

(1958) 04 MP CK 0023

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 215 of 1957

Chunnilal Ken Budha Ram

APPELLANT

Vs

Shri Radhacharan Baldeo Prasad and Others

RESPONDENT

Date of Decision : 17-04-1958

Acts Referred:

Constitution of India, 1950 — Article 226
Representation of the People Act, 1951 — Section 92

Citation : AIR 1958 MP 313 : (1958) ILR (MP) 153 : (1958) 3 MPLJ 485

Hon'ble Judges : M. Hidayatullah, C.J.; V.R. Sen, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; K.K. Dube, for Opposite Party Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

This is a petition under Article 226 of the Constitution against an order dated 30-9-1957 passed by the Election Tribunal, Gwalior, in Election Petition No. 433 of 1957. By this order the Election Tribunal decided six preliminary issues. Issues Nos. 5 and 6 are subject of the impugned decision. They are as follows:

"(5) Does the petition lack in concise statements of facts and is vague and meaningless, as shown in para 6 of the written statement, if so what is the effect?

(6) Whether the petition does not set forth full particulars of corrupt practices as mentioned in para 7 of the written statement; if so what is the result."

As a result, paragraph 10 (b), (c), (d) and (e) of the petition along with the particulars relevant thereto and parts 2 and 3 of list G were ordered to be struck off.

It is contended that after the amendment of the Representation of the People Act in 1956 the Election Tribunal cannot order better particulars and cannot strike off pleadings. All that it can do is to declare that the particulars are vague and indefinite and cannot be tried. On such a declaration the election petitioner can,

if so advised, apply for amendment.

The matter is covered by a decision of this Court in Hari Vishnu Kamath v. Election Tribunal, Jabalpur 1958 Jab LJ 1: (A). There the decision was that the Tribunal does not now possess the power to order better particulars. It can only either consider an application for amendment if one was made or refuse to try a matter which does not raise a precise issue.

The order in question does no more -- whether it is right or wrong on merits is not a matter we can go into at this stage. That is a matter for appeal. No question of acting with Hari Vishnu Kamath Vs. Election Tribunal and Another, out jurisdiction is involved, and the powers under Articles 226 or 227 of the Constitution cannot be exercised in such a case.

The petitioner contended lastly that an application for amendment was made and the petitioner offered to correct the election petition by supplying better particulars but that no heed was paid to it. That is a matter for the Tribunal to decide. It is quite manifest that while the Tribunal cannot act without jurisdiction, or refuse to exercise a jurisdiction, acts performed with jurisdiction cannot be the subject of a writ, unless there is an error of law apparent on the face of the record or there has been a violation of the principles of natural justice or the case otherwise warrants interference on well-settled principles.

A Court decides matters rightly as well as wrongly, but with jurisdiction. The remedy in such cases can only be an appeal where one lies, and not Article 226 of the Constitution, which does not confer appellate jurisdiction on the High Courts.

The petition is dismissed. There shall be no order about costs.