
(1954) 02 MP CK 0002

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Petition No. 1 of 1954

Murlidhar

APPELLANT

Vs

Kadam Singh and others

RESPONDENT

Date of Decision : 18-02-1954

Acts Referred:

Constitution of India, 1950 — Article 226
Representation of the People Act, 1951 — Section 83

Citation : AIR 1954 MP 111

Hon'ble Judges : Dixit, J;Chaturvedi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dixit, J.—The petitioner was elected to the Madhya Bharat Legislative Assembly from the Morena Constituency at a bye-election. A petition was filed by the non-applicant Kadam Singh challenging the applicant's election. The Election Commission referred the petition to an Election Tribunal of which the opponent Shri Surajbhan is the Chairman. In this application under Art. 226, Constitution of India the petitioner prays for the issue of a writ or a direction calling upon the Tribunal to dismiss the election petition and also for quashing the proceedings before the Tribunal. The petition is somewhat prolix. The main grounds of challenge to the proceedings of Tribunal that emerge from petition are:

1. that the election petition did not comply with the mandatory provisions of S. 83, Representation of the People Act, 1951, in that it did not contain a concise statement of facts and full particulars of alleged corrupt and illegal practices and that the Tribunal having found that the petition did not conform to the provisions of S. 83, it had no alternative but to dismiss the petition under the mandatory provision of S. 90(4) and further that the Tribunal had no jurisdiction to allow the opponent Kadam Singh to amend the petition so as to bring it in conformity with S. 83,

2. that the Representation of the People Act, 1951 not being an Act of the

Madhya Bharat State Assembly, the Election Tribunal appointed under that Act has no jurisdiction to try any Election petition calling in question any election to the State Assembly, and

3. that Mr. Pagnis who is one of the members of the Tribunal, is disqualified to sit on the Tribunal as his wife is a member of the Congress party and she was "in the last general election a candidate on the Congress ticket for Madhya Bharat Legislative Assembly

2. Having heard Mr. Puttupal Dubey learned counsel for the applicant, I have reached the conclusion that there is no force in any of these contentions, and this petition must be dismissed.

Sub-s. (4) of S. 90, Representation of the People Act, 1951 provides that notwithstanding anything contained in S. 85 the Tribunal may dismiss an election petition which does not comply with the provisions of S. 81, S. 83 or S. 117. That sub-section, therefore, does not cast any obligation on the Tribunal to dismiss an election petition which does not comply with the provisions of S. 83. It gives a discretion to the Tribunal whether the petition should or should not be dismissed, if it does not comply with the provisions of s. 83. That, it is not obligatory for the Tribunal to dismiss a petition under S. 90(4) if it does not comply with the provisions of S. 81 or 83 or 117 is made further clear by the fact that whereas in S. 85 it is provided that the Election Commission "shall dismiss" the petition if the provisions of S. 81, S. 83 or 117 are not complied with, the Legislature has while dealing with the same subject in relation to the Election Tribunal used the words "may dismiss" in S. 90(4).

It is, therefore, impossible to read the words "may dismiss" used in S. 90(4) as "shall dismiss" and thus wipe out the distinction which the Legislature obviously intended to make between the powers of the Election Commission and the Election Tribunal with regard to the dismissal of an Election petition not complying with the provisions of the sections referred to above.

As regards the power of the Tribunal to allow a party to amend the petition so as to bring it in conformity with S. 83, I think it is implicit in S. 90(4) that the Tribunal has such a power. If the Legislature intended that the Tribunal should have no power, to allow a party to amend an Election petition so as bring it in conformity with S. 83, then it would have cast an obligation upon the Tribunal to dismiss a petition not complying with the provisions of S. 83 and not given to the Tribunal a discretion as to whether to dismiss or not to dismiss a petition. It would appear that under S. 90(2) also, the Tribunal has the power to amend the petition in a proper case. There are direct decisions on this point. See -- Sitaram Hirachand Birla Vs. Yograjsing Shankarsing Parihar and Others, ; and -- "Mahadeo v. Jwala Prasad", AIR 1954 Nag 26 (B). In both these cases, it has been held that no obligation is cast upon the Tribunal under S. 90(4) to dismiss an election petition which does not comply with the provisions of S. 83 and that the Tribunal has power to permit an amendment of the petition so as to bring it

in conformity with S. 83 so that it need not be dismissed. I respectfully agree with this view.

Therefore, in my opinion, the Tribunal was right when it declined to dismiss the petition under S. 90(4) and asked the non-applicant Kadam Singh to amend his petition by "furnishing further proper particulars" so as to bring it to accord with S. 83.

3. The objection that the Tribunal appointed under the Representation of the People Act, 1951 has no jurisdiction to try an election petition calling in question an election to the State Assembly is really an objection as to the competency of the Parliament to make a law with respect to any matter relating to, or in connection with, election to the State Legislature. This contention is devoid of any substance.

The power of the Parliament to make laws with respect to all matters relating to, or in connection with, either House of the Legislature of a State is derived from Arts. 246 and 327, Constitution of India read with Entry No. 72 of List I in the Seventh Schedule to the Constitution. The State Legislature has also no doubt power under Arts 246 and 328 read with Entry No. 37 of List II in the Seventh Schedule to make laws with respect to all matters relating to, or in connection with, elections to the State Legislature. But this does not mean that the Parliament is not competent to make a law prescribing the authority and procedure for challenging an election to the State Legislature.

As is clear from the expression "in so far as provision in that behalf is not made by Parliament" used under Art. 328 and the words "subject to the. Provision of any law made by Parliament" occurring in Entry 37 of List II in Seventh Schedule, the power of the State Legislature to make a law on the subject is subordinate to the Parliament's power. The expressions referred to above only mean that the Parliamentary statute made in exercise of powers under Arts. 246 and 327 read with Entry No. 72 of the Union List would have preference over a State law in case of repugnancy and that whenever a law is made by the State Legislature in exercise of its legislative power under Entry No. 37 of State List, that law will be subject to the provision of a Parliamentary statute made in exercise of its legislative power under Entry No. 72 of the Union List. There is thus no force in the argument that the Tribunal appointed under the Representation of People Act, 1951 is not competent to try a petition calling in question an election to the State Legislature.

4. I am unable to appreciate the contention of the learned counsel for the applicant that Mr. Pagnis who is a very senior member of the Madhya Bharat Judicial service and is holding the post of a District & Sessions Judge is not competent to sit on the Tribunal because his wife is a member of the Congress and because she contested an election to the Assembly. It is not the allegation of the petitioner that Mrs. Pagnis was a candidate at the bye-election from the Morena Constituency. The petitioner's suggestion is that as he himself does not

belong to the Congress party and as at the election the Congress nominee was defeated, Mr. Pagnis "due to his associations, affinity and relation with Shrimati Pagnis" would be unable to give an unbiased hearing to him. The petitioner has not stated any "facts" or "incidents" on which he has formed the impression that he may not be given an unbiased hearing.

Now I attach as everybody must attach, the greatest importance to the fact that every litigant in a court or a Tribunal should be satisfied that he is having a fair and impartial trial. A long line of cases shows "that it is not merely of some importance but is of fundamental importance that Justice should not only be done but should manifestly and undoubtedly be seen to be done". But I think it would be preposterous to suggest that there is bias, or a possibility of bias on the part of Mr. Pagnis because of the mere fact that his wife is a member of the Congress party and the applicant defeated a Congress candidate at the bye-election. If we were to put any such exacting test upon the right of Judges or members of Tribunal to sit, it might very well be that the whole structure of the administration of justice would be upset.

The applicant is no doubt not required to show that Mr. Pagnis is, in fact, biassed. But he must show that there are facts and circumstances on which any reasonable man can suppose that there would be an improper interference with the course of justice if Mr. Pagnis sat as a member of the Tribunal. The applicant has nowhere in his petition alleged any such facts and circumstances and there is no information for the applicant's suggestion of bias.

5. The result is that this petition is dismissed.

CHATURVEDI J.

6. I agree.