

(1953) 04 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous Petition No. 38 of 1953

S. Hukam Singh Sham Singh and Another	APPELLANT
Vs	
S. Sardul Singh Kirpal Singh and Others	RESPONDENT

Date of Decision : 29-04-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 90(2) , 92
Constitution of India, 1950 — Article 132(1), 226, 227, 329
Criminal Procedure Code, 1898 (CrPC) — Section 480 , 482
Representation of the People Act, 1951 — Section 105, 117, 119, 30, 36

Citation : AIR 1953 P&H 133

Hon'ble Judges : Teja Singh, C.J;Passey, J

Bench : Division Bench

Advocate : S. Amar Singh, for the Appellant; Bhagwati Parshad, for the Respondent

Judgement

Passey, J.—This is a petition by S. Hukam Singh & S. Ajit Singh under Articles 226 & 227 of the Constitution of India for the issue of a writ of certiorari or any other writ, direction or order setting aside or quashing the order of the Election Tribunal dated 20-11-1952 whereby respondents 8 to 11, who were not originally made parties to his petition u/s 82 of the Representation of the People Act (43 of 1951) hereafter called the Act, by respondent 1; but were applied for to be impleaded as such parties subsequently were allowed to be retained as respondents for opposing the petition. For the two seats, one being meant for the Scheduled castes, required to be filled in the House of the People, from the Kapurthala-Bhatinda double-member constituency, the Petitioners and respondents 1 to 11, according to their eligibility, had entered into a contest in the last general elections. Their nomination papers were accepted by the Returning Officer u/s 36 of the Act, but respondents 8 to 11 withdrew their candidatures u/s 37 within the time fixed therefor. As a result of the polling that took place from 15-1-1952 to 24-1-1952, the Petitioners were declared to be duly returned. On 15-5-52, S. Sardul Singh Caveeshar, respondent 1, presented

an election petition u/s 81 of the Act, before the Election Commission calling in question the validity of the election of the returned candidates, and the same was published in the Gazette of India on 16-8-52. The petition was later sent for trial to the Election Tribunal consisting of the respondents 12 to 14. In the petition respondents 2 to 7 and the two Petitioners were arrayed as the opposite party, and notice of the petition was issued to them by the Tribunal for 17-9-52. On that date the Petitioners appeared and objected to the tenability of the petition. They urged that u/s 82 of the Act, it was imperative for respondent 1, S. Sardul Singh Caveeshar, to implead all the duly nominated members, and since he had failed to join respondents 8 to 11, who fell in that category, the petition could not be entertained and was liable to be thrown out. On the next date, viz., 30-9-1952, respondent 1 submitted an application to the Tribunal praying that respondents 8 to 11 be made pro forma parties to his petition. It was stated in that application that his failure to implead them was due to his ignorance about their having been duly nominated. The application came up before respondent 12, Chairman of the "Tribunal on 30-9-1952 and he made an order that the names of the respondents 3 to 11 be put on the election petition. Respondent 1 was allowed to make the necessary amendment in the election petition but as the objection raised by the Petitioners could not be decided by the Chairman alone, it was left to be determined during the trial of the position. On the same day respondent 1 submitted the amended petition containing the names of respondents 8 to 11 and they were described as pro forma parties. Notice was issued to respondents 8 to 11. Out of them respondent 8 put in appearance through his counsel on 20-10-1952 and opposed the petition stressing in particular that the petition should be republished so that he could exercise the right of recrimination. In his election petition S. Sardul Singh Caveeshar had asked for a declaration that the election of S. Hukam Singh and S. Ajit Singh was void and that he and respondent 7 had been duly elected or in the alternative that the whole election was void. The Tribunal drew up four preliminary issues covering the points on which the parties were at variance. In deciding those issues on 29-11-1952, the Tribunal held that the respondents 8 to 11 were necessary parties to the petition, that the effect of their non-joinder initially within the period fixed for filing election-petitions was not to render the petition unmaintainable; but that S. Sardul Singh's failure to implead them within the prescribed time should deprive him of the right to ask for a declaration that he and respondent 7 had been duly elected and that since the Tribunal would deprive respondent 1 of that right, it would be unnecessary to give effect to the objection of respondent 8, that the election petition required to be republished u/s 90 of the Act. As a consequence respondents 8 to 11 were not struck out but were retained as parties. The present petition was filed on 17-2-1953 and by an order made on 2-4-53 the Tribunal before whom the case had become ripe for arguments was asked not to pronounce its final decision during its pendency.

2. Shri Bhagwati Parshad, appearing for respondent 1, made a double pronged attack by way of preliminary objections against the maintainability of the

petition. His contention was that Article 329(b) of the Constitution of India and Section 105 of the Act, precluded this Court from interfering in matters exclusively relating to an election; as those matters could only be entertained, investigated and decided by an authority constituted under the Act. Article 329(b) provides a bar to interference by Courts in electoral matters and lays down inter alia that notwithstanding anything in the Constitution no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature. This Article falls in Part XV of the Constitution relating to elections and is the last in that Part. The Parliament by enacting the Representation of the People Act, 1951 as its preamble would show, has made provision for the conduct of elections to the Houses of Parliament & to the House or Houses of the Legislature of each State, the qualifications and disqualifications for Membership of those Houses, the corrupt and 11; legal practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections. In the light of the provisions of Article 329(b), therefore, it is the Election Commission or Election Tribunal constituted under the Act, that is competent to deal with disputes arising out of or in connection with elections and the jurisdiction of the Courts in matters concerning elections, to which Part XV of the Constitution applies must be held to be barred. That must, however, be different from saying that the jurisdiction of the High Court ensured by Article 227 of the Constitution is also barred. Clause (b) of Article 329 prohibits the calling in question of an election to either House of Parliament or to the House or either House of Legislature of a State except by an election petition presented to such authority and in such manner as has been provided by the Act. In the present case, the election petition is being dealt with by a Tribunal constituted under the Act and not by any Court, so that the provisions of Article 329(b) are being adhered to. The Election Tribunal is functioning within the territories of the PEPSU State and, therefore, within the territories in relation to which this Court exercises jurisdiction. It is a Tribunal whose procedure is regulated by and whose powers re derived from a particular enactment known as the Representation of the People Act, but it is undeniably a Court of justice exercising judicial or quasi-judicial powers. As laid down by Article 227 of the Constitution, the High Court has superintendence over all Courts and tribunals throughout the territories to which its jurisdiction extends. An exception to this jurisdiction is, however, created by Clause (4) of this Article in favour of Courts or tribunals constituted by or under any law relating to the Armed Forces. It is thus clear that the Court or tribunal intended to be taken out "of the jurisdiction of superintendence by the High Court, has been mentioned in the Constitution itself. If a similar exception were intended by the Constitution to be made in favour of the election tribunals as well, the fact would have been expressly, specified in Article 227 or some other appropriate Article. The Election Tribunals do not stand as a class by themselves over which the High Court's power to see whether they are discharging their duties within the four corners of

the law, which they are required to administer, does not exist. It is a different matter that the High Court would not interfere unless it finds that the proceedings before the Tribunal are void for total want of jurisdiction or the defect of jurisdiction is apparent on the record; but there appears to me to be no force in the contention that it has no jurisdiction to take note of and pass necessary orders even when the order of an Election Tribunal is patently "ultra vires" or where the initial jurisdiction to entertain an election petition is lacking. The Act, no doubt, does not provide for an appeal or a revision against any order of the Election Tribunal; but it cannot follow as a corollary that the Tribunal has been made independent of the High Court's power of superintendence so specifically stated in Article 227 of the Constitution to be exercisable over all Courts and tribunals functioning within its jurisdiction. An Election Tribunal created to determine an election petition, after the result of the election has been declared, is in my view not immune from the superintending control of the High Court. The High Court would have, of course, no power to interfere in any matter which relates to the merits of the election petition, and it would exercise its powers under Article 227 very sparingly and only where the error complained of infringes the fundamental rights of a party or is likely to cause a miscarriage of justice.

3. The other bar on the jurisdiction of this Court to entertain a petition for a writ, as contended by Shri Bhagwati Parshad, is the one created by Section 105 of the Act which provides that every order of the Tribunal made under the Act shall be final and conclusive. The question was considered by this Bench in-"Shri Gian Chand v. The State" Civil Misc No. 189 of 1951 D/-24-12-1951 (Pep)(A) and it was held that so far as the Representation of the People Act is concerned, there could be no hesitation in saying that it could not take away the powers of the High Court which were expressly given to it by Article 226. Those observations apply equally with regard to the High Court's powers under Article 227.

4. Next to be considered is the objection of the respondents' learned Counsel that the petition is liable to be thrown out as it was submitted about 21/2 months after the Tribunal had made the order in question. The objection to the tenability of the election petition had been taken by the Petitioners in their written statement. They were advised and represented by a counsel and were conscious of the benefit that the success of their objection was to bring them. They had fought out the point but, lost on 29-11-1952. After the Tribunal had made its order on 29-11-1952, the respondent 1 led his evidence and it was not till he had closed it that the Petitioners moved this Court asking it to exercise its extraordinary power of issuing a prerogative writ. The Petitioners have obviously been guilty of laches and no explanation of the delay was given in their petition to this Court nor was any suggested by their counsel S. Amar Singh, while replying to the arguments of Shri Bhagwati Parshad. It is the uniform opinion of the various High Courts in India that a party aggrieved by an order of a Court or tribunal if he seeks to invoke the extraordinary but discretionary, remedy of a writ to avoid miscarriage of justice, must do so as early as possible. In cases

where there is other remedy also available, a great and unexplained delay in making the petition might render it liable to be dismissed on that score. It is, however, doubtful if in a case where the aggrieved party can knock at no other quarters for relief as he has no other remedy under the Law, the delay in filing a petition can by itself be a sufficient ground for rejecting it outright. There is no time specified in the Indian Limitation Act or any other Law within which a petition for the issue of a writ must be filed, but a rule of practice has grown up which insists upon such petitions being made promptly. As to what would constitute promptitude would depend upon the facts of each particular case. The rule enunciated is not too rigid or inflexible in a proper case a lenient view of the delay can be taken and that delay can be condoned". In the case before us the order of the Tribunal is final and conclusive. There is no subsequent stage at which it can be impugned and the Petitioners have no other course open to get rid of its adverse effects. The petition has passed the stage of preliminary hearing and notice was issued to the respondents on 20-2-1953. An order restraining the Tribunal from pronouncing their final decision was also made on 2-4-1953. These are circumstances which we take into consideration in proceeding to consider if there is any force in the grounds on which the petition is founded.

5. It is contended by S. Amar Singh that the Tribunal had no jurisdiction to entertain a petition which did not strictly comply with the requirements of Section 82, of the Act, and that the Tribunal had again no jurisdiction to permit respondent 1 to amend his petition so as to include the names of respondents 8 to 11 and thereby remove the lacuna, the presence of which had made the petition not maintainable. To support the first part of his argument he has referred us to Sections 30 and 82 of the Act. Both those sections fall in Part VI of the Act relating to presentation of election petitions to the Election Commission. Section 80 provides that no election shall be called in question except by an election petition presented in accordance with the provision of that Part, and Section 82 lays down that a Petitioner shall join as respondents to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated His argument precisely is that since the petition by S. Sardul Singh Caveeshar did not comply with the imperative requirements of Section 82 inasmuch as it did not contain the names of the respondents 8 to 11, it should have been thrown out summarily It is also contended that in the framework of the Act there is no provision except Clause (3) of Section 83 which has no relevancy to the question involved in these proceedings which empowers a tribunal to permit amendment of an election petition.

6. As mentioned above Section 82 of the Act insists that the Petitioner must implead all duly nominated candidates as respondents to his petition. According to the Petitioners counsel the word "shall" in the Section connotes a command requiring an act to be done in a particular manner and the failure to comply with the provisions of the section in the manner specified in it would constitute a breach of that command the penalty for which would be dismissal of the petition.

7. Some distinction between duly nominated and validly nominated candidates was attempted to be drawn by Shri Bhagwati Parshad with a view to show that while a candidate of the latter category would be a necessary party to an election petition, a candidate who belongs to the former class would at best be a proper party. Under the Act validly nominated candidates would be those whose names after scrutiny of nominations u/s 36 and withdrawals, if any, u/s 37 has been published u/s 38; whereas the expression "duly nominated candidate" would mean candidates whose nominations were accepted by the Returning Officer, but whose names were not published u/s 38; because they had subsequent to the acceptance of their nominations withdrawn their candidatures within the time fixed. It would, thus, be evident that whereas all validly nominated candidates must also be duly nominated ones, the converse cannot be true, as all those who were duly nominated need not necessarily be validly nominated candidates. The withdrawal of a candidate after acceptance of his nomination does not however take him out of the definition of a duly nominated candidate. Although, therefore, respondents 8 to 11 had withdrawn their candidatures within the time prescribed for the purpose and had ceased to have any self-interest in the election, and were relegated to the position of electors only, their status as duly nominated candidates had not terminated. Apparently those candidates who had fought the election were mainly interested in the result of the election. They must be regarded to be necessary parties to an election petition if one is filed and the object of which is to get the election upset. In the present case all the validly nominated candidates had been made parties by respondent 1. The respondents 3 to 11, by the very act of their withdrawal had ceased to have any interest in the result of the petition so far as their own candidatures were concerned. Looked at from that point of view they would be proper parties; but by fiction of law the expression "duly nominated candidates" continues to apply to them and the Act requires that all duly nominated candidates must be made parties to an election petition. They are in that sense necessary parties whose inclusion in the petition as respondents so far as the person making the petition is concerned, is indispensable.

8. It is undisputed that the respondent 1 had not complied with the provisions of Section 82, as he had failed to join as respondents the four duly nominated candidates forming the set of respondents 8 to 11. What has to be considered is what would be the effect of such a failure, and whether the Tribunal had at all the power to permit their joinder, after the time for making the petition had expired. In either the Act itself or the Rules made thereunder there is no provision that can determine the question. The word "shall" in Section 82, no doubt, casts on the Petitioner a duty to implead all the duly nominated candidates as respondents, but neither that section nor any other section of the Act provides any penalty in the event of his failing to do so, much less a penalty of dismissal. The Act does not make it imperative for the Tribunal to dismiss the petition as soon as it finds that it does not conform to the requirements of Section 82, nor does it say that no Tribunal shall take cognizance of or proceed

with an election petition in which all duly nominated candidates have not been joined as parties. The prescription provided by the word "shall" has, therefore, to be considered as merely directory the neglect of which does not affect the validity of the petition or involve any other consequence than a liability to a penalty if any were to be imposed by the Tribunal for Breach of the prescription. In the present case, all the validly nominated candidates had been impleaded and it cannot be said that without respondents 8 to 11, the Tribunal's final order would not be effective. In any case the failure of respondent No. 1 to join respondents 8 to 11 would not bring into effect an automatic dismissal of his petition. The question of the result of such a non-joinder will have to be considered and decided by the Tribunal. It will be for the Tribunal to accept the omission as fatal to the continuance of the petition or to hold that the non-joinder of a duly nominated candidate who had withdrawn does not affect its maintainability. The Tribunal is the only authority competent to determine whether all the necessary parties have been brought before it in an election petition, and if it finds that some have been omitted, it has the power to throw out the petition or make an order bringing them before it. There are only two sections in the Act which deal with the power of the Election Commission or Election Tribunal to dismiss an election petition summarily. They are Sections 85 and 90(4). u/s 85 the Election Commission is empowered to dismiss an election petition summarily if the Petitioner has not complied with the provisions of Sections 81, 83 and 117 of the Act. The same power has been conferred by Section 90(4) of the Act upon the Election Tribunal and is exercisable even in cases where the Election Commission has not dismissed a petition u/s 85. Neither Section 85 nor Section 90(4) covers the case in which the requirements of Section 82 have not been fulfilled. It would, therefore, be not farfetched to infer that if the non-observance of the provisions of Section 82 were necessarily to bring about a summary dismissal Section 82 would have been included in Sections 85 and 90(4). The reason for non-inclusion of Section 82 in those two sections is obvious. The Election Commission or the Tribunal cannot offhand know if any necessary party has been left out and the Tribunal has to find out after enquiry if all the necessary parties have been joined.

9. It has been argued by S. Amar Singh that if the Tribunal were to be regarded to have the power to add or permit the addition of parties, the provisions of the Act dealing with the form of the petition and the period within which it can be submitted, etc., would be rendered nugatory. Although the questions whether the petition is in proper form and has been presented within the statutory period would be very relevant in considering whether an election petition should be permitted to continue after the defect of the non-joinder of the necessary parties is discovered, yet those are not matters that really militate against the existence of the power in the Tribunal to adjudicate upon questions arising out of the non-joinder of a necessary party or proper party. No consequence of the failure of the Petitioner to observe the provisions of Section 82 having been provided in the Act, it has to be presumed that the Legislature had intended to leave the

question of the effect of non-joinder to be appropriately dealt with by the Tribunal. In this view of the law, there can be no hesitation in holding that the petition of respondent 1 was not liable to fail automatically or necessarily for the defect objected to by the Petitioners and that the Tribunal had the jurisdiction to decide whether a petition with a defect of that nature could survive or not. The object behind enacting Section 82 appears to have been that the Tribunal should have before it all the duly nominated candidates so that all the facts and the circumstances surrounding the election may be brought out in the proceedings before it. If, therefore, the tribunal with that end in view, by its order, makes the petition to be in consonance with the provisions of Section 82 by allowing inclusion of a party or parties, who by fiction of law have to be regarded as duly nominated candidates, it does not act in contravention of any law nor does it transgress the jurisdiction with which it is vested. Assuming that the order in question of the Tribunal was wrong in law and that it should have in the circumstances of the case dismissed the petition, it could not be said that it had no jurisdiction, because it gave a wrong decision.

10. It was argued for the Petitioners that the only power that the Tribunal had under the Act to allow amendment was the one conferred by Sub-clause (3) of Section 83, and that since that section did not apply in this case, the provisions of Order 1 Rule 10, C.P.C. could not be invoked to assume jurisdiction. The learned Counsel maintained that only those provisions of the C.P.C. applied to the proceedings before the Tribunal as governed the trial of suits meaning thereby that those provisions of the C.P.C. as have a direct bearing on the conduct of proceedings commencing with the trial of the suit are alone applicable. From the other side the contention is advanced that Section 90 Clause (2) of the Act makes the provisions of the C.P.C. applicable to election petitions and the term "trial" should include proceedings in the suit from the inception stage to the final judgment that the Court pronounces. It was further pointed out that Order 1, Rule 10, C.P.C. confers ample powers upon the tribunal to add those persons as parties to the election petition who were necessary or proper parties, but had been left out. I think it is unnecessary for us to go so minutely into that controversial question, as we are of the view that the Tribunal is competent to decide if an election petition should or should not fail for want of joinder of necessary parties. If it can decide that the defect of non-joinder should not be fatal, it would follow as a reasonable deduction that it can also have the omitted parties before it, whether that addition be called an amendment or given any other name. If a Court or tribunal has the jurisdiction to decide a question, it can decide it correctly or wrongly and the mere fact that "it decides wrongly would not make its order without jurisdiction or one made illegally in the exercise of jurisdiction. In this connection, it would be profitable to refer to the observations of the learned Chief Justice in a Division Bench Case-"Roller Flour Mills Patiala v. Income Tax Officer "A" Ward ?Patiaia" AIR 1953 Pepsu 88 (B). This is what his Lordship said:

Now, it is clear from these cases that so far as the English Courts are concerned

they have consistently taken the view that the tribunals established by and working under the Income Tax Law belong to the class of the tribunals to which the second part of the formula laid down by Lord Esher in-"Reg v. The Commissioners for the Special Purposes of the income tax" (1888) 21 QBD 313 (C) relates and that all points arising out of and affecting the assessment, whether they be points of fact or law, must be raised before, and adjudicated upon by those tribunals and no writs are issued against those tribunals except when their proceedings are vitiated by total want of jurisdiction or the defect of jurisdiction is apparent on record.

The observations of Lord Esher in-"(1888) 21 Q.B.D. 313 (C)", were set out and followed in that judgment and were as follows:

When an inferior court or tribunal, or body, which has to exercise the power of deciding facts is first established by Act of Parliament the Legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The Legislature may entrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more. When the Legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned, it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the Legislature gave them jurisdiction to determine all the facts-including; the existence of the preliminary facts, on which the further exercise of their jurisdiction depends and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction.

11. The parties" counsel concede that the Election Tribunal would fall within the second, category enunciated by Lord Esher. In that event the Tribunal had the jurisdiction to decide the point of non-joinder raised before it. The Legislature has given the Election Tribunal Jurisdiction to determine the existence of the preliminary facts on which further exercise of its jurisdiction would depend. It is, therefore, not correct to say that the tribunal cannot by wrongly deciding or assuming that the preliminary facts exist, confer jurisdiction upon itself. I may also reproduce here the observations of Mahajan 3; in- Ebrahim Aboobakar and Another Vs. Custodian General of Evacuee Property,

A Writ of certiorari cannot be granted to quash the decision of an inferior court

within its jurisdiction on the ground that the decision is wrong. Before such a writ is issued, it must be shown that the authority which passed the order acted without jurisdiction or in excess of it or in violation of the principles of natural justice.... Once it is held that the Court has jurisdiction but while exercising it, it made a mistake, the wronged party can only take the course prescribed by law for setting matters right inasmuch as a Court has jurisdiction to decide rightly as well as wrongly.

12. I would, therefore, hold that a writ in this case cannot be issued, as there was no breach of any fundamental rule of justice and the decision on the point in question was given by the tribunal in the exercise of its jurisdiction. The petition is dismissed. In view of the difficult points of law involved we leave the parties to bear their own costs.

Teja Singh, C.J.

13. I agree with my learned brother in the conclusion reached by him and would like to add a few words.

14. The first question to be decided in this petition is whether the election petition presented to the Election Tribunal by S. Sardul Singh Caveeshar was a proper petition. Section 82 of the Representation of the People Act, 1951 lays down that a Petitioner shall join as respondent to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated. Mr. Bhagwati Parshad, counsel for S. Sardul Singh Caveeshar contended that though the words used in Section 82 are "duly nominated", in a petition in which election of persons who are returned as elected is questioned only they are necessary parties and all other candidates who are duly nominated are merely proper or "pro forma" parties. In my judgment, this contention is without force, because the words of Section 82 do not make any distinction between candidates who are elected and who were not elected but were validly nominated or even duly nominated. According to the well-known canon of construction of statutes every word of a section must be given full effect to and since the section makes it imperative that every duly nominated candidate should be joined as a respondent to the petition, the petition which leaves out some duly nominated candidates, cannot be regarded a proper petition. With a view to finding out whether the provisions of Section 82 are complied with all that we have to see is whether every duly nominated candidate is made a party to the petition regardless of the fact whether such a candidate withdrew from the election or he ceased to have any active interest in the result of election. After a good deal of argument Mr. Bhagwati Parshad was constrained to admit that respondents" 8 to 11 who were not originally joined as respondents" to the petition was not a proper petition.

14a. The second question that we have to determine is whether the election Tribunal had the power to allow respondents 8 to 11 to be made parties to the petition and the petition, to be amended. Mr. Bhagwati Parshad argued that the

Tribunal had such power under Order 1, Rule 10, Civil P.C. which, has been made applicable to the proceedings before Election Tribunals by Sub-section (2) of Section 90 of the Representation of the People Act. Mr. Amar Singh Ambalvi, counsel for Sardars Hukam Singh and Ajit Singh who are the Petitioners before us, on the other hand, argued that Order 1, Rule 10, Civil P.C. had no applicability to the proceedings before the Tribunal and the scope of Sub-section (2) of Section 90 is altogether limited. Learned Counsel argued that the Representation of the People Act was a complete code and only those provisions of the Civil P.C. could be availed of by the Tribunal which were specifically mentioned either in Clause (2) of Section 90 or Section 92.

15. The heading of Section 90 is "Procedure before the Tribunal". The first clause of the section lays down that the Tribunal shall, as soon as may be cause a copy of the petition together with a copy of the list of particulars referred to in Sub-section (2) of Section 83 to be served on each respondent and to be published in the Official Gazette, and at any time within fourteen days after such publication, any other candidate shall subject to the provisions of Section 119, be entitled to be joined as a respondent. Then comes Sub-section (2) which reads as follows:

Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Tribunal as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (Act 5 of 1908) to the trial of suits.

To this sub-section are appended two provisos. The first proviso says:

Provided that it shall be sufficient for the tribunal to make a memorandum of the substance of the evidence of any witness examined by the Tribunal and it shall not be necessary for the Tribunal to take down the evidence of any witness in writing at length unless the Tribunal is, on the application of any party or otherwise, satisfied that there is any special reason for so doing.

The second proviso lays down that

the Tribunal shall have the discretion to refuse for reasons to be recorded in writing to examine any witness or witnesses if it is of the opinion that their evidence is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

Sub-section (3) says that

the provisions of the Indian Evidence Act, 1872 (Act 1 of 1872) shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.

16. The words of Section 92 which deals with the "Powers of the Tribunal" are:

The Tribunal shall have the powers which are vested in a Court under the Code of Civil Procedure, 1908, in respect of the following matters.

- (a) discovery and inspection;
- (b) enforcing the attendance of witnesses, and requiring the deposit of their expenses;
- (c) compelling the production of documents;
- (d) examining witnesses on oath;
- (e) granting adjournments;
- (f) reception of evidence taken on affidavit;
- and (g) issuing commissions for the examination of witnesses.

and may summon and examine suo motu any person whose evidence appears to it to be material; and shall be deemed to be a Civil Court within the meaning of Sections 480 and 482, Cr. P.C. 1898.

Explanation: For the purpose of enforcing the attendance of witnesses, the local limits of the jurisdiction of the Tribunal shall be the limits of the State in which the election was held.

17. It cannot be denied that the CPC not only lays down the procedure that a Court has to follow in the course of proceedings before it, but also defines its powers. If the intention of the framers of Sub-section (2) of Section 90 was that the whole of the CPC should apply to the proceedings before an Election Tribunal, and subject to the provisions of the Act a Tribunal should follow the same procedure and possess the same powers as a Civil Court follows and possesses, there was no necessity whatsoever to insert Section 92 dealing specially with the powers of the Tribunal. I am, therefore, of the opinion that Sub-section (2) of Section 90 is limited only to the procedure that a Tribunal is to follow while trying a petition. This procedure is laid down in Order 18. It is true that the heading of the said Order is "Hearing of the Suit and examination of witnesses", but hearing and trial mean the same thing". Reference in this connection is invited to Wharton's Law Lexicon (fourteenth edition) at page 1011 of which "Trial" is defined "as the hearing of a case, civil or criminal, before a Judge, who has jurisdiction over it, according to the laws of the land." The conclusion that Section 90 of the Act dealt with the same subject that is dealt with by Order 18, Civil P.C., is further strengthened by the fact that the provisions of Sub-section (2) which I have reproduced above relate to the examination of witnesses. As regards Section 92, the powers to which it refers are the powers given to the Civil Court by other Orders-Discovery and inspection (Order 21), Enforcing of the attendance of witnesses (Order 16), Compelling the production of document (Orders 21 and 13), Examining witnesses on oath (Order 18), Granting adjournments (Order 17), reception of evidence taken on affidavits (Order 19) and issuing commissions for the examination of witnesses (Order 26). I repeat that if the effect of Sub-section (2) of Section 90 was to make the whole of the CPC applicable to the proceedings before Election Tribunals, Section 92, is

altogether redundant, but it is well recognised that no provision of a statute and no part of a section should be regarded as redundant and superfluous. I may also refer in this connection to Section 91 headed "Appearance before Tribunal" which says

Any appearance, application or act before the Tribunal may be made or done by the party in person or by a pleader duly appointed to act on his behalf; provided that it shall be open to the Tribunal to direct any party to appear in person whenever the Tribunal considers it necessary.

This provision is almost identical with that contained in Order 13, and if Sub-section (2) of Section 90 was intended to have such a wide meaning as Mr. Bhagwati Parshad would have us hold, where was the necessity of enacting this Section?

18. The relevant part of Order 1, Rule 10 upon which Mr. Bhagwati Parshad relied is Clause (2) which gives the Civil Court very wide powers to strike out and add parties. The words of the clause are:

The Court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as Plaintiff or defendant, be struck out, and that, the name of any person who ought to have been joined, whether as Plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

Clause (4) of the Rule provides for the amendment of the plaint when a Defendant is added. It says:

Where a Defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new Defendant and, if the Court thinks fit, on the original defendant.

As will be seen from Sub-section (1) of Section 90 of the Representation of the People Act that contains a provision for joining as respondents the duly nominated candidates other than those that are impleaded by the Petitioner, but such candidates can be joined only if they apply within fourteen days of the publication of the election petition with a copy of the list of particulars referred to in Sub-section (2) of Section 83 in the Official Gazette. As regards the amendment of the petition power is given to the Tribunal by Sub-section (3) of Section 83 which lays down that

the Tribunal may, upon such terms as to costs and otherwise as it may direct at any time, allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition.

Wide though this power is, it is not as wide as the power of amendment of pleadings given to Civil Courts, because the amendment u/s 83(3) can only relate to the particulars or matter referred to in the original petition. These factors further support Mr. Amar Singh Ambalvi's contention that the intention of the legislature was to apply to the proceedings before the Tribunal only those few parts of the CPC which are specifically mentioned in Sub-section (2) of Section 90 and Section 92. Accordingly I hold that the Tribunal had no power to allow respondents 8 to 11 to be made parties to the petition.

19. After having disposed of these points I come now to the most important question whether this Court can and should quash the order of the Election Tribunal by which respondents 8 to 11 were permitted to be made parties to the petition. To start with Mr. Bhagwati Parshad contended that in view of Clause (b) of Article 329 of the Constitution and Section 105 of the Act the High Court has no jurisdiction to quash or interfere with any orders of the Election Tribunal. The relevant words of Article 329 are:

Notwithstanding anything in this Constitution-(b) no election to either house of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

Now, the object of the present petition is not to call in question any election, rather it is to ensure that the election of Sardars Hukam Singh and Ajit Singh should not be questioned except to strict conformity with the provision of Article 329. Section 105 of the Act lays down that "Every order of the Tribunal made under this Act shall be final and conclusive." It is true that the words "every order" are significant, and strictly construed they do bring the order of the Tribunal which is the subject-matter of the present petition into the ambit of the Section, but it must be remembered that the Act cannot override the positive provisions of the Constitution, nor can it take away the powers that the Constitution has given the High Courts under Articles 226 and 227.

20. Clause (1) of Article 227 definitely lays down that every High Court shall have superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. It cannot be denied that the Election Tribunal stationed in and working in this State is a tribunal within the meaning of the Article and Mr. Bhagwati Parshad also conceded that the powers of superintendence include the power to set aside the orders of tribunals in appropriate cases. The only tribunals which are not subject to the powers of superintendence of the High Court are those constituted by or under law relating to the Armed Forces. The scope of Article 329(b) of the Constitution when read in the light of Article 227 was discussed by a Bench of the Bombay High Court in-"Shankar Nanasaheb Karpe Vs. Returning Officer, Kolaba District and Another, and the following observations were made by the learned Chief Justice:

We may also point out, though it strictly does not arise that the jurisdiction of the Court has not been wholly taken away with regard to election matters.... Mr. Purshottam said that on our view of the interpretation of Article 329(b) even if the Tribunal were to act without jurisdiction or were to assume jurisdiction which it did not possess, we would have no right to interfere. That is not our interpretation of Article 329(b). All that we lay down is that to the extent that the merits of an election matter are concerned our powers have been taken away, but our powers have not been taken away to compel a Tribunal which is set up to decide those matters acting with jurisdiction and not in excess of the powers conferred upon it by statute.

Accordingly I hold that we have power of superintendence over the Election Tribunal. The question, however, is whether in the exercise of that power we should interfere in this case.

21. Mr. Amar Singh Ambalvi argued that since the order of the tribunal was wrong in law we should quash it without any hesitation. This argument, in opinion, ignores the exact scope of Article 227. It has been held by this Court, and the same view has been taken by other High Courts in India, that while dealing with orders of tribunals or subordinate Courts under Article 227 the High Courts does not act either as a Court of appeal or a Court of revision. It has further been held by us that the object of Article 227 is not to enable the High Court to correct every error but merely to see that the subordinate tribunals are kept within the four corners of law and they do not act outside the jurisdiction given to them by law. So the mere fact that the tribunal in this case made an order which in my view is illegal cannot be a ground for interfering with it. Then Mr. Amar Singh Ambalvi argued that the tribunal acted without jurisdiction in proceeding with the petition which was not presented to it according to the provisions of the Act. In this connection learned Counsel referred us to Section 80 which lays down that no election shall be called in question except by an election petition presented in accordance with the provisions of part VI of the Act and contended that as the mandatory provisions of Section 82 as regards the impleading of necessary respondents had not been complied with the petition was not properly presented and the tribunal had no jurisdiction to go into the legality of the election on the basis of it. Mr. Bhagwati Parshad, on the other hand, argued that it was for the Election Tribunal to decide whether or not the petition before it had been properly presented and whether it had jurisdiction to go on with it and even if the Tribunal decided these questions wrongly it cannot be said that it acted without jurisdiction.

This point was recently decided by a Bench of our High Court in-AIR 1953 Pepsu 88 (B). The case involved the question whether it was within the jurisdiction of the Income Tax Officer to decide certain objections that were raised before it by an assessee and whether the High Court could issue a writ to the Income Tax Officer restraining him from deciding those objections on the ground that he had no jurisdiction in the matter. The judgment of the Bench was delivered by me

and after referring to a number of English and Indian cases and quoting the observations made by Lord Esher M.R. in "(1888) 21 QBD 313 (C)" I held that the Tribunals established by and working under the Income Tax Law belong to the class of the tribunals to which the second part of the formula laid down by Lord Esher relates and that all points arising out of and affecting the assessment, whether they be points of fact or law, must be raised before, and adjudicated upon, by those tribunals and no writs are issued against those tribunals except when their proceedings are vitiated by total want of jurisdiction or the defect of jurisdiction is apparent on record. One of the reasons why I came to the above conclusion was that the scheme of the Income Tax Law convinced me that the intention of the legislature was to give a finality to the decisions of the tribunal established by the Income Tax law and as regards this aspect of the matter the perusal of Article 329 of the Constitution of India, and Section 105 of the Representation of the People Act makes me think that position of Election Tribunal is somewhat better than that of the Income Tax Tribunals. It can certainly be argued that so far as Income Tax Tribunals are concerned the Income Tax Law has made ample provisions for appeals and further appeals and on questions of law an aggrieved assessee can even demand a reference to the High Court and the Supreme Court, but whether or not an appeal or any other remedy should be provided from the decisions of Election Tribunals is a matter of policy which is for the legislature to determine. All that I am concerned with at the present stage is whether the legislature intended that the decisions of Election Tribunals on petitions made before them should have a finality and it is not possible to answer this question except in the affirmative. This being the case I hold that all objections relating to the proper presentation of an election petition and the power of the tribunal to allow the Petitioner to remove defects in the petition should be raised before the tribunal itself and the tribunal has jurisdiction to decide them. Following the well-known maxim that "Jurisdiction to decide a question included the jurisdiction to decide it rightly or wrongly", I further hold that the order in question made by the Election Tribunal in the present case is not vitiated by total want of jurisdiction.

22. In the course of arguments our attention was drawn by counsel to decisions of various Election Tribunals which showed that there is a great diversity of opinion between them as regards the effects of the Petitioner's failure to implead necessary parties as respondents and the powers of the tribunals to adjudicate upon petitions in which necessary parties are not impleaded. Since the law is that the decisions of Election Tribunals must be given effect to it is clear that in some cases at least election petitions were, or are likely to be, accepted or dismissed on wrong grounds, which means real hardship for the parties affected. This, however, is a matter which cannot influence us in the decision of the present petition, because when we find that the impugned order of the Election Tribunal is not without jurisdiction, we have no power to interfere with it in these proceedings.

(Certificate required by Article 132(1) for appeal to the Supreme Court was

granted.)