

(1954) 09 AHC CK 0022

In the Allahabad High Court

Case No : Civil Miscellaneous Application No. 99 of 1953

Dr. Brijendra Swarup

APPELLANT

Vs

Election Tribunal at Lucknow and Others

RESPONDENT

Date of Decision : 27-09-1954

Acts Referred:

Representation of the People Act, 1951 — Section 100, 100(1), 100(2), 81, 83

Citation : AIR 1955 All 129

Hon'ble Judges : Malik, C.J.;V. Bhargava, J

Bench : Division Bench

Advocate : Inayat Ullah, Iqbal Ahmad, Saraswati Pd., H.D. Tandon and S.D. Misra, for the Appellant; P.D. Tandon, Mani Kant Tewari and R.N. Misra for Opposite Party (No. 5), for the Respondent

Final Decision : Dismissed

Judgement

Malik, C.J.—This is an application under Article 226 of the Constitution filed by Dr. Brijendra Swarup.

2. There was an election held for the Uttar Pradesh Legislative Council from the U. P. Graduates Constituency (West), in the year 1952 and three candidates were elected, they being Dr. Brijendra Swarup, Dr. Ishwari Prasad and Shri Beni Prasad Tandon. Sri Batan Shukla challenged the election by a petition which he filed on 4-8-1952. The relief claimed by him in the petition was to the following effect:

"It is, therefore, prayed that (1) the election to the U. P. Legislative Council from U. P. Graduates (West) Constituency be declared wholly void;"

The petitioner also claimed costs and any other consequential relief that may be granted to him. The relief claimed was u/s 84(c), Representation of the People Act, 1951 (Act 43 of 1951). Section 84 is as follows:

"84. A petitioner may claim any "one" of the following declarations:

(a) That the election of the returned candidate is void.

(b) That the election of the returned candidate is void and that he himself or any other candidate has been duly elected.

(c) That the election is wholly void."

On any one of these reliefs having been claimed, the Tribunal has to make an appropriate order, u/s 98 of the Act, at the conclusion of the trial of the petition. Section 98 provides that:

"98. At the conclusion of the trial of an election petition, the Tribunal shall make an order-

(a) dismissing the election petition; or (b) declaring the election of the returned candidate to be void; or

(c) declaring the election of the returned candidate to be void and the petitioner or any other candidate to have been duly elected; or

(d) declaring the election to be wholly void."

These four reliefs, which the Tribunal can grant, relate back to the three reliefs mentioned in Section 84 of the Act. If the petitioner claims that the election is wholly void, then the Tribunal can either dismiss the election petition, or, declare the election to be wholly void.

3. A number of grounds were raised in this petition. They were grounds Nos. 10 to 14 and 19 to 28 and a plea was taken, in an objection filed by Dr. Brijendra Swarup, that these paragraphs contained allegations which were not relevant to relief (c) of Section 84, Representation of the People Act. 1951 (Act 43 of 1951), A reference to Section 100 of the Act would make the point clear. Section 100(1) is as follows:

"100(1). If the Tribunal is of opinion-

(a) that the election has not been a free election by reason that the corrupt, practice of bribery or of undue influence has extensively prevailed at the election; or

(b) that the election has not been a free election by reason that coercion or intimidation has been exercised or resorted to by any particular community, group or section on another community, group or section to vote or not to vote in any particular way at the election; or

(c) that the result of the election has been materially affected by the improper acceptance or rejection of any nomination, the Tribunal shall declare the election to be wholly void."

This refers to relief (c) of Section 84 of the Act. It is not necessary for us to quote the Explanation. Sub-section (2) of Section 100 of the Act mentions the grounds on which the Tribunal shall hold the election of a returned candidate to be void. The grounds given are-

"(a) that the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by any corrupt or illegal practice; or

(b) that any corrupt practice specified in Section 123 has been committed by a returned candidate or his agent or by any other person with the connivance of a returned candidate or his agent; or

(c) that the result of the election has been materially affected by the improper reception or refusal of a vote or by the reception of any vote which is void, or by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act or of any other Act or rules relating to the election, or by any mistake in the use of any prescribed form."

Sub-section (3) of Section 100 is not relevant for our purposes and need not be quoted.

4. To have the whole election declared void, a petition has to be filed within 60 days from the expiration of the time specified in Sub-rule (1) of Rule 112 for the lodging of the returns of election expenses of the candidates with the Returning Officer (see Sub-rule (b) of Rule 119). In a case where the election of a particular returned candidate is challenged, the petition has to be filed within 14 days, as provided for in Sub-rule (a) of Rule 119, from the date of publication of the notice in the Official Gazette under Rule 113 that the return of election expenses of the candidate and the declaration made in respect thereof have been lodged with the Returning Officer. In this case, the petition was filed, as we have already said, on 4-8-1952, i.e., within 60 days under Sub-rule (b) but well beyond 14 days fixed under Sub-rule (a) of Rule 119.

5. The learned Members of the Tribunal, however, did not go into the question whether paragraphs Nos. 10 to 14 and 19 to 28 of the election petition contained allegations which were relevant for the grant of the relief claimed that the whole election be declared void. They rejected the application of Dr. Brijendra Swarup and framed issues not because those paragraphs contained material which was relevant for the decision of the petition, but on the ground that, even if an election petition was filed for a declaration that the whole election was void, the Tribunal was not confined to the relief claimed and it could grant a different relief and declare the election of any one returned candidate to be void. Similarly, if the relief claimed was that the election of a returned candidate be declared void, the Tribunal could declare the whole election void.

The Tribunal was also of the opinion that reliefs u/s 84 could be claimed in the alternative. As a matter of fact the Tribunal went on to hold that even if no relief was claimed, the petition could not be rejected and the Tribunal had to grant such relief as in its view was justified in the circumstances. As regards the period of limitation, the Tribunal was of the opinion that where there was a single returned candidate the shorter period of 14 days would apply whatever might be the relief claimed and the longer period of 60 days would be applicable where

more than one candidate had been returned.

6. Learned counsel for the opposite parties has frankly conceded that he is not able to support any of the findings on questions of law recorded by the Tribunal. He has conceded that if the election of one returned candidate is challenged, it is not open to the Tribunal to declare the whole election void; nor is it possible, where the plea taken is that the whole election is void, for the Tribunal to refuse to grant that relief and declare the election of one returned candidate to be void. Learned counsel has also, conceded that the period of 14 days applies to a claim u/s 84(a) and (b) of the Act, while the period of 60 days applies to a claim u/s 84 (c) of the Act.

7. The reasoning of the Tribunal on which its conclusions have been based need not be gone into in detail, but we may state that those reasonings do not appeal to us. One point taken by the Tribunal is that where there is only one returned candidate reliefs (a) and (c) would overlap. To our minds, to such a case relief (c) would not apply at all and it is relief (a) of Section 84 that would be applicable. The Tribunal has also drawn some support for its conclusion from Sections 81 and 83 of the Act. Section 81 deals with presentation of petitions. It provides that:

"An election petition calling in question any election may be presented on one or more of the grounds specified in Sub-sections (1) and (2) of Section 100 and Section 101"

This does not necessarily indicate that the relief claimed did not really matter and the Tribunal was entitled to grant any relief that it may consider appropriate.

Section 83 has even less bearing. It only lays down what the petition should contain and provides that the petition shall contain a concise statement of the material facts on which the petitioner relies and it is to be signed and verified like a pleading, while Sub-section (2) lays down that there should be a list signed and verified in like manner setting out full particulars of any corrupt or illegal practices alleged by the petitioner. If the election of one returned candidate is being challenged u/s 84, naturally the other candidates, though they may be parties to the proceedings, are not interested, and it would be against the rules of natural justice if the entire election is held to be void, even though the relief claimed was that the election of a particular returned candidate be held to be void. Similarly, the election as a whole cannot be held to be void, if the charges u/s 100(1) are not made out, merely on the ground that one of the returned candidates was guilty of irregularities mentioned in Sub-section (2) of Section 100.

8. To our minds, the words "any one of the following reliefs may be claimed" would become wholly redundant if it is open to a petitioner to claim more than one relief. It might also lead to confusion and complications if such a procedure is followed. The language of Section 84 provides further indication that the view that we have taken is correct. Relief (a) of Section 34 is for a declaration that

"the election of the returned candidate is void." If the relief claimed could be in the alternative or if more than one relief could be claimed, then it was not necessary in relief (b) to repeat the words "that the election of the returned candidate is void" and then add "that he himself or any other candidate has been duly elected". Similarly, Section 88 provides for four reliefs which are to be granted by the Tribunal at the conclusion, of the trial. Section 98 makes it clear that each relief is separate and distinct and either one or the other can be granted, whichever may be appropriate to the relief claimed.

9. Coming now to Section 100, grounds mentioned in Sub-section (1) are for declaring the whole election void, while grounds mentioned in Sub-section (2) are for holding the election of a returned candidate to be void. Sub-section (2) deals with irregularity or illegality or any corrupt practice indulged in by a particular candidate whose election is challenged, while Section 100(1) is of a more general nature and is not aimed at corruption, illegality or irregularity indulged in by a particular candidate but the corruption, illegality or irregularity which were much more widespread and general in nature and were likely to have affected the whole election. The question is more or less a question of substance and of degree and it is not for us to consider whether paragraphs 10 to 14 and 19 to 28 come under Sub-section (1) or Sub-section (2) Section 100.

Those paragraphs have not been placed before us and learned counsel for the petitioner has rightly urged that it was for the Tribunal to decide on the relevancy of the grounds mentioned in those paragraphs and the matter should be left to their decision. Learned counsel has made a grievance of the fact, and to our minds rightly, that the objection of the petitioner has been dismissed on wholly irrelevant grounds on a wrong view of the law without going into the merits.

10. A question has arisen whether we should interfere at this stage in the exercise of our jurisdiction under Article 226 or Article 227 of the Constitution. The view of law taken by the Tribunal is, however, so palpably erroneous that unless it is corrected at this stage it is likely to further complicate matters. We have, therefore, decided to express our opinion on the points of law so that the Tribunal may not engage itself in enquiries which may be wholly irrelevant to the relief claimed before it. The Tribunal will now act according to the view of law enunciated by us above and consider whether the paragraphs objected to contain any grounds which are relevant (sic) the relief claimed, and if so, confine itself only to such issues out of those that it might have framed and take evidence which might be relevant for the grant of the relief claimed in the petition.

11. We order accordingly, but in view of the very reasonable attitude taken by learned counsel for the opposite parties we make no order as to costs. The stay order is discharged.

12. We need not pass any separate orders on Application No. 988 of 1954.