Allahabad High Court
Bhusan Saran vs Onkar Singh And Ors. on 26 April, 1956
Equivalent citations: AIR 1956 All 715
Author: N Beg
Bench: Desai, Beg
JUDGMENT Nasirullah Beg, J.

1. This is a writ petition praying for the issue of a writ of certiorari quashing the judgment and proceedings of an Election Tribunal. The dispute in connection with which the case before the Election Tribunal arose related to the election of members of ward No. 3 of Pilibhit Municipality. This ward is a two member constituency. The election for membership is said to have been held on 26-10-1953. The following four persons were rival candidates for membership of Pilibhit Municipality from the said ward:

(1) Sri Bhushan Saran who is the applicant in this writ petition;

(2) Sri Rameshwar Dayal Gupta;

(3) Sri Shankar Lal; and (4) Sri Hargopal Agarwal.

On 29-10-1953 the result of the said election was announced. Sri Shankar Lal was found to have obtained 954 votes while Sri Bhusan Saran, Sri Hargopal Agarwala and Sri Rameshwar Dayal Gupta were found to have secured 700, 697 and 544 votes respectively. As a result, Sri Shankar Lal and Sri Bhushan Saran were declared duly elected for membership of Pilibhit Municipality from ward No. 3.

2. On 27-11-1953 an election petition was filed by 14 voters of the said ward against Sri Bhushan Saran, one of the elected candidates, praying for a declaration that the election of the said candidate from ward No. 3 was invalid and for a further declaration that Sri Hargopal be declared to have been duly elected in his place. This election petition was based on a number of grounds. It is not necessary to mention all of them here.

The ground that is relevant at this stage is, that the election was invalidated by reason of the improper rejection and improper admission of votes.

In this connection reference was made to the following forn voters on the electoral roll :

Serial number in the electoral roll Name Husband's Name Mohalla Ram Kali Kishan Lal Asaf Jan Dhanka Devi Brij Bhukan Lal Mohtashim Khan Rani Devi Rishi Ram Sharma Do.

Asudan Maula Bux Khairullah Shah

3. The case of the petitioners in the election petition was that none of the above-mentioned lour voters voted for Sri Bhushan Saran in the first instance and that all the four voters mentioned above cast their votes only by tendered votes in favour of Hargopal.

4. It would appear that on 9-4-1954 an application for amendment was made on behalf of the petitioners. By this application the petitioners in the election petition sought to add a fifth instance namely that of Khushnudi Begum of Mohalla Khairullah Shah, Serial No. 294. It was alleged that this voter had doubly voted, and both the votes were counted in favour of' Shri Bhushan Saran and therefore, one of the votes in his favour should be excluded.

5. Sri Bhushan Saran respondent in that petition contested the petition. In reply to the above plea his case was that the real voters had voted in the first four cases mentioned above in the first instance and there was no personation. With regard to the instance relating to Khushnudi Begum, it was pleaded on behalf of the respondent that she had cast only one vote. It was further pleaded that the amendment application was barred by limitation.

6. On 13-6-1955 Sri Onkar Singh, Election Tribunal Judge, Pilibhit, pronounced his judgment in the said case allowing the petition with costs. The election of Sri Bhushan Saran respondent was ret aside and Sri Hargopal was declared elected in place of Sri Bhushan Saran. The present writ petition is directed against the said judgment and seeks to quash the order passed by the Judge of the Election Tribunal setting aside the election of Sri Bhushan Saran and declaring Sri Hargopal to be elected in his place.

7. The first point urged by the learned counsel for the applicant was that the trial Judge had no jurisdiction to allow the amendment application as, according to him, the hearing of the case had not started at that time. In this connection the learned counsel for the petitioner invited our attention to Section 23, U. P. Municipalities Act, 1916 (Act 2 of 1916) which lays down the procedure to be followed by the Judge in municipal election cases.

According to this section the procedure provided in the Code of Civil Procedure in regard to suits would, so far as it is not inconsistent with the Municipalities Act and so far as it can be made applicable to it, be followed in the hearing of election petitions. In this case the amendment was allowed on 9-4-1954, which was the date fixed for the filing of the written statement.

The appellants' contention is that the hearing of the petition had not commenced on or before 9-4-1954, that consequently the provisions of the Code of Civil Procedure had not become applicable and that the Tribunal had no jurisdiction to allow the amendment. He argued that the hearing of a petition commences with the examination of parties under Order 10 of the Code and ends with the arguments after the oral evidence is recorded.

We find it difficult to accept this contention. It appears to us that the word "hearing" in Section 23, U. P. Municipalities Act, 1916, is used in a broad sense to cover the entire stage of trial and not in the restricted sense of only a particular stage beginning with the examination of parties under Order 10 Civil P. C. and ending with the arguments in the case. The result of accepting the contention of the learned counsel is that there would be no procedure at all which would govern the proceedings relating to the filing of the petition, the filing of the written statement and all other proceedings anterior to the date of oral pleadings under Order 10, Civil P. C.

Further there would be no provision for the procedure governing the case alter the arguments are closed. The writing of judgment would come after the hearing of the case and, therefore, if the argument of the learned counsel were accepted, even the judgment need not comply with the provisions of the Code at all. This would obviously not be a very reasonable interpretation of Section 23. Not only is a petition to be heard by a Tribunal, but also it may be presented before it, and it would be anomalous if there were no provision to govern the stage between toe receipt of the petition, and the oral examination under Order 10 of the Code.

The provisions of Section 23 (2) (a), U. P. Municipalities Act show that all the provisions of Order 1, Civil P. C. are applicable to the hearing. This means, that the hearing commences with the receipt of the petition by the Tribunal. The provisions of Section 23(2)(a) of the same Act indicate that the hearing includes the passing of the judgment, there is, no good reason to restrict its commencement as suggested.

8. In support of his contention the learned counsel referred to a case reported in Sitaram Hirachand Birla v. Yograj AIR 1953 Bom 293 (A) and a judgment of this Court in Writ Petition No. 169 of 1950. None of these cases appears to us to be applicable to the facts of the present case, in the Bombay case the question did not directly arise. The Court was construing the meaning of the word "trial" and in that connection a reference was made to the meaning of the word "hearing". Any observations in this regard were therefore, obiter dicta.

In the judgment in Writ Petition No. 169 of 1950 (B) it was observed that determination of costs in the decree is not a part of the hearing of the case... It is obvious that a decree is framed after the judgment is pronounced and the case is finished, and, even if the law laid down in the said case is accepted to be correct, we do not see how it would help the learned counsel for the applicant in the present case.

On the other hand, the latest decision of this Court reported in Amir Ullah v. L.P. Nigam 1956 All LJ 189 (C) is directly opposed to the contention of the learned counsel. In that case it was held that there is no clearly accepted difference between a trial and a hearing and the procedure provided in the Code of Civil Procedure, except as otherwise provided by the U. P. Municipalities Act or any rule, applies to the entire proceedings before the Election Tribunal. Therefore, an Election Tribunal can exercise the power of amendment conferred on a Court under Order 6 Rule 17, Civil P. C., and can allow an election petition to be amended. We are in agreement with the view expressed in this case. Accordingly, we find no substance in this part of the arguments of the learned counsel.

9. The next contention of the learned counsel was that the amendment application as a result of which one more instance of Khushnudi Begum was added to the petition could not have been made after the expiry of the period of limitation. No doubt this point was taken in the written statement filed by the respondent in the writ petition. No issue was framed on this point.

The learned counsel for the applicant was also unable to specifically point out any ground relating to this plea of limitation in his long writ petition which covers no less than 93 paragraphs and runs 33 closely typed pages. Under the circumstances, we are not inclined to entartain any argument based

on this plea.

Moreover we consider it unnecessary for the purposes of this case to go further into the matter as it is conceded by the learned counsel for the applicant that even if the case of the petitioner relating to Khushnudi Begum based on the amendment application is left out of consideration, the result would be the same if the finding with regard to the four cases which were set out in the initial writ petition is sustained.

10. The next argument of the learned counsel for the petitioner was that no value could be attached to any of the election records presented in this case, as the sanctity of the election records was not maintained. He argued that the Judge of the Election Tribunal had no jurisdiction to call for the election record from the District Magistrate and allow its inspection to the petitioner. The learned counsel was unable to point out any provision of law which debarred the Judge of the Election Tribunal from requisitioning the election records relating to the case with which he was dealing.

11. The learned counsel further argued that the record should not have been allowed to be inspected by the petitioner in the absence "of the respondent or his counsel. He conceded that some officer of the Court was present throughout the time when the inspection was allowed, and the inspection took place under his supervision. He also failed to point out any evidence which would indicate that the record was tampered with by any party during the course of transmission or after its requisition by the Judge of the Election Tribunal. In this situation we are of opinion that the argument of the learned counsel for the petitioner on this point is devoid of all merit and must be rejected.

12. The next argument of the learned counsel for the applicant was that the finding of the trial Judge in respect of the four cases of tendered votes mentioned in the initial election petition was vitiated owing to a misreading of evidence on record by the trial Judge. It may be recalled at this stage that the four cases referred to in this connection are the cases of Ram Kali, Asudan, Dhanka Devi and Rani Devi.

In respect of all these cases the case of the petitioners before the Election Tribunal was that the real voters had not cast their votes in the first instance and that they had cast their votes only by means of tendered ballot papers in favour of Sri Hargopal. The plea as set out in the petition Was quite clear and definite. In reply to this plea the respondent in that case Sri Bhushan Saran stated in his additional pleas that the real voters voted at the above mentioned four numbers in the first Instance and there was no personation.

In view of the above state of pleadings the sole question that arose before the Court was whether the real voters had voted in the first instance as alleged by the respondent Sri Bhushan Saran or the real voters had voted only subsequently by means of tendered votes as alleged by the petitioners in that election petition. The issues in the case were also framed keeping in view the two respective cases set up by the contending parties in the petition and the written statement.

The petitioners also adduced a considerable body of evidence, both documentary as well as oral, in support of the case set up by them in their petition and in rebuttal of the case set up by the

respondent in his written statement. However, there was a material departure between the case set up by Sri Bhushan Saran in the pleadings as incorporated in his written statement and the case as set up by him in his oral evidence.

In spite of the fact that Bhushan Saran's case in regard to all the four voters including Ram Kali and Asudan was that the real voters had voted in the first instance, his evidence was to the effect that the real voters in the first instance were not Ram Kali, and Asudan at Nos. 26 and 226 but some other voters at some other number and that numbers 26 and 226 were ticked off by mistake by the polling officer. This was quite a new case and was unwarranted by the pleadings set up by him. This was the main reason why the trial Judge accepted the evidence adduced on behalf of the petitioners in the election case and disbelieved the case of Sri Bhushan Saran in respect of the above two cases.

In fact, a Court would be justified in not looking at all into evidence in support of a case which was not pleaded at all and which the other party was never called upon to meet. With regard to Dhanka Devi and Rani Devi learned counsel for Sri Bhushan Saran contended that the petitioners in the election case had failed to substantiate their case that the real voters cast their votes only by tendered ballot papers and not in the first instance.

The finding of the trial Judge in all the four cases was to the effect that the real voters had not voted in the first instance, that they had cast their votes only by tendered ballot papers and that in all the four cases mentioned above the genuine votes were cast in favour of Sri Hargopal. The findings arrived at by the trial Judge in this regard are supported by a large body of evidence, both oral and documentary, which has been referred to at length in the judgment of the trial Judge.

It is not necessary for us to refer to the said evidence in these proceedings as we are of opinion that it is not the function of this Court at this stage to go into the question of sufficiency or insufficiency of evidence. On behalf of the applicant the case seems to have been argued as appeal. While hearing a writ petition it is not open to the Court to meticulously scrutinise the evidence of the parties and to substitute its own findings for the findings of fact arrived at by the lower tribunal.

A Court would not issue a writ of certiorari Unless it finds that the tribunal whose proceedings are impugned had committed a manifest error of law or procedure apparent on the face of the record or had acted in complete disregard of some principle of natural justice or had exceeded the prescribed bounds of jurisdiction.

Learned counsel for the petitioner was unable to point out any such defect to us. It is true that the trial Judge dismissed certain portions of evidence. Thus, for example while discussing the case of Ram Kali he wrongly stated that Harish Chander (D.W. 9), the accounting clerk, admitted that ballot papers of serial Nos. 24 and 26 were both issued. Again, while discussing the case of Dhanka Devi the learned Judge's observation that the respondent Bhushan Saran had produced a certificate of illness of this voter is incorrect.

In fact the certificate of illness did not relate to this voter at all but related to Rani Devi. The learned counsel, no doubt, succeeded in pointing out a number of similar mistakes in the judgment of the

trial Judge. It does appear that the learned Judge was not quite careful in his reference to details of evidence in his judgment. We are, however, of opinion that the erroneous references brought to our notice are not of such a material type as to shake the foundations of the broad conclusions at which he has arrived.

The main consideration that seems to have been the sheet-anchor of his findings appears to be that there was a material departure between the case as set up by Bhushan Saran in his pleadings and the case as set up by him in his evidence. In our opinion this was a consideration of vital importance in the case and a finding based on such a consideration cannot be said to be either perverse, Without jurisdiction or even incorrect.

Even supposing for a moment that we are inclined to take a contrary view of the evidence it is not permissible for us in these proceedings to subvert the findings of fact of the subordinate tribunal and to substitute our own in their place. We are not sitting here as a Court of appeal. There is evidence to support the findings arrived at by him and it cannot be said that, either of the two plausible views cannot reasonably be taken of the evidence produced before the tribunal.

It has to be remembered that the matter which is agitated before us is not even a question of law. It is a question of fact pure and simple, and we are called upon by the learned counsel to review the entire evidence at large and afresh and to record a dissentient view on facts of which the trial Court was the sole judge. This is a course which we feel would be an unwarranted one. Under these circumstances, we have no other alternative but to reject the arguments of the learned counsel and we have done so without calling upon the opposite party in reply.

13. The next argument of the learned counsel for the applicant is that this is a case where the mind of the trial Judge was tainted with bias, and any judgment which is the outcome of such a tainted mentality is liable to be set aside by the issue of a writ of certiorari. On this point it is to be noticed that main reliance is placed by him on certain extraneous matters which happened outside the Court and in respect of which a charge of partiality or bias is levelled against the trial Judge.

It is said, for instance, that the trial Judge was friendly with some persons who were the friends of the rival candidate and belonged to his camp. It is further said that the trial Judge was seen using a jeep belonging to one of the friends of the rival candidate. There is nothing in the proceedings of the case itself to substantiate these allegations.

The charge of bias is made in the affidavit of the petitioner before us and denied by counter affidavit filed on behalf of the opposite parties as well as by the trial Judge. This is a case of oath against oath, and writ proceedings are hardly proceedings suited for an elaborate enquiry into grave charges of this nature -- charges which might require evidence of a voluminous type. To do any such thing would be to condemn unheard a person who is not a party to the case or even a witness in it and who did not have any opportunity of meeting a serious charge against him. This itself, to our mind, would be a violation of a principle of natural justice.

At any rate, in view of the lack of material on this point on the record of the election case these proceedings are not the appropriate proceedings for agitating matters of this nature. We have also considered the merits of these charges, and we have no hesitation in observing that the charges themselves appear to be of a wild character and might very well have been fanciful and baseless.

It may be noticed in this connection that the learned counsel for the petitioner invited our attention to an application of transfer which was the result of a conviction in the mind of Sri Bhushan Saran that the trial Judge was biased in the matter. This application is said to have been moved before the Minister for Local Self Government. The important point to note in this connection is that this application is dated 4-6-1955 and was given after 12-5-1955 when the parties had closed their case.

It is possible that after the evidence Was closed the party preferring the said application might have realised the weakness of his case, and might have given this application in anticipation of the plea that is being raised before us. It is not for us, however, to express any opinion at this stage on the merits of this application. All that We can say is that the material on record is hopelessly insufficient to substantiate any such plea.

14. In this connection learned counsel for the applicant invited our attention to Reg. v. Grimsby Borough Quarter Sessions, (1956) 1 QB 36 (D). Reliance by the learned counsel was put on the following observations by Lord Goddard C.J. at p. 41:

"It is not for every irregularity in the course of a hearing either at petty or quarter sessions that a certiorari would be granted. In our opinion we ought to apply the same rule as in a case where bias on the part of a justice adjudicating is alleged : which was fully considered by this Court in the recent case of Reg. v. Camborne Justices; Ex parte Pearce (1955) 1 QB 41 (E), where, in the result a certiorari was refused. It was there held that there must be a real likelihood of bias and so we would say a real likelihood of prejudice. We emphasize it is likelihood, not certainty". Learned counsel also invited our attention to the following statement of law in Halsbury's Laws of England, Edn. 3, Vol. II, para 123 at pages 67-68: --

"Any pecuniary interest, however small, in the matter in dispute disqualifies a person from acting as judge, unless the disability is removed by statute. Where the interest of the person adjudicating is not pecuniary, the order will not be granted unless it is shown that his interest is substantial and of such character that it will give rise to a real likelihood of bias, or that his decision was actually biased. A mere suspicion, or even a reasonable suspicion, of bias will not of itself suffice."

15. In order to attract the application of the above rule it is incumbent upon a party to show that there is a real likelihood of bias. It is no doubt true that the likelihood need not reach the degree of certainty, but still it cannot be forgotten that the likelihood must be shown to be real and not a fancied one. In the present case, as the above observations made by us will show, no real or even bare likelihood of bias has been shown.

Moreover, before a party can be allowed to raise any argument based on bias, whether real or fancied, it should first of all prove the existence of bias. Unless, therefore, the factum of bias is

established, the foundation for the plea itself does not exist and any superstructure of arguments raised in this connection cannot stand and must fall. In the present case, as we have already shown, there is no evidence on the record of the case for laying any such foundations. Under the circumstances the arguments of the learned counsel on this point cannot be sustained and must be rejected as untenable.

No other argument was advanced before us.

There is no force in this writ application which is, accordingly dismissed with costs.