

(1958) 01 AHC CK 0014

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2603 of 1957

Bhuvanesh Bhushan Sharma

APPELLANT

Vs

Election Tribunal, Farrukhabad and Another

RESPONDENT

Date of Decision : 16-01-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 16, Order 9 Rule 13

Constitution of India, 1950 — Article 226

Representation of the People Act, 1951 — Section 117, 121, 3, 83, 91

Citation : AIR 1958 All 587

Hon'ble Judges : V. Bhargava, J; M.L. Chaturvedi, J

Bench : Division Bench

Advocate : V.K.S. Chaudhory, for the Appellant; Shambhu Prasad, for the Respondent

Final Decision : Allowed

Judgement

V. Bhargava, J.—By this petition under Article 226 of the Constitution the petitioner seeks the issue of a writ of certiorari to quash two orders dated 13th September, 1957, and 21st September, 1957, passed by the Election Tribunal, Farrukhabad. The petitioner and opposite party No. 2 were both candidates for election as members of the U. P. Legislative Assembly from the Single Member Etawah Constituency (No. 150), in the last general elections held in the beginning of the year 1957. On 10th March, 1957, the petitioner was declared as the duly elected candidate.

On 23rd April, 1957, opposite party no. 2 presented an election petition before the Election Commission accompanied by a treasury receipt in respect of a deposit of Rs. 1,000/- as security for costs of the election petition. On 12th May, 1957, the Election Commission passed the order u/s 86 of the Representation of the People Act referring this petition for trial to the Election Tribunal at Farrukhabad. The petition was notified by the Election Commission and the Election Commission fixed the 15th of July, 1957, as the date on which parties

were required to appear before the Tribunal.

On that day opposite party No. 2, who was the petitioner in the election petition, did not appear, whereas the present petitioner appeared and, asked for time to file a written statement. The Tribunal fixed the 5th of August, 1957, as the next date and for that date information through a post card was sent to opposite party No. 2 also. On that date again, opposite party No. 2 did not appear, whereas the present petitioner appeared and filed preliminary objections. Thereafter the next date fixed was 12th August, 1957.

A registered letter was posted addressed to opposite party No. 2 Shri Hakim Haziq on 6th August, 1957, intimating to him that the 12th of August, 1957, had been fixed for the hearing of the petition. On that date, again, opposite party No. 2 was absent. The Tribunal heard the arguments on behalf of the present petitioner and then on 13th August, 1957, rejected the petition. On 14th August, 1957, opposite party No. 2 appeared and presented an application under Order IX, Rule 9 of the CPC requesting that the order of dismissal of the petition in default be set aside.

On 13th September, 1957, the order rejecting the petition passed on 13th August, 1957, was set aside. Thereafter on 18th September, 1957, the objections, which had been earlier filed by the present petitioner, came up. Arguments of parties were heard on those objections and the objections were rejected by the order dated 21st September, 1957. This order of 21st September, 1957, and the order dated 13th September, 1957, setting aside the order of rejection of the petition are the two orders which are challenged by the present writ petition.

2. The ground, on which the validity of the order of 13th September, 1957, is impugned is that, though the provisions of the CPC have been made applicable to the trial of an election petition by the Election Tribunal, there are other provisions in the Representation of the people Act which indicate that the provisions of Order IX, Rule 9 of the CPC cannot be applied to the trial of an election petition.

This inference is sought to be drawn by a reference to Sections 109 and 110 of the Representation of the People Act which make a serious departure from the principle laid down by the CPC for withdrawal of suits already instituted. By these provisions, if a petitioner, who has filed an election petition, wants to withdraw the petition, the petition does not at once become liable to dismissal. The withdrawal, even without any permission to bring a fresh election petition, can only be made by leave of the Tribunal.

When there are more than one petitioner, no application can be made for withdrawal by only one of them without the consent of all others. Then there are special provisions laying down when the Tribunal shall not allow the petition to be withdrawn. Similarly, there are special principles laid down with regard to abatement of election petitions under Sections 112 to 115 of the Representation Of the People Act. Particular reference was made to Section 115 of the

Representation of the People Act under which, after a petition has abated on the death of a petitioner, any person, who might himself have been a petitioner, is allowed, within the time specified, to be substituted as petitioner.

From these various provisions, an inference is sought to be drawn that the rules laid down in the CPC for abatement of suits in such contingencies as the death of a plaintiff or the rules governing the withdrawal of a suit have been made specifically inapplicable to election petitions because election petitions stand on a different footing from suits and are not considered to be proceedings for the enforcement of the individual and personal right of the petitioner alone.

It was urged that, in these circumstances, the absence of a petitioner on a date fixed for the hearing of the petition may not entail its dismissal in default and, even if it is dismissed in default, the petitioner cannot apply for its restoration under Order IX, Rule 9 of Code of Civil Procedure. It was further urged that, once the petition had been dismissed by the Tribunal all jurisdiction of the Tribunal in the matter came to an end and the Tribunal could not, therefore, exercise jurisdiction to restore the petition and start the trial afresh.

The contention was that, under the Representation of the People Act, the jurisdiction of the Tribunal was limited to trying a petition referred to it and once the trial is concluded, the Tribunal becomes functus officio and cannot, therefore, pass any orders by which the petition might be restored. In the present case, it appears to us that it is not at all necessary for us to go into the correctness of these arguments because, in our view, even if they be correct, it is a fit case where we should exercise our powers under Article 226 of the Constitution so as to bring about the position which came into existence as a result of the order of the Election Tribunal dated 13th September, 1957.

It has been found by the Tribunal as questions of fact that opposite party No. 2 did not receive any intimation from the Election Commission that 15th July, 1957, had been fixed as the date of appearance before the Election Tribunal, that there was no evidence that the post card sent to opposite party No. 2 fixing 5th August, 1957, as the date of hearing was ever received by him and that the registered letter posted on 6th August, 1957, intimating to opposite party No. 2 that 12th August, 1957, had been fixed for hearing was actually received by opposite party No. 2 after that date had expired.

These findings of fact clearly show that the information of the three dates fixed for hearing before the petition was rejected by the Election Tribunal, was not received by opposite party No. 2. Shri Hakim Haziq opposite party No. 2 was totally ignorant of the dates when he was required to appear before the Election Tribunal. The petition was dismissed on 13th August, 1957, for default of his appearance when he had not been able to receive information of the dates his non-appearance on which was the cause of rejection of the petition.

The order of 13th August, 1957, rejecting the petition was, therefore, a very unjust order and, in the interest of justice, it was essential that it should be set

aside. The Election. Tribunal has set it aside purporting to exercise its powers under Order IX, Rule 9 of the Code of Civil Procedure. If that provision of law is applicable, the order passed by the Election Tribunal is correct and must be upheld.

If that provision of law is not applicable, we consider that this is a fit case where, the matter having come up before this Court under Article 226 of the Constitution, this Court should now pass an order vacating that order of the 13th of August, 1957, and consequently, this judgment of ours is to be read as setting aside the order of 13th August, 1957, rejecting the petition, in case it be held that the provisions of Order IX, Rule 9 of the CPC are not applicable and that the Election Tribunal was incompetent to pass the order dated 13th September, 1957. In these circumstances, we need not issue any writ quashing the order of the 13th of September, 1957.

3. So far as the order dated 21st September, 1957, is concerned, the two objections raised on behalf of the present petitioner have been decided by it. One objection taken by the petitioner Was that opposite party No. 2 had not complied with the provisions of Section 117 of the Representation of the People Act and, consequently, the petition was liable to dismissal under Sub-section (3) of Section 90 of that Act. The second objection taken was that the various paragraphs containing charges of corrupt practice in the petition were much too vague, so that those paragraphs did not comply with the requirements of Section 83 of the Representation of the People Act and were liable to be struck off. The Tribunal rejected both these contentions.

4. u/s 117 of the Representation of the People Act, the person filing the election petition has to 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. A copy of the treasury receipt, which was enclosed with the petition by opposite party No. 2, has been produced in this Court verified by an affidavit to be a true copy.

The treasury receipt does show that a sum of Rs. 1,000/- was deposited in the Government treasury. It also shows that the deposit was a security for the costs of the petition. The contention of the present petitioner was that this receipt did not show that the deposit was in favour of the Secretary to the Election Commission, so that the receipt did not satisfy the requirements of Section 117 of the Representation of the People Act and, consequently, the election petition was liable to be dismissed u/s 90, Sub-section (3) of the Representation of the People Act.

5. The question turns mainly on the interpretation of the word "showing". It is to be noticed that the word used in Section 117 is "showing" and not "stating". If the word "stating" had been used, the only possible interpretation would have been that it should be written in the receipt itself that the deposit was in favour

of the Secretary to the Election Commission. The significance of using the word "showing" instead of the word "stating" cannot be ignored. The word "show" is defined in various dictionaries as equivalent to "disclose", "make it clear", "make it apparent"; "let it be seen" and "manifest".

The question that arises is whether, to serve the purposes indicated by these meanings of the word "show", it is essential that the receipt should, on the face of it, contain a note in writing that the deposit is in favour of the Secretary to the Election Commission. There is, of course, no doubt that, if this note in so many words had appeared on the receipt itself, it would certainly have shown that the deposit was in favour of the Secretary to the Election Commission, but we are unable to accept the contention that this is the only way by which the receipt could show that the deposit had been made in favour of the Secretary to the Election Commission.

In our opinion, the use of the word "show" indicates that the contents of the receipt should be such that any one who looks at the receipt can arrive at the conclusion that the deposit had been made in favour of the Secretary to the Election Commission. As an example, we may envisage a possibility that the Secretary to the Election Commission might have opened a current account in some bank. That account may be given a specific number or may be designated by some other description which is notified for general information.

If thereafter any deposit had been made in that account, and the receipt, on the face of it, showed that the deposit had been made in that account, we do not see why it should not be held that the receipt showed that the deposit was in favour of the Secretary to the Election Commission. The banking rules are well known under which the person, in whose name a current account stands, has full authority to operate on that account. He can order payment of that amount to any one he likes irrespective of the identity of the person who may have deposited the money in that account.

Consequently, we do not think that the language of Section 117 of the Representation of the people Act can be held to require that the receipt enclosed with the petition must have the words "in favour of the Secretary to the Election Commission" recorded on it. The entry on the receipt of the number of the account or a sufficient description of the account would be quite sufficient to show that the amount has been so deposited that it is entirely at the disposal of the Secretary to the Election Commission, so that the deposit in the bank is a deposit in his favour.

It is in this light that we proceed to examine how far the receipt produced in the present case satisfies the requirements of Section in of the Representation of the people Act. In the receipt, which has been produced, the head of account in which the security amount was deposited is entered. The entry is-

"Central (Civil) Section P--Deposits and advances-- Part II--Deposits not bearing interest-- (C)--Other deposits accounts Civil Deposits--Revenue Deposits

Deposits for election petitions."

This head of account, it appears, was laid down by the Government of India, Ministry of Finance, by their letter No. D-490-BI/52 dated 22nd January, 1952. The letter invited a reference to Section 117 of the Representation of the People Act under which a provision was made that every election petition was required to be accompanied by a Government treasury receipt showing that a deposit of RS. 1,000/- was made either in the Government treasury or in the Reserve Bank of India in favour of the Secretary to the Election Commission, as security for costs of the election petition.

The Government of India then indicated their decision in partial relaxation of Rules 95 and 431 (3) of the Central Government Treasury Rules, Volume I, that the money may be deposited in the Government treasury or in the Reserve Bank of India, as the case may be, without getting the chalan endorsed by the Election Commission. It was further laid down that the credits were to be accounted for under the head which has just been mentioned by us above. The chalan, which accompanied the petition of opposite party No. 2 in the present case, mentioned the head of account in language identical with that laid down in the letter of the Government of India dated 22nd January, 1952 mentioned above.

6. Some question arose as to the nature of this account and the power of the Secretary to the Election Commission to operate on it. Various documents were filed by learned counsel for the Parties before us in this connection, including a letter issued on the 21st of April, 1952, by the Comptroller and Auditor General of India and a press note issued by the Election Commission of India on the 11th of April, 1957. On behalf of opposite party No. 2 a certified copy of a statement of the Accountant General (Central Revenues), New Delhi, was also filed.

Besides this, some other documentary evidence was also filed. Taking into consideration the nature of the question involved, we considered it appropriate in this case to examine the Accountant General or an officer of the rank of a DeR.No.16puty Accountant General posted in Uttar Pradesh. We decided not to examine the Treasury Officer as the officers of the treasuries, in which deposits are made in this state, are directly under the audit control of the Accountant General of Uttar Pradesh and it was considered that the Accountant General or a Deputy Accountant General of Uttar Pradesh would be in a position to explain how these accounts are dealt with in the treasuries of this State.

The Senior Deputy Accountant General, who appeared, gave a statement and informed the Court, during the course of his statement, that these deposits in the treasuries of Uttar Pradesh are governed by the Central Government Treasury Rules and not by the State rules contained in the U. P. Financial Hand Book. This point is of importance as learned counsel for the present petitioner, when arguing this petition, before us, drew our attention to various views that have been expressed by various election tribunals citing them not as rulings but adopting the reasoning given in those decisions as his own arguments.

We discover that, in most of these cases, the tribunals made reference to the rules in the U. P. Financial Hand Book and no attempt was made to discover whether those rules at all governed those deposits; the deposits being central, they would clearly be governed by the Central Government Treasury Rules and not by the rules contained in the U. P. Financial Hand Book. The statement of the Senior Deputy Accountant General also shows that the deposits of this nature are governed by the rule contained in Section 9 of Part IX of volume I of the Central Government Treasury Rules under which it is laid down that such deposits would be regulated by general or special directions given by the Government.

The direction contained in the letter of 22nd January, 1952, mentioned above would, therefore, govern such deposits. With regard to other detailed rules governing such deposits, the statement of the Senior Deputy Accountant General is that no general or special directions have been issued by the Government and, consequently, the general rules regulating revenue deposits given in Section 3 of Part III of Volume I of the Central Government Treasury Rules have actually been applied to these deposits also.

In applying these rules, of course, they are enforced only subject to Sections 117 and 121 of the Representation of the People Act. The actual manner of making a deposit is according to him, laid down in Rule 92 of the Central Government Treasury Rules under which any person paying money into a treasury Or bank on Government account is required to show distinctly the nature of the payment, the person or Government officer on whose account the payment is made and all the information necessary for the preparation of the receipt to be given and for proper classification of the credit.

It also appears from the rules as well as from the statement of the Deputy Accountant General that, normally, whenever a deposit is made, the Government officer, on whose account the deposit is to be made is required to counter-sign the challan. In the case of deposits u/s 117 of the Representation of the People Act, this regulation requiring the signature of the departmental officer concerned was relaxed, so that the deposits could be made in the treasury without obtaining the signatures of the Secretary to the Election Commission.

In the challan, which was used for this purpose, the first four columns are required to be filled in by the person making the deposits. The first column gives the name of the person by whom the deposit is tendered. In the second column are given the name and address of the person on whose behalf money is paid. In the third column have to be given full particulars of the remittances and of authority, if any, and in the fourth column is entered the amount deposited. The question arose whether, in column 3, the depositor was required to put down the words "in favour of" the Secretary to the Election Commission" under any rule.

The heading of the column requires full particulars of the authority, if any, to be entered. The word "authority" as used here appears to us to Mean "the order" of the Government officer in compliance with which the deposit is being made. The

word "authority" does not here mean "the name or designation of the officer" on whose account the deposit is made but the reference is to the order under which the deposit is being made. This was also borne out from the statement of the Deputy Accountant General.

He, however, added, that, in view of Rule 92 of the Central Government Treasury Rules, it would be the duty of the depositor to enter in the receipt the designation of the Government officer on whose account the money is deposited. When he was first asked whether the deposit in this particular case had been made in accordance with the rules, he pointed out two omissions: One omission was that the money had not been shown to be in favour of the Secretary to the Election Commission in accordance with Section 117 of the Representation of the People Act.

The second defect, according to him, was that the words "deposits in connection with elections" had not been specifically mentioned and the words revenue deposits" were an addition in the head of account. We shall deal with each of these points mentioned by the Senior Deputy Accountant General separately. So far as the first point is concerned, it appears to have been raised by him on the assumption that Section 117 of the Representation of the People Act specifically requires that the words "in favour of the Secretary to the Election Commission" should be written on the challan itself.

AS we have indicated above, no such interpretation can be placed on Section 117 of the Representation of the People Act. When dealing with the treasury rules, the Deputy Accountant General also expressed the view that these words should have found place in the challan because of the provisions of Rule 92 of the Central Government Treasury Rules, the purport of which has already been indicated above. In interpreting this rule also, We have to keep in view the nature of the document that is before us. The document is a receipt and, by its very nature, it is to be written and executed by the person receiving the money and not by the person paying the money or depositing the money.

There may, of course, be special rules requiring that, even though the receipt is to be executed by the person receiving the money, certain parts of it should be written out by the person paying or depositing the money. It is in this light that Rule 92 of the Central Government Treasury Rules has to be examined. That Rule only requires that the person depositing the money should show distinctly the nature of the payment, the person or Government officer on whose account payment is made and all the information necessary for the preparation of the receipt to be given and for the proper classification of the credit

In the present case, the nature of the payment was clearly indicated as, being security for costs of the election petition. The person or Government officer, on whose account the payment was made, need not have been indicated because there was already a general order issued by the Government of India dated 22nd January, 1952, referred to above under which a special head of account had been

opened for depositing security for costs in compliance with the provisions of Section 117 of the Representation of the People Act

The moment that head was entered in the challan, it became clear, because of the Government of India letter, that the deposit was being made in compliance with Section 117 of the Representation of the People Act and, consequently, the treasury officer or whoever may have been the appropriate person required to execute the receipt should at once infer that the payment was being made in the account of the Secretary to the Election Commission. The very entry of the head of account contains enough information to convey to the person executing the receipt the identity of the person or Government officer on whose account the payment was being made, viz., the Secretary to the Election Commission.

The proper classification of the credit was, of course, easy when the actual head of account was entered and it would, therefore, appear that, in case the proper head of account was also entered in addition to the entries in the first four columns mentioned above, the challan would contain all information necessary for the preparation of the receipt to be given. There being no Rule specifically requiring an entry by the depositor that the deposit is in favour of the Secretary to the Election Commission", any omission on his part to make such an entry in the challan would be immaterial.

As we have indicated earlier, unless the rules specifically require the depositor to make certain, entries in the receipt, it must be held that the duty of making all necessary entries is cast on the person receiving the money and, in this case, as long as the depositor had given sufficient details required by Rule 92 of the Central Government Treasury Rules, there could be no further duty cast on him to enter the words "in favour of the Secretary to the Election Commission". So far as he was concerned, the entries made by him in the first four columns together with the entry about the head in the fifth column would contain all necessary information required to be given by him.

Thereafter it was, of course, open to the person who received the money to enter in the receipt itself that the deposit was being accepted "in favour of the Secretary to the Election Commission". This could be done by making a specific note to that effect in the challan itself but. as we have said earlier, this could also be indicated by other entries in the receipt. In the present case, this indication appears from the head of account in which the deposit was made. That head of account was a head in which were to be deposited moneys required to be deposited u/s 117 of the Representation of the People Act.

7. The analogy of this account with that of a current account of the nature which we envisaged earlier in this judgment also appears from the rules themselves. The Deputy Accountant General stated that repayments from moneys deposited in this head are governed by Rule 627 of the Central Government Treasury Rules. Sub-rule (1) of this Rule lays down that "refund" of deposits can be made only on the receipt of the person entitled to them after production of due authority.

The words "due authority" would naturally mean an order passed by the Secretary to the Election Commission u/s 121 of the Representation of the People Act and this is precisely what the Deputy Accountant General also stated. The person, who can receive the money, is anyone who produces such an authority. The main difficulty that arose was with regard, to the use of the word "refund". It appeared to us that this word could be interpreted in two different ways.

One interpretation of the word "refund" could be that the money could only be paid back to the person who had originally paid it in the treasury. The other interpretation could be that this word was used to signify repayment by the treasury without implying any reference to the identity of the person to whom the repayment was to be made. It was, principally, for the purpose of resolving this doubt that the Deputy Accountant General was summoned in this Court.

His statement is clear that, in spite of the absence of the words "in favour of the Secretary to the Election Commission" in the challan, the Treasury Officer would have to make payment to the person who produces the authority of the Secretary to the Election Commission u/s 121 of the Representation of the People Act. He also amplified this statement by saying that, even "if the payment to a person producing the authority of the Secretary to the Election Commission u/s 121 of the Representation of the people Act is opposed by the original depositor, the Treasury Officer must make the payment to the person who produces the authority.

According to him, this position comes into existence simply because of the classification of the head in which the money was deposited. The money having been deposited in that head, it was held by the treasury, more or less, in the capacity of a bank and the treasury, in respect of such, deposits, was bound to carry out all orders of payment issued by the Secretary to the Election Commission u/s 121 of the Representation of the People Act, irrespective of protest, by any other person.

The deposit in this head of account, which is governed by the Government of India letter dated 2nd January, 1952, and by the published rules of the Central Government Treasury, is, therefore, a deposit of the same nature as would have been a deposit in a current account in a bank opened in the name of the Secretary to the Election Commission. In both the cases, the disposing powers of the Secretary to the Election Commission in respect of the moneys standing in the account are absolute and he can make orders of payment in favour of any person.

This leads us to the conclusion that the deposit, having been made in this head and the fact that it was made in this head having appeared on the challan itself which accompanied the election petition, opposite party no. 2 did fully comply with the requirements of Section 117 of the Representation of the People Act.

7a. We may also deal with the argument that arises out of the second alleged defect in the receipt pointed out by the Deputy Accountant General, it appears

that, after the Government of India had issued the letter dated 22nd January, 1952, referred to above, the Accountant General of Uttar Pradesh issued a circular letter to all district officers and treasury officers in Uttar Pradesh in pursuance of the letter of the Comptroller and Auditor General of India dated 21st April, 1952. According to the Deputy Accountant General, the directions issued in that letter were to open the head with the following description :

"P--Deposits and advances-- Part II--Deposits not bearing interest-- (c)--Other deposit accounts Civil Deposits Deposits in connection with elections-- III-- Deposits made for election petitions."

It was because the Accountant General gave this description of the head in which deposits had to be made that the Deputy Accountant General pointed out the error in the description of the head entered in the challan in question, in this challan the words "revenue deposits" also occur, whereas the words "deposits in connection with elections" are missing. The question is whether this difference is at all material.

AS we have indicated earlier, u/s 9, Part IX of the Central Treasury Rules, Volume I, such special deposits are governed by the general or special directions issued with regard to them by the Government of India. It is only if there are no general or special directions of the Government that the other rules contained in the Central Government Treasury Rules would become applicable. The directions contained in the letter of the Government of India dated 22nd January, 1952, would, therefore, be primarily applicable. The head of account prescribed in that letter is identical with the head which has been entered in the challan.

The slightly different description of the head prescribed by the Accountant General may, in these circumstances, either be held to be an incorrect one or it may be possible to hold that it is an alternative description of the same head which was otherwise described in the letter of the Government of India dated 22nd January, 1952. Even if this be so, any deposit made in the head prescribed by the Government of India itself in its special directions would be a correct deposit in the correct head and the Accountant General would be bound to treat it as a deposit in that very head even though he may describe that head in a slightly different manner.

It is because of this position that the Deputy Accountant General himself admitted that, in this particular case, the deposit made by this challan did go into the Proper head and that the money deposited is entirely at the disposal of the Secretary to the Election Commission, so that he can operate on it like a banking account. In fact, he himself stated that the treasury holds this money more or less like a bank. There was also some argument with regard to the competence of the Deputy Accountant General to make a statement on this point on the ground that he had himself not seen the actual entries in the treasury and was basing his opinion on the statement which was received in his office from the treasury.

The statement received was in a form which, was headed "revenue deposits central" and the nature of the deposit was indicated by writing the words "election petition money". It is true, of course, that these two descriptions in the statement cannot, by themselves, be held to be sufficient to indicate that the money had actually been deposited in the head in which such deposits had to be placed in accordance with the Government of India letter dated 22nd January, 1952, but this appears to us to be immaterial.

The Deputy Accountant General, who deals with these matters from day to day, inferred from the entries made in the statement that the deposit was made in the correct head and this may be based on his experience. His opinion may be right or wrong on this point, but with that we are not concerned. We have to base our decision on the entry about the head of account as it occurs in the challan itself and, as we have indicated above, that entry clearly shows that the deposit has been made in the correct head of account prescribed by the Government of India.

The Deputy Accountant General was called in order to find out the exact nature of the powers of the Secretary to the Election Commission to pass orders in respect of moneys deposited in this head and the position, as we have indicated above is that the Secretary to the Election Commission has full disposing powers over moneys deposited in this head. In the circumstances, the entry about the head of account in the challan, by itself, shows that the deposit is in favour of the Election Commission, so that the challan satisfied the requirements of Section 117 of the Representation of the People Act.

8. The only other point that remains relates to the rejection of the other objection raised by the present petitioner that the paragraphs containing allegations about corrupt practice were much too vague and should be struck off. The Election Tribunal has expressed the opinion that the details already given in the petition are sufficient and fully comply with the requirements of "section 83 of the Representation of the People Act. The view expressed by the Tribunal appears to us to be, on, the face of it, incorrect.

In the case of a number of corrupt practices, the persons, who committed the corrupt practice, are described as "the candidate himself and his agents and workers" without giving the names of the agents and workers. The places where the corrupt practices were committed and the dates of Commission of such corrupt practices were also not given. These are at least the minimum requirements of the details which are laid down in Section 83 of the Representation of the People Act in plain language.

Under that provision of law, full particulars of corrupt practice have to be given and, in giving the full particulars, there must be at least the bare minimum of three particulars. One particular is the names of parties who committed the corrupt practice and the other two are dates and places of, commission of the corrupt practice. Even these details did not exist and, consequently, the rejection

of the objection as a whole without considering each individual paragraph containing allegations of corrupt practice was entirely wrong.

The order of the Tribunal dismissing that objection has, therefore, to be set aside. It will be for the Tribunal to take each allegation of corrupt practice contained in the election petition separately and decide in each case as to whether the pleadings satisfy the requirements of Section 83 or not. It will, of course, be open to opposite party No. 2 to move an application for amendment in accordance with the law. If such an application for amendment is moved, it will be for the Election Tribunal to decide how far and which amendment should be permitted and, after that has been decided, the Tribunal must deal with each Paragraph separately and record its findings as to which of the grounds are so vague that they are liable to be struck off under Order VI, Rule 16 of the Code of Civil Procedure.

9. We may also here incidentally take notice of a view which has been expressed by the Election Tribunal and which neither party has attempted to support (before us. The Election Tribunal-expressed its opinion that Section 117 of the Be. presentation of the People Act was ultra vires the Parliament as it imposed an unreasonable restriction on the fundamental right of challenging an election by an election petition. The reason why even learned counsel for opposite party No. 2 did not try to support this view is clear. The right of challenging an election by an election petition is not a fundamental right at all. It is clearly a creature of statute and the question is whether the statute at all confers that right and, if so, with what limitations? Consequently, this argument has to be disregarded.

10. As a result, we allow this petition only to the extent that the order of 21st September, 1957, passed by the Election Tribunal rejecting the objection about the vagueness of the pleadings in the petition and praying for striking off some paragraphs in the petition is set aside, so that the Tribunal will now be required to decide that application afresh in accordance with our views expressed above. The rest of the petition is dismissed. Since, in this case, opposite party No. 2 has substantially succeeded, we direct that opposite party No. 2 shall be entitled to its costs from the present petitioner which we fix at Rs. 250/-.