
(1964) 07 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 5-E of 1964

Sadhu Singh

APPELLANT

Vs

Shamsher Singh Josh and Others

RESPONDENT

Date of Decision : 17-07-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, Order 9 Rule 7, 151
Representation of the People Act, 1951 — Section 116A, 90(6)

Citation : AIR 1965 P&H 58

Hon'ble Judges : I.D. Dua, J;D.K. Mahajan, J

Bench : Division Bench

Judgement

Inder Dev Dua J.

(1) This appeal u/s 116A of the Representation of the People Act 1951 is directed against the order of the Elections Tribunal Ambala dated 16-3-1964 dismissing the election petition filed by the appellant

(2) In the election petition Sadhu Singh appellant questioned the election petition of Shri Shamsher Singh Josh from the Rupar Constituency of the Punjab Legislative Assembly held in February 1962. It is unnecessary in view of our decision to refer to the various details. Suffice it to say that after hearing the learned counsel for the appellant at length we felt impressed by the criticism levelled against the impugned order of the Election tribunal on issues nos. 4, 5, 6, 7, and 7A which are in the following terms:

"4. Whether on 12-1-1962 in the evening a religious congregation was held in Gurdwara Sada Barat Rupar on the occasion of the birthday of Shri Guru Gobind Singh Ji and speeches were delivered that congregation by respondent No. 1 members of congregation to pledge by oath to vote for respondent No. 1 since it was the religious duty the full support of Shiroman Akali Dal and that the voters voting for respondent No. 1 would then have the blessing of God Almighty? If so what is its effect?

5. Whether on 12-2-1962 a religious congregation was held in Gurdwara Bhatta Sahib Rupa and speeches were made by respondent No. 1 and Dharam Singh in the presence of Shri Guru Granth Sahib exhibiting the voter to vote in the name of Panth, the Guru, Punjabi Suba and Punjabi religion and assured them that if they voted for respondent No. 1 they would have the blessings of the 10th Guru and Mata Sahib Devan? If so what is its effect on the election?

6. Whether on 13-2-1962 a religious congregation was held on the Gurdwara Singh Sabha Rupa and speeches were delivered in the meeting by respondent No. 1 and Dharam Singh and Isher Singh asking the voters to swear to vote for respondent No. 1 ? If so its effect on the election?

7. Whether respondent No. 1 got poster "B" titled "Sikh Votaran Noon appeal ". printed and published throughout the Constituency and whether the contents of the poster contained an exhortation amounting to corrupt practice? If so its effect on the election?

7-A Whether poster "B" was not printed by the election petitioner after the election with a view to fabricate false evidence?"

Issues Nos. 4, 5 and 6 were discussed together by the Tribunal in paragraphs Nos. 8 to 19 of the judgment and issues Nos. 7 and 7-A were considered separately in paragraphs nos. 20 to 32. As a matter of fact we called upon the respondent only on these five issues.

(3) Shri Anand Swaroop learned counsel for the respondent plainly expressed his inability to support the decision of the Election Tribunal on the existing record and took us through the proceedings of the Tribunal for purpose of justifying his plea that Shamsheer Singh Joshi's defence had been wrongly shut out and that this Court should now permit him to adduce defence evidence. This plea is contained in cross-objections under O. 41 Rule 22, of the CPC filed on behalf of the respondent. It is unnecessary to go into the question whether these cross-objections are competent for the purpose for which they were sought to be utilised because even now these objections can be taken by the respondent without preferring any cross-objections and indeed on behalf of the appellant it has not been argued that the respondent is not entitled to ventilate his grievance in this connection in the present appeal.

(4) The appellant's learned counsel has stated that 6-10-1962 was date fixed for the petitioner's evidence on which date about 8 witnesses were examined. The proceedings were then adjourned to 22-11-1962. One day before this date i. e. 21-11-1962 Shamsheer Singh Joshi the returned candidate was arrested and detained under the Defence of India Rules. A telegram sent from the District Jail Rohtak praying for adjournment was received by the Tribunal on 23-11-1962. On 22-11-1962, however P. W. 9 to P. W. 22 were duly examined. After the examination of one witness according to the appellant's submission an application was presented by the counsel for Shamsheer Singh Joshi that as his client has been arrested under the Defence of India Rules the previous day and

had been unable to give instructions to cross-examination should be deferred till such time as the counsel was in a position to get instructions for effective the Election Tribunal on the ground inter alia that there was no provision in the CPC to which its attention has been drawn empowering it to defer the cross-examination of witnesses.

On 23-11-1962, Shri Anand Swaroop learned counsel for Shamsheer Singh Josh submitted that he was not in a position to take part in the defence of the case so long as Shamsheer Singh did not give him proper instructions. The Tribunal however examined quite a number of witnesses on that day who were duly cross-examined by the counsel for the respondent. The case was then adjourned on 22-12-1962 when it was adjourned on the request of the counsel for Shamsheer Singh Josh with an observation that the counsel should contact him in jail for receiving instructions. It was also pointed out that in a D. O. letter to the Home Secretary to Punjab Government it should be suggested that it would be expedient in the interest of justice if the detenu could be brought to a jail nearer the seat of the Tribunal. The proceedings were then adjourned to 12-1-1963. On that date the proceedings were again adjourned to 1-2-1963 when Shri G. S. Chawla informed the Court that he had since interviewed Shamsheer Singh Josh and was accordingly posted with necessary instructions. Proceedings were in the circumstances adjourned to 12-2-1963 for the petitioner's evidence.

On 12-2-1963, after the statements of two witnesses in support of the election petition were recorded and the first question was put to the third witness Shri G. S. Chawla counsel for Shri Shamsheer Singh Josh withdrew from the proceedings saying that he had no instructions to take further part in it. According to the learned counsel he had been unable to obtain-instructions for cross-examination of the remaining witnesses because his client had to collect the necessary Jata from his friends and relations. Naturally therefore the witnesses for the petitioner were examined in the absence of the counsel for the respondent. The Tribunal of course did not accede to Mr. Chawla's request to adjourn the case as prayed. Six more witnesses were examined on that date in addition to the petitioner's own statement and his case was closed on the issues the onus of which was on the petitioner. The proceedings were then adjourned to 2-3-1963 with the words " to come up for final hearing on 2-3-1963".

On 28-2-1963, Shri G. S. Chawla learned counsel for Shamsheer Singh Josh put in an application purporting to be under Order 9, Rule 7 and section 151, Civil Procedure Code, for setting aside the ex parte proceedings stating that the absence of his client was not without good cause because his client was under detention and he was handicapped being without instructions and, therefore, had to withdraw. He, therefore, prayed to be permitted to produce his defence witnesses and also to cross-examine the witness who had been examined during the counsel's absence. The proceedings being semi-criminal, the application proceeded, no evidence could be taken in the absence of the returned candidate when his counsel had withdrawn from the proceedings. This prayer was

disallowed by the Tribunal on the ground that no good cause for the deliberate withdrawal of the counsel on 12-2-1963 had been shown but permission was granted to address arguments on the case. Support for the view taken by the Tribunal was sought from a decision of the Supreme Court in Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, .

(5) It appears that an application under Art. 227 of the constitution was thereafter presented to this Court challenging the order of the Tribunal dated 12-3-1963 which was dismissed by a Division Bench of this Court: Civil Misc. No. 771 of 1963 (Punj). It is clear from the order in these proceedings that earlier a civil writ petition had been filed in this Court (Civil Writ No. 291 of 1963) which had also been dismissed by the same Bench on the ground that it was improper to interfere at that stage; the writ petition was apparently directed against the order of the Tribunal dated 12-2-1963 and was dismissed in limine suggesting that the impugned order could be challenged on appeal. Presumably the proceedings before the Tribunal were stayed on account of the petition presented in this Court under Art. 227 of the Constitution, with the result that the election petition was finally disposed of only on 16-3-1964. The Division Bench disallowed the petition under Article 227 on 26-4-1963, but Shamsher Singh Josh respondent again approached the Tribunal on 10-6-1963 through his counsel for the review of its orders by which Josh was feeling aggrieved. In this application, it was stated that the Punjab Government had since permitted Josh to appear in the Tribunal on all future hearings on the Tribunal writing to the Government to that effect. This application was disallowed by the Tribunal on 5-9-1963, observing that it was not shown that the order dated 12-3-1963 was erroneous or that there was any other sufficient reason for reviewing the same. In the meanwhile on 9-10-1963, Josh was released from detention and on 23-10-1963, he again presented an application to the Tribunal with a prayer that he should now be allowed at least to give his own statement as a witness in defence of his case. The Tribunal again could not persuade itself to grant this prayer in view of its earlier orders.

6. The foregoing resume of the proceedings would show that, for various reasons noticed therein, even though the evidence was closed on 12-2-1963 and the proceedings were adjourned to 02-03-1963 for final hearing, it was more than a year later that the election petition was finally disposed of; and this, in spite of the express direction of the Parliament contained in S. 90(6) of the Representation of the People Act, 1951, that endeavour should be made to conclude the trial within six months from the date of publication of the copy of the petition in the official gazette under S. 86(1). In the High Court also, the merits were not gone into and the matter was left to be determined to appeal. Be that as it may, in my opinion, the order of the 12th February, 1963, cannot to be considered to be a bar to the prayer made on behalf of the respondent Shamsher Singh Josh, after his release from detention, that his statement should at least be recorded. As observed in Sangram Singh Josh, after his release from detention, that his statement should at least be recorded. As observed in

Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, an order proceeding ex parte in the absences of the party does not amount to " a mortgaging of the future but only applies to the particular hearing at which a party was afforded the chance to appear and did not avail himself of it ". When, therefore, an application was made on behalf of the respondent to permit to adduce his evidence, it was fully competent for the Tribunal to consider the question whether or not to allow this prayer without feeling hampered by the previous orders. Indeed the dictates of justices, to a considerable extent, required the learned Tribunal to consider more favorably Josh"s request to permit him to appear as his own witness, after had been permitted by the Government to attend hearing ; after his release, his request was apparently more difficult to refuse.

It is instructive in this connection to bear in mind what Bose J., speaking for the court in Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, said:

"Now a code of procedure must be regarded as such. It is "procedure", something designed to facilitated justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up."

* * * *

" Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle."

Another important and basic factor which the Courts and the Tribunals dealings with election contests would do well always to keep in view is that the election of a successful candidates is not to be lightly interfered with; and further that in spite of it one of the essential objects of the law of elections is to safeguard the purity of the election process that people do not get elected by flagrant breaches of law or by corrupt practices. Our welfare democratic Republic is founded on principles of truth, justice and fair play; our election of the citizens" representatives chosen as legislators. From this point of view the whole constituency would apparently be interested in election contests; it is indeed sometime described to be the principal party interested. An election being an essential part of our democratic process, the citizens at large are vitally interested in seeing, and indeed they justifiably claim an in herent right to insist, that all elections are fair and free and not vitiated by corrupt and illegal practices Every democratic set-up of our pattern postulates a certain standard of integrity in public administration; at the present stage of our democratic existence, such integrity is of the utmost importance. A citizen who attempts to get into position

of privilege and power and to retain the same through corrupt methods and illegal practices is the biggest enemy of such set-up. A legislator who gets elected through corrupt and illegal practices can seldom be depended upon to resist the temptation of resorting to such practices, in the discharge of his official functions. whenever such resort may tend to promote his personal interests. Such a legislator can scarcely promote the cause of honest public administration; his personal interest might well lead him in diametrically opposite direction, thereby injecting into our body politic the poisonous and malignant germ of corruption and illegality. It would of course also be destructive and nugatory of the rule of law and violative of our constitutional set-up. Our law of election is thus very rightly zealous in checking such practices in the election process, and Tribunals and Courts dealing with election petitions are no less so in effectively enquiring into allegations of such practices. An enquiring into allegations of such practices. An election petition is, for the foregoing reasons., not a matter in which the only persons interested are the candidates striving against each other; the Tribunal has, therefore, a solemn duty to look at the matter from a somewhat broader point of view, and the approach adopted in a private action is not to be strictly adhered to in the trial of election petitions.

(7) In the light of the two aspects discussed above, in my opinion, when Shamsher Singh Josh was permitted to attend the Tribunal, and again later when he was released, the Tribunal should have exercised its judicial discretion in considering whether or not it would better serve the cause of justice to permit him to appear as his own witness and also to permit him to produce the necessary evidence in rebuttal. The relevant advantages and disadvantages of allowing or disallowing the respondent's prayer in changed circumstances should have been weighed without attaching undue importance to or being unduly obsessed with the earlier order passed in different circumstances. Of course, I have no reason to disagree with the Tribunal on 12-2-1963 was in the circumstances, unjustified, though I am unable to agree with it when it says in its order dated 12-3-1963 that the election petitioner having cut short his witnesses on the withdrawal of the returned candidate's counsel, it was unfair to permit the returned candidate to produce his witnesses. This discloses a certain amount of misunderstanding of the legal position on the part of Shri Sant Ram Garg who at that time constituted the Tribunal. Merely because the proceedings are ex parte against a returned candidate on a particular day the onus on the election petitioner to prove the charges does not for that reason become lighter; nor does the standard of proof vary; the election petitioner has to discharge his onus in the same manner as in a contested case and the Tribunal has also to apply the same test in appraising the evidentiary value. The fact the proceedings are ex parte would perhaps increase the reasonability of the Tribunal to see that the election is not too lightly set aside.

(8) After considering all the circumstances of the cases, I am of the view that in fairness, Josh should have been allowed on his own responsibility to produce his witnesses and also to put himself in the witness box. As the respondent too

cannot be completely absolved from blame, we are inclined to allow his this opportunity only if he brings his witnesses on his own responsibility so that no undue delay is caused in the disposal of the election petition. It appears to us that Shamsheer Singh Joshi had perhaps been wrongly advised that on the analogy of a criminal trial no ex parte proceedings can lawfully take place if his counsel were to withdraw, but as the public is also interested in proper per trial of the election petition we have persuaded ourselves to afford this last opportunity to him.

(9) He initially submitted a list of 41 witnesses for production, but after consulting with the appellant this list has been revised and out of it Sant Fateh Singh at serial No. 2 clerk of the record room, Ambala, at serial No. 6 Giant Santokh Singh Printer, Gurdwara Printing Press at serial No. 12 Giani Mohinder Singh at serial No. 33 and Tara Singh Majra at serial No. 38 were scored out by the respondent's counsel. This list was ultimately finalised with the consultation of both the parties (who were personally present in Court) and their counsel.

(10) The appeal is for the foregoing reasons allowed in part and setting aside the decision of the learned Tribunal on issues Nos. 4, 5, 6, 7, and 7-A, we sent the case back for further proceedings in accordance with law and in the light of the observations made above. The respondent is permitted to produce only 36 witnesses included in the list on his own responsibility. If he wants the summonses from, the Court they will be issued but no adjournment would be granted on the ground that a witness could not be served or produced. HE will of course be entitled to put himself in the witness outside this list would be permitted to be produced.

(11) The parties are directed to appear before the Election Tribunal appointed by the Election Commissioner on 10-8-1964. The Tribunal would fix 24-8-1964. for the production of evidence which will proceed from day to day and the election petition should be disposed of by the end of September 1964. Costs in this Court would be borne by the parties but costs before the Tribunal so far incurred would be costs in the cause to be determined by the Election Tribunal at the conclusion of the trial. A copy of the order should immediately be forwarded to the Election Commission.

D.K. Mahajan J.

(12) I agree.

IH/AGJ/V. B B.

(13) Appeal partly allowed.