Chandrika Prasad Tripathi vs Shri Siv Prasad Chanpuria & Others on 9 April, 1959

Equivalent citations: 1959 AIR 827, 1959 SCR SUPL. (2) 527, AIR 1959 SUPREME COURT 827, 1959 ALL. L. J. 494, 1959 BLJR 486, 1959 SCJ 962

Author: P.B. Gajendragadkar

Bench: P.B. Gajendragadkar, Bhuvneshwar P. Sinha, K.N. Wanchoo

PETITIONER:
CHANDRIKA PRASAD TRIPATHI

Vs.

RESPONDENT:
SHRI SIV PRASAD CHANPURIA & OTHERS.

DATE OF JUDGMENT:
09/04/1959

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
SINHA, BHUVNESHWAR P.
WANCHOO, K.N.

CITATION:
1959 AIR 827 1959 SCR Supl. (2) 527
CITATOR INFO :
R 1983 SC 558 (25)

ACT:
Election Petition--Security deposit-Dismissal of Petition by Election Tribunal for defect in deposit-Appeal to High Court, if competent-Representation of the People Act, 1951 (43 Of 1951), ss. 90(3), 98, 116-A and 117.

HEADNOTE:
Respondent I filed an election petition challenging the election of the appellant. The security required to be deposited under s. 117 Of the Representation of the People Act, 1951, was made in the following terms:
" Security deposits for Election Petition of Bargi Assembly Constituency No. 97, Distt. Jabalpur, Madhya Pradesh.

Refundable by order of the Election Commission of India, New Delhi."

Before the Election Tribunal the appellant made an application alleging that there was non-compliance with the provisions s. 117 inasmuch as (i) the deposit was not in favour of the Secretary to the Election Commission, and (ii) the amount was only refundable to the depositor and would not be payable to appellant in case the petition was dismissed under s. 90(3). The Tribunal upheld the objections and dismissed the petition under s. 00(3). Respondent I preferred an appeal under s. 116-A of the Act to the High Court. The High Court allowed the appeal, set aside ,the order of the Tribunal and sent back the petition for trial. The appellant contended that no appeal lay to the High Court and that there was non-compliance with the provisions of s.117.

Held, that, an appeal lay to the High Court under s. 116-A of the Act against the dismissal of the election petition under S. 90(3) by the Tribunal. The order passed by the Tribunal under s. 90(3) was an order passed at the, conclusion of the trial of the petition and was in substance and in law one under s. 98. Once an election petition was entrusted to the Tribunal the trial started and any order passed by the Tribunal which concluded the trial was an order at the conclusion of the trial.

Harish Chandra Bajpai v. Tirloki Singh, [1957] S.C.R. 370, referred to.

Gulsher Ahmad v. Election Tribunal, A.I.R. 1958 Madh. Pra. 224, approved.

Held, further that, there had been substantial compliance with the provisions of s. 117 of the Act. Section 117 was not to be strictly or technically construed and a substantial compliance with its requirements was sufficient. The security in this case

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had been made in respect of the election petition in question and it had been credited towards the accounts of the Election Commission. The use of the words " refundable " would not prevent the Election Commission from making an order of payment of the amount to the successful party.

Kamraj Naday v. Kunju Thevar, A.I.R. [1958] S.C. 687, applied.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 343 of 1958. Appeal by special leave from the judgment and order dated March 8, 1958, of the Madhya Pradesh High Court in First Appeal No. 141 of 1957, arising out of the judgment and order dated December 5, 1957, of the Election Tribunal, Jabalpur, in Election Petition Case No. I of 1957. G. C. Mathur, for the appellant.

P. Rama Reddy and R., Mahalingier, for respondent No. 1. 1959. April 9. The Judgment of the Court was delivered by GAJENDRAGADIKAR, J.-This appeal by special leave arises out of an election petition filed by respondent I (No. 320 of 1957) before the Election Commission, New Delhi, in which he prayed that the appellant's election to the Madhya Pradesh Legislative Assembly from Bargi constituency should be declared to be void and that it should be further declared that he had himself been duly elected from the said constituency. The polling for the election in question was taken on March 9, 1957, and the result was declared on March 12, 1957. Of the three candidates who had stood for election, the appellant secured 9308 votes, respondent 1, 8019 votes and the third candidate, respondent 2, 3210 votes.

The petition filed by respondent I was entrusted to the Election Tribunal, Jabalpur, for trial. On October 12, 1957, the-appellant filed before the Election Tribunal, an objection under s. 90, sub-s. (3) of the Representation of the People Act, 1951 (hereinafter called the Act), alleging that respondent 1 had not complied with the provisions of s. 117 of the Act in regard to the making of the deposit of the security for costs and praying that his election petition should be dismissed on that account under s. 90, sub-s. (3) of the Act. Respondent I disputed these allegations and urged that there was no justification for dismissing his petition under s. 90, sub- s. (3) of the Act.

By its order passed on December 5, 1957, the Election Tribunal held that the provisions of s. 117 were mandatory and that they had not been complied with by respondent 1. ID the result the application filed by the appellant was allowed, his objection was upheld and the election petition presented by respondent I was dismissed under s. 90, sub-s. (3) of the Act.

On December 27, 1957, respondent I preferred an appeal in the High Court of Madhya Pradesh at Jabalpur against the said order (Appeal No. 141 of 1957). In the High Court a preliminary objection was urged on behalf of the appellant that the appeal preferred by respondent I was incompetent under s. 116A of the Act. This objection was overruled and the merits of the appeal were considered by the High Court. On the merits the High Court held that respondent I had substantially complied with s. 117 and so the order passed by the Election Tribunal dismissing the election petition filed by respondent I was set aside and the said petition was sent back to the Election Tribunal for disposal in accordance with law.

On February 22, 1958, the appellant applied to the High Court for a certificate of fitness but his application was dismissed. Thereupon the appellant applied for, and obtained, special leave to appeal from this. Court on April 14, 1958. That is how this appeal has come to this Court. The first point which calls for our decision in this appeal is whether the High Court was right in holding that the appeal preferred before it by respondent I was competent. The appellant's contention is that the impugned order was passed under s. 90, sub-s. (3) and no appeal is provided against such an order under s. 116A. Section 116A provides that an appeal shall lie from every order made by the tribunal under s. 98 67 or s. 99 to the High Court of the State in which the tribunal is constituted. We are not concerned in the present appeal with s. 99. The case for respondent I is that in substance and in law the impugned order must be deemed to have been passed under s. 98. That is the view which the High Court has taken and we are satisfied that the High Court is right.

It is true that in terms and in form the order was passed under s. 90 sub-s. (3); and it is also true that the right to prefer on appeal is a creature of the statute and no appeal can be held to be competent unless it is shown that such a right flows from the relevant statutory provision itself, In order to decide whether or not an order passed under s. 90, sub-s. (3) can be regarded in law and in substance as an order passed under s. 98, it would be relevant to consider the scope and effect of the provisions of the said two sections. Section 98(a) provides that at the conclusion of the trial of an election petition the tribunal shall make an order dismissing the election petition. There is no doubt that in the present case the Election Tribunal has dismissed the election, petition filed by respondent 1. But the appellant's contention is that this dismissal cannot be said to be under s. 98(a) because the order dismissing the petition has not been passed at the conclusion of the trial of the election petition. This argument is not well-founded. Section 90, subs. (3) under which the impugned order purports to have been passed occurs in ch. III of Pt. VI which deals with the trial of election petitions. In other words., s. 90, sub-s. (3) confers power on the tribunal to dismiss the election petition after the trial of the election petition has commenced. The scheme of ch. III clearly indicates that once an election petition is referred to an Election Tribunal for trial under s. 86 the tribunal is possessed of the petition and all proceedings before it are proceedings in the trial of the said petition. Section 85 shows that for failure to comply with the provisions of ss. 819 82 and 117, the Election Commission is empowered to dismiss the election petition. If the Election Commission exercises its jurisdiction and passes an order dismissing any election petition, it may be said that the election petition never reached the stage of trial ; but once the petition has passed the scrutiny of the Election Commission under s. 85 and it has been referred. to the Election Tribunal for trial, any, further action taken by the parties or any order passed by the tribunal under the said petition would constitute a part of the trial of the said petition. This question has been incidentally considered by this Court in Harish Chandra Bajpai v. Triloki Singh (1) while it was dealing with s. 90, sub-s. (2) of the Act; and it has been held that " the provisions of ch. III read as a whole clearly show that I the trial is used as meaning the entire proceedings before the tribunal from the time the petition is transferred to it under s. 86 until the pronouncement of the award ". Therefore, there can be no doubt that the order passed under s. 90, sub-s. (3) is an order passed at the conclusion of the trial. It is true that it is an order on a preliminary point of law raised by the appellant; but even so the decision of the preliminary issue is undoubtedly a part of the trial of the petition and it cannot be said that the order passed on such a preliminary point is not an order passed at the conclusion of the trial when it, in fact, concludes the trial. Section 90, sub-s. (3) provides that the tribunal shall dismiss an election petition which does not comply with the provisions of ss. 81, 82 or 117 notwithstanding that it has not been dismissed by the Election Commission under s. 85. It would thus be clear that an objection raised against the competence of the election petition on the ground that the provisions of the aforesaid sections have not been complied with can be considered by the Election Commission suo motu under s. 85 and if it is upheld the election petition can be dismissed without any further enquiry; but if the Election Commission does not dismiss the petition under s. 85, then the same objection can be raised before the Election Tribunal by the respondent to the election petition ; and when it is so raised it assumes the character of a preliminary objection and (1) [1957] S.C.R. 370,387.

is dealt with by the Election Tribunal as any preliminary objection would be dealt with by a civil court under the Code of Civil Procedure. That being so, a preliminary objection has been tried and

the decision on the preliminary objection being in favour of the respondent the election petition is dismissed. Though the order of dismissal in form may be under s. 90, subs. (3), it is in substance and in law an order of dismissal passed at the conclusion of the trial and must be deemed to be an order under s. 98(a). That is the view which the Madhya Pradesh High Court has taken in Gulshar Ahmed v. Election Tribunal(1) and it was this decision which was followed by the High Court in the present proceedings. In our opinion, therefore, the contention raised by the appellant that the appeal preferred by respondent I- before the High Court was incompetent must be rejected.

The question of construing s. 90 can be considered from another point of view. It provides for the procedure before the tribunal and lays down that it is open to the tribunal to dismiss an election petition under s. 90, sub-s. (3); but this being a procedural provision is would not be unreasonable to hold that, when the actual order dismissing the petition is passed, it would be referable to the provisions of s. 98(a). The same conclusion would follow if we consider the provisions of ss. 103, 106 and

107. It cannot be suggested that the order passed by the tribunal dismissing the election petition for noncompliance of s. 117 is not required to be communicated to the Election Commission under s. 103 or transmitted by the Election Commission to the appropriate authority under s. 106. Similarly it cannot be said that such an order would not take effect as soon as it is pronounced by the tribunal under s. 107. It would thus be noticed that though the provisions of these sections are obviously applicable to an order dismissing the election petition on the ground of non- compliance of s. 117, in terms the said sections refer to orders passed under s. 98 or s. 99. Therefore, we think it would be reasonable to hold that, where the tribunal dismisses an election petition by virtue of the provi- (1) A.I.R. 1958 Madh. Pra, 224.

sions contained in s. 90, sub-s. (3), the order of dismissal must be deemed to have been made under s. 98. Similarly s. 99(1) (b) which empowers the tribunal to fix the total amount of costs payable and to specify the person by and to whom that shall be paid in terms refers to cases where an order is made under s. 98. It cannot be suggested that, where an order of dismissal is passed under s. 90, sub-s. (3), the tribunal cannot, make an appropriate order of costs. This provision also indicates that-the order passed under s. 90, sub-s. (3) is in law and in substance an order passed under s. 98(a). It is true that in cases where such ail order is passed s. 99(1)(a) would not come into operation, but that can hardly affect the position that an order' under s. 90, sub-s. (3) is nevertheless an order under s. 98.

We would like to add that by Act 58 of 1958 an explanation has been added to s. 90, sub-s. (3) which clarifies the legislative intention on this point. This explanation provides that an order of the tribunal dismissing an election petition under this sub-section shall be deemed to be an order made under cl. (a) of s. 98. After the enactment of this explanation there can be no doubt that ail order passed under s. 90, sub-s. (3) would be appealable under s. 116 A of the Act.

That takes us to the second point raised by the appellant that the High Court was in error in holding that respondent I bad complied with the provisions of s. 117 of the Act. Section 117 provides that the petitioner shall enclose with the petition a Government Treasury Receipt showing that a deposit of

Rs. 1,000/has been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Secretary to the Election Commission as security for costs of the petition. In the present case, respondent 1 has deposited the requisite security, but it is urged that the security has not been deposited as required by s. 117. This is how the security deposit has been made Under Amount.

By whom On what account. rupees in brought. words. Rs. A. P. Shiv Prasad Security deposits for Rs. One 1,000-0-0. Chanpuria. Election Petition of Thous-

Bargi Assembly Con- and and stituency No. 97 one D i s t t., Jabalpur, only.

Madhya Pr ad es h.

Refundable by order of the Election Commission of India, New Delhi.

Total ... 1000-0-0.

The argument is that the security has not been deposited in the name of the Secretary to the Election Commission as required by s. 117 and it is deposited with the condition that it is refundable by the order of the Election Commission of India. In other words, the only power which the Election Commission of India can exercise in respect of the security is to refund the amount to respondent I ; and it would not be competent to the Commission to direct the amount to be paid to the appellant even if the election petition filed by respondent I is dismissed with costs. In our opinion, this objection is purely, technical. It has recently been held by this Court in Kamaraj Nadar V. Kunju Thevar (1) that s.117 should not be strictly or technically construed and that wherever it is shown that there has been a substantial compliance with its requirements the tribunal should not dismiss the 'election petition under s. 90, sub- s. (3) on technical grounds. Indeed it is clear that the receipt with which this Court was concerned in the case of Kamaraj Nadar (1), was perhaps slightly more defective than the receipt in the present case. The argument based on the use of the word " refundable " ignores the fact that the security in terms has been made in respect of the election petition in question and it has been duly credited as towards the account of the Election Commission. Therefore, there can be no doubt that if an (1) A.I.R. 1958 S.C. 687.

occasion arises for the Election Commission to make an order about the payment of this amount to the successful party the use of the word "refundable" will cause no difficulty whatever. We hold that the security has been made by, respondent. 1 as required by S. 117 of the Act and would be at the disposal of the Election Commission in the present proceedings.

We would like to add that even s. 117 has been subsequently amended by Act 58 of 1958 and the reference to the Secretary has been deleted.

The result is the appeal fails and must be dismissed with costs.

Appeal dismissed.