erroneous that we can interfere under Article 226 of the Constitution.

9. In the circumstances we do not consider that this is a fit case in which we should interfere. The application is, therefore, dismissed but we make no order as to costs. The stay order is discharged.

10. Learned counsel has asked for leave to appeal to the Supreme Court under Article 132 of the Constitution. Leave can be granted under Article 132 only in a case involving a substantial question of interpretation of the Constitution. No such question arises. Leave is, therefore, refused.