

## **Dr. Brijendra Swarup vs Election Tribunal, Lucknow And Ors. on 14 September, 1955**

**Equivalent citations: AIR1956ALL111, AIR 1956 ALLAHABAD 111, ILR (1956) 2 ALL 731**

### **JUDGMENT**

Randhir Singh, J.

1. This is a petition on behalf of one Dr. Brijendra Swarup who was one of the persons elected from the U.P. Graduates Constituency (West) to the U.P. Legislative Council, for the issue of a writ of certiorari to quash the order of the Election Tribunal dated 12-1-1955 and for certain other directions to be issued to the Election Tribunal.

2. It appears that after the election of the applicant, an election petition was presented by opposite party No. 5 for the setting aside of the entire election on the ground that it was void under Section 100(1), Representation of the People Act, 1951. Certain allegations were made in this election petition and they were controverted on behalf of the applicant.

It was alleged on behalf of the petitioner that allegations in paras. 10 to 14 and 19 to 28 of the election petition were not material for the grant of the relief prayed for. The Election Tribunal, however, did not agree with the contentions raised on behalf of the applicant and proceeded to record evidence.

The applicant then made an application for a writ which came up for hearing before a Division Bench of this Court. A view was expressed by the Election Tribunal that it was open to it to go into the question of the invalidity of the election of a particular candidate while deciding whether the entire election was void and similarly in deciding whether the election of a particular candidate was invalid it was open to the Tribunal to go into the question of the entire election being void.

In the writ petition which was presented earlier by the applicant it was argued that the view expressed by the Election Tribunal was not correct and that it was not open to the Election Tribunal to go into the invalidity of the election of a particular candidate while deciding whether the entire election was void nor was it open to a petitioner to claim the reliefs mentioned in Section 84(a)(b)(c), Representation of the People Act, in the alternative.

This contention of the applicant made in the earlier writ petition was accepted by this Court and in view of the fact that the view taken by the Election Tribunal was so palpably erroneous as to

complicate matters further it was thought fit to issue a direction for the correction of this error at that stage. After the first writ petition was decided the proceedings commenced in the Election Tribunal.

3. An application was made by the present applicant before the Election Tribunal asking it to give effect to the order of the High Court passed in the writ petition. It was desired that paras. 10 to 14 and 19 to 28 as also paras 4 to 7 of the election petition should be deleted and it was argued that it was the intention of the High Court in granting the writ that these paragraphs should be omitted.

After hearing this application the Tribunal held that the allegations made in paras 11 to 14 were not material for the decision of the election petition but the allegations made in the other paragraphs were material subject to certain observations made by them. This order was passed by the Election Tribunal on 12-1-1955. After this order had been passed issues were framed and the Tribunal commenced recording evidence.

The petitioner objected to the admissibility of certain evidence with regard to the age of one Sri Virendra Swarup, opposite party No. 10. The Tribunal, however, did not agree with this contention and the applicant has come up with the writ petition which is before us.

4. One of the grounds on which the whole election was challenged was that the nomination paper of Sri Virendra Swarup was improperly accepted by the Returning Officer. It has been argued on behalf of the applicant that the Tribunal should not have gone into the question of the propriety of the acceptance of the nomination paper of Sri Virendra Swarup as it was a question covered by Section 100(2)(c) of the Representation of the People Act and not by Section 100(1)(c).

Reliance has been placed on a ruling of the Supreme Court, 'Durga Shankar Mehta v. Raghuraj Singh', AIR 1954 SC 520 (A). In this reported case it was observed by their Lordships of the Supreme Court that a Returning Officer before whom a nomination paper was presented was bound to accept a nomination paper if a candidate appeared to be fully qualified on the face of the electoral Roll and no objection with regard to the validity of the nomination was made at that time.

On the strength of this decision it has been argued that Sri Virendra Swarup appeared to be fully qualified on the face of the electoral roll and as such even if he was, in fact, not of the qualifying age which was 30 years the case was tot covered by Section 100(1)(c) but by Section 100(2)(c).

5. A printed copy of the electoral roll has been filed on behalf of the opposite party and it shows that the age of Sri Virendra Swarup as entered in this electoral roll was 26. The applicant has filed a certified copy of the electoral roll which shows that the age of Sri Virendra Swarup was 29 years.

We refrain from expressing any opinion as to what was the age which was recorded in the electoral roll at the time when it was filed along with the nomination paper as that might be the subject of an inquiry before the Tribunal as the age entered in the electoral roll was below the qualifying age.

It cannot, therefore, be argued that some inquiry, howsoever, preliminary or summary was not necessary for the Returning Officer in order to find out whether Sri Virendra Swarup was or was not of the required age at the time of the nomination and it cannot be said, that Sri Virendra Swarup appeared to be qualified on the face of the electoral roll. An issue has already been framed by the Election Tribunal on this point and it is as follows:

"Does the case as regards nomination of Sri Virendra Swarup come within the purview of Section 100(1)(c) or within the purview of Section 100(2)(c) only?"

It will, therefore be open to the Election Tribunal to decide the point as to whether the question involved, was covered by Section 100(1)(c) or Section 100(2)(c). Any evidence which will be necessary to arrive at a conclusion on this issue will therefore, be material for the decision of the election petition.

6. The contention that directions were issued by this Court in the earlier writ petition to the Election Tribunal to strike off paras 10 to 14 or 19 to 28 is evidently unsound as we do not find from the order passed in the earlier writ petition that any such direction was issued by this Court.

It was left entirely to the Election Tribunal to decide whether the allegations contained in these paragraphs were material in view of the observations made by the learned Judges in their judgment and the view of the law taken by them. No specific directions for striking out any of the paragraphs were issued by this Court.

In view of these circumstances it was open to the Tribunal to consider after hearing the parties whether the allegations made in any of the paragraphs of the election petition should or should not be allowed to be retained. It is not open to this Court while exercising jurisdiction under Article 226 of the Constitution to take into consideration all these facts as alleged by the applicant.

It was under very special circumstances when this Court found that a palpably erroneous view of the law was held by the Tribunal that it thought fit to interfere and issued a direction to the Tribunal. The question as to whether certain evidence should or should not be allowed is entirely within the discretion of the Tribunal and it cannot be said that that discretion can be interfered with in a writ petition.

7. We, therefore, find that on none of the grounds made out in the application any of the directions sought to be issued to the Election Tribunal would be issued by this Court.

8. The application has, therefore, no force and is dismissed with costs, which we assess at Rs. 200/-, to the opposite party No. 5 who is the only contesting party. In view of the above orders no separate orders are required on Civil Miscellaneous Application No. 854 of 1955.