

(1963) 04 BOM CK 0013

In the Bombay High Court

Case No : Special Civil Application No. 97 of 1963

Vithalrao Rajaram Hingwe

APPELLANT

Vs

M.K. Joshi and Others

RESPONDENT

Date of Decision : 19-04-1963

Acts Referred:

Bombay Treasury Rules, 1960 — Rule 112, 117 , 118, 188, 6
Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227
Representation of the People (Amendment) Act, 1961 — Section 19
Representation of the People Act, 1951 — Section 112, 113, 114, 115, 117
Reserve Bank of India Act, 1934 — Section 45, 45(1)

Citation : AIR 1964 Bom 107 : (1963) 65 BOMLR 612

Hon'ble Judges : V.G. Wagle, J;S.P. Kotval, J

Bench : Division Bench

Advocate : B.R. Mandlekar and K.N. Dole, for the Appellant; B.A. Masodkar and C.S. Dharmadhikari, for the Respondent

Judgement

Kotval, J.—This petition directly arises out of our decision in Vithalrao Rajaram Hingwe Vs. M.K. Joshi and Others, and we are here concerned with the same order as in that appeal. It is the order of the Election Tribunal Wardha, passed on 15th December 1962 in Election Petition No. 147 of 1962.

2. First Appeal No. 11 of 1963 was an appeal preferred! against the order of the Election Tribunal dismissing an application for substitution u/s 115 of the Representation of the People Act, 1951. The Election Tribunal had dismissed the petition on the short ground that a deposit made by the petitioner applying for substitution in place of a deceased petitioner was not made in compliance with Section 117 of the Act and, therefore, the petition for substitution could not be considered. When the First Appeal came up for hearing before us, a preliminary objection was raised on behalf of the present respondent No. 2 that no appeal lay against such an order of the Election Tribunal, and by our judgment dated 14-3-1963 in First Appeal No. 11 of 1963 Vithalrao Rajaram Hingwe Vs. M.K.

Joshi and Others, we upheld that objection. At the same time we noted in that judgment that the then appellant before us Vithalrao Rajaram Hingwe had made alternative prayers that the memo of appeal should be treated as a writ petition or that we should exercise our power under Art. 227 of the Constitution to interfere with the order of the Election Tribunal or, in the alternative, that we should treat it as a revision application u/s 115 of the Code of Civil Procedure. We did not pronounce upon those alternative prayers but having dismissed the appeal, left it to the appellant to take such remedy as he chose to take. Accordingly, he has now filed the present application invoking the powers of this Court under Articles 226 and 227 of the Constitution.

3. Having regard to the pronouncements of their Lordships of the Supreme Court in Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, there can be no doubt today that this Court can interfere with the orders of Election Tribunals, though within the strict limits laid down by the several decisions of the Supreme Court. In the case just referred to, the Supreme Court observed in paragraph 20:

"We are also of opinion that the Election Tribunals are subject to the superintendence of the High Courts under Article 227 of the Constitution, and that that superintendence is both judicial and administrative. ----- It may also be noted that while in a "certiorari" under Article 226 the High Court can only annul the decision of the Tribunal, it can, under Article 227, do that, and also issue further directions in the matter. We must accordingly hold that the application of the appellant for a writ of "certiorari" and for other reliefs was maintainable under Articles 226 and 227 of the Constitution."

Undoubtedly, this power has to be exercised within the strict limitations laid down by the High Courts for themselves in the exercise of their extraordinary jurisdiction under Articles 226 and 227 of the Constitution and as laid down in several cases of the Supreme Court. We shall, when we discuss the points argued in this petition, deal with those powers at the appropriate place. Suffice it to say that a discussion of the scope and extent of those powers was one of the major contentions in this case.

4. The circumstances under which the application for substitution filed by the present petitioner came to be dismissed by the Election Tribunal have already been referred to by us in our Judgment in First appeal No. 11 of 1963, Vithalrao Rajaram Hingwe Vs. M.K. Joshi and Others, . We may briefly recount those circumstances here. In the last general elections the respondent no. 2 Narayan Rajaram Kale was elected to the Legislative Assembly of the State of Maharashtra from the Arvi Constituency. The returned candidate, got 26,337 votes and one Mahadeo Tukaramji Thakre got the second highest votes viz 25,156 votes. The respondents Nos. 3, 4 and 5 to this petition were also candidates for the election, but the number of votes polled by them were comparatively few.

5. After the declaration of the results, Mahadeo Thakre filed an election petition

before the Election Commission, and the latter forwarded it to the Election Tribunal at Wardha for disposal. The officer appointed to be the Election Tribunal was Shri M. R. Joshi, District Judge, Wardha. The election petition was received by the Election Tribunal on 28-7-1962, notices were issued and the returned candidate Narayan Kale put in appearance on 17-8-1962 and asked for time to file his written statement. The next date of hearing was 31-8-1962 on which date the Tribunal was informed that the petitioner Mahadeo Thakre had passed away on 26-8-1962. As a result of the death of the sole petitioner. and in view of Section 112 of the Representation of the People Act, the Election Tribunal held that the election petition had abated. It consequently took action under the provisions of Section 114 to give notice in the Official Gazette that the petition had abated. The Tribunal also ordered that the case should be put up to it after the publication of the notice in the Official Gazette, for proper orders. The notice was published in the Maharashtra Government Gazette on the 13th of September 1962.

6. Section 115 of the Act says that after a notice of the abatement of an election petition is published u/s 114,

"any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner and upon compliance with the conditions of Section 117 as to security shall be entitled to be so substituted and to continue the proceedings upon such terms as the Tribunal may think fit".

Acting under these provisions of law the present petitioner Vithalrao Hingwe applied on the 26th of September 1962 for substitution in the place of Mahadeo Thakre stating that he was a recorded voter in the Arvi Constituency and as such he might himself have been a petitioner. The application was filed on the 26th of September 1962 and was within fourteen days from the date of the notice of abatement published in the Maharashtra Government Gazette as required by Section 115 of the Act. The notice was published on the 13th September 1962 as we have stated above. In paragraph 4 of the application for substitution the petitioner Vithalrao alleged:

"That the petitioner has fulfilled the conditions of Section 117 of the Act as to deposit of Rs. 2000/- as security of the cost of petition. He begs to file herewith the treasury challan in that behalf."

The treasury challan filed by the petitioner is at Exh. 32.

7. The application for substitution was opposed only by Narayan Kale the returned candidate. The other respondents do not seem to have taken any interest in it. The respondent No. 1 before the Tribunal raised several objections to the application for substitution. He denied that the petitioner was recorded voter or that he could file a petition u/s 115 of the Act. He denied that he could have been the petitioner in the election petition. In reply to the averment of the petitioner that he had complied with the conditions of Section 117, the

respondent No. 1 stated:

"Contents of para 4 are not admitted and the petitioner is put to a strict proof that he has fulfilled the condition of Section 117 of the Act (ibid), as alleged."

It may be stated here that beyond this denial of the allegation in the petition, the respondent No. 1 did not raise any specific objection, nor did he refer to non-compliance with any provision of law. We stress this here because it has been strenuously argued on his behalf by Mr. Masodkar that any new question upon the provisions of law cannot be considered by us in a writ petition. In fact, neither in the pleadings of the petitioner, nor of the first respondent, was any positive stand taken based upon any provision of the law. There were hardly any pleadings beyond the one party asserting and the other denying that Section 117 had been complied with, and it was solely upon that cryptic pleading that extensive arguments were advanced before the Election Tribunal and before us.

8. The Election Tribunal framed five points for determination of which the point No. 1 was whether the petitioner was a person who might himself have been the election petitioner, and points Nos. 2 to 4 were whether Section 117 had been complied with or not. The 5th point was a point relating to the relief to be granted. On the question upon the first point, the Election Tribunal held in favour of the petitioner. It held that u/s 115 of the Act the petitioner was a person competent to be substituted in place of the deceased election petitioner and, therefore; entitled to be substituted upon compliance with the conditions of Section 117 as to security and to continue the proceedings before the Election Tribunal. But upon the second point arising before it, viz. whether the petitioner had complied with the conditions of Section 117 as to security, it held against the applicant for substitution. The Tribunal took the view that having regard to the provisions of Section 117 of the Act, the deposit made by the petitioner of Rs. 2000/- as required by Section 117 was not in strict compliance with the provisions of Section 117 and, therefore, the application for substitution was liable to be dismissed. The finding of the Election Tribunal that the petitioner might himself have been a petitioner in the election petition has not been challenged before us on behalf of the returned candidate, the second respondent. Therefore, the only point which survives for consideration is whether the deposit of Rs. 2000/- made under Exh. 32 complies with the requirements of Section 117 of the Act read with Section 115 thereof.

9. From the arguments advanced before us it appears that the objection to the treasury chalan Exh. 32 is four-fold. The objections are:

Firstly, that u/s 117 the petitioner himself must deposit the amount, but, in the present case, it was not deposited by the petitioner but on his behalf by a complete stranger one D. H. Gandhi.

Secondly, that the voucher which has been produced at Ext. 32 is not a Government Treasury receipt within the meaning of Section 117.

Thirdly, that the deposit was actually made in the State Bank of India which is not the same thing as making it in a Government Treasury or the Reserve Bank of India, as required by Section 117; and

Fourthly, that neither the deposit nor the voucher produced shows that it was in favour of the Election Commission of India; therefore, it is urged that the deposit was not under the control of the Election Commission of India and cannot be regarded as a voucher in compliance with Section 117.

10. Section 117 of the Representation of the People Act, 1951, runs as follows:

"117. Deposit of security. -- The petitioner shall enclose with the petition a Government Treasury receipt showing that a deposit of two thousand rupees has been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Election Commission as security for the costs of the petition."

Section 115, which brings into play the provisions of Section 117, runs as follows:

"115. Substitution on death of petitioner- --After a notice of the abatement of an election petition is published u/s 113 or Section 114, any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner and upon compliance with the conditions of Section 117 as to security shall be entitled to be so substituted and to continue the proceedings upon such terms as the Tribunal may think fit."

The words used in Section 115, are not that the provisions of Section 117 shall be complied with, but the words used are "upon compliance with the conditions of Section 117 as to security". In other words, it is clear that it is the conditions of Section 117 as to security that have to be fulfilled by the applicant for substitution, and not the provisions of Section 117. In this respect we shall have occasion hereafter to contrast the provisions of Section 85 with the provisions of Section 115. Now, no doubt the condition as to security in Section 117 is that a deposit of two thousand rupees shall be made as security for the costs of the petition. There are several other requirements of Section 117, and the question is whether, having regard to the provisions of Section 115, all those requirements have to be fulfilled in the very terms of Section 117 or substantially. It is in the light of these provisions we will have to consider the objections taken to the treasury challan Exh. 32.

11. The first objection is that the petitioner himself ought to have made the deposit and that he could not entrust the matter to a stranger like one D. H. Gandhi. The latter has given evidence as P. W. 3 (Duragadas Gandhi). He has stated that he deposited the amount under Exh. 32 and it was deposited for the costs of the election petition. He admits that he is neither a Mukhtiar nor a servant of Hingwe but was asked by his own master one Bansilal to deposit the amount which the petitioner would give him. He also states that he had gone to the Election Office and told the Head Clerk one Khan that the amount had to be

deposited and before he deposited it, Khan signed the challan and asked him to go to the State Bank. The petitioner no doubt, has not signed the challan, but in the column "By whom brought" is entered the name "Vithalrao Rajaram Hingwe of Dharti", and the witness Gandhi has signed over the "signature of the tenderer."

12. It seems to us quite plain upon reading these entries that any reasonable person would conclude that the amount was deposited for and on behalf of Vithalrao Rajaram Hingwe by the witness Gandhi. Undoubtedly, Section 117 says that the petitioner shall enclose with the petition a Government Treasury receipt showing that a deposit "has been made "by him", either in a Government Treasury or in the Reserve Bank in favour of the Election Commission". (Underlining (here in " " marks -- Ed) is ours). But we do not think that when the legislative draftsman used in relation to the deposit the words "has been made by him" that the draftsman intended to say that the petitioner must go in person to deposit it. At any rate, if the petitioner sends another person to make the deposit, he has in our opinion substantially complied with the provisions of Section 117 of the Act. In our opinion, the matter is concluded by the remarks of their Lordships of the Supreme Court in two cases (1) K. Kamaraja Nadar Vs. Kunju Thevar and Others, and (2) Chandrika Prasad Tripathi Vs. Siv Prasad Chanpuria and Others, , and is considered in a recent decision of the Madhya Pradesh High Court, Kesheo Prasad v. A. D. Mani 1961 MPLJ 1021 which has directly decided this very point.

13. In K. Kamaraja Nadar Vs. Kunju Thevar and Others, the point was dealt with in paragraphs 30 to 32 of the judgment. In that case the objection taken was that the Treasury receipt was not in favour of the Secretary to the Election Commission as the section then required, but only mentioned the Election Commission. In dealing with this objection the Supreme Court observed:

"What is of the essence of the provision contained in Section 117 is that the petitioner should furnish security for the costs of the petition, and should enclose along with the petition a Government Treasury receipt showing that a deposit of one thousand rupees has been made by him either in a Government Treasury or in the Reserve Bank of India, is at the disposal of the Election Commission to be utilised by it in the manner authorised by law and is under its control and payable on a proper application being made in that behalf to the Election Commission or to any person duly authorised by it to receive the same, be he the Secretary to the Election Commission or any one else.

32. If, therefore, it can be shown by evidence led before the Election Tribunal that the Government Treasury receipt or the chalan which was obtained by the petitioner and enclosed by him along with his petition presented to the Election Commission was such that the Election Commission could on a necessary application in that behalf be in a position to realise the said sum of rupees one thousand for payment of the costs to the successful party it would be sufficient compliance with the requirements of Section 117. No such literal compliance with

the terms of Section 117 is at all necessary as is contended for on behalf of the appellant before us." In Chandrika Prasad Tripathi Vs. Siv Prasad Chanpuria and Others, the Supreme Court again made it clear that technical objections u/s 117 ought to be discouraged. Mr. Justice Gajendra-gadkar delivering the judgment of the Court remarked:

"It has recently been held by this Court in K. Kamaraja Nadar Vs. Kunju Thevar and Others, that Section 117 should not be strictly or technically construed and that wherever it is shown that there has been a substantial compliance with its requirements the Tribunal should not dismiss the election petition u/s 90, Sub-section (3) on technical grounds."

In both the above cases it may be noted that what the Supreme Court was considering was direct compliance with the provisions of Section 117, because by Section 90 Sub-section (3), as it then stood, to which the learned Judge has referred in the above passage, the Election Tribunal was bound to dismiss an election petition which did not comply with the provisions of Section 117. We are not here directly concerned with an election petition but with an application for substitution. Therefore Section 117 can in no case directly apply. It is Section 115 which directly applies and indirectly brings in Section 117. The remarks of the Supreme Court would thus apply to the present case with greater force. We shall have occasion to show a little later that a considerable difference has been made by the amendment of Sub-section (3) of Section 90 by Section 19 of Act 40 of 1961, whereby reference to Section 117 was omitted in Sub-section (3) of Section 90. We stress this point here, because, as we have said, in Section 115, with which alone we are concerned, the words, as they were originally to be found in Section 90(3) or in Section 85(1) to the effect that the petition shall be dismissed if Section 117 has not been complied with, are not to be found. On the other hand, the only requirement of Section 115 is that the conditions of Section 117 as to security shall be complied with. In other words, the emphasis in Section 115 is upon whether the requirement as to security for the costs has been complied with, and not whether all the literal words of Section 117 are complied with, But apart from this, it seems to us that upon the observations of the Supreme Court that Section 117 should not be strictly construed even if it were directly applicable but the tribunal should see that it is substantially complied with, would show that this objection, which is a highly technical objection, ought not to be entertained.

14. Moreover, the point was directly dealt with and decided in 1961 MPLJ 1021. In that case the amount of the deposit was made by a counsel on behalf of the returned candidate and objection was also taken, as here, that it was not made by the candidate himself. Chief Justice Dixit negated the contention upon the basis of the two Supreme Court cases to which we have referred, holding that

"Section 117 does not require that the person filing the petition should himself personally make the deposit. An amount to be deposited in a Bank or Treasury to the credit of some person or authority can be paid by any person directed by him

to pay the same. All that is necessary is to indicate clearly that the deposit is from the person filing the election petition" (in the present case, an application for substitution).

15. The case which we have just referred to is also very material upon the fourth objection raised to the deposit in the instant case, viz. that it was not in favour of the Election Commission. Since we are dealing with the question we might as well reproduce here the decision on that point. In that case it was also held that "Even if the words "in favour of the Election Commission" were not there, still the entry in the challan that the security was for costs of the election petition was plain enough to show that the deposit was in favour of the Election Commission".

16. Then we turn to the second and third objections that the document produced in the instant case is not, as required by Section 117, a Government Treasury receipt and the deposit) was not made in the Reserve Bank of India. These questions can be conveniently discussed together. Exh. 32 shows on the face of it that it is a challan for money paid into the Wardha Treasury, and the printed instructions under it are "To be presented at the Treasury single or in duplicate or triplicate as the case may be". The entries to be made at the foot of the challan also indicate that they are to be made by some officer in the Treasury. This is clear from the use of the words "FOR USE IN TREASURY" and the entry further shows as follows :

FOR USE IN TREASURY

Examined Received Entered No.

(Seal) Rs. (in figures) 2000

Rs.(in words) two thousand

STATE BANK

OF INDIA RECEIVED PAYMENT

Cash Received FOR STATE BANK

26th Sep. 1962 OF INDIA

Sd/- Illegible. Sd/- Illegible Agent, Sd/- Illegible.

Initials of Wardha, 26th Sep. 1962 Signature of

Accountant, Signature of Treasurer. Accountant

The form used was undoubtedly a Treasury Challan form. It is a form described by the Madhya Pradesh Treasury Code, Vol. I, Rule 10, subsidiary Rules 19 and 20 which was formerly in force in these parts.

16a. The objection, now, is that the money itself was not paid into the Treasury but was paid into the State Bank of India and that the signature of the receiving party is that of the Agent of the Wardha Branch of the State Bank of India. Now,

in this respect, the agent of that Bank has been examined. He is the witness Sheoram Krishna Ranade (P. W. 2). He says that he received this amount and credited it in the account of the State Government. He has also deposed that:

"There is no branch of Reserve Bank of India at Wardha. The State Bank acts as an agent of the Reserve Bank of India. At places where there are no branches of Reserve Bank of India the State Bank acts as an agent. The amount was received by us as an agent of Reserve Bank of India. I have sent copy of the Govt. credit Scroll to the Treasury. At Ser. No. 94 there is mention of this amount of Rs. 2000/-."

He has admitted in cross-examination that Exh. 32 is the receipt by the Bank and not by the Treasury. He has, however, alleged that the receipt was given on behalf of the State Government and the amount in Exh. 32 was deposited in favour of the State Government.

17. What the agent has stated is also borne out on a consideration of Section 45 of the Reserve Bank Act 2 of 1934. Section 45(1) of the Reserve Bank Act says that

"Unless otherwise directed by the Central Government with reference to any place, the Bank (Reserve Bank) shall appoint the State Bank as its sole agent at all places in India where it does not have an office or branch of the Banking Department and there is a branch of the State Bank or a branch of a subsidiary bank".

Therefore, while Section 117 of the Representation of the People Act prescribes that the petitioner shall enclose with a petition a Government Treasury receipt showing that a deposit has been made by him either in the Government Treasury or in the Reserve Bank of India, the fact remains that the money was actually deposited with an Agent of the Reserve Bank of India. The matter may be looked at from another point of view. If the money had been paid to the Receiving Cashier at the counter of the Reserve Bank the payment would have been admittedly unexceptionable. Legally that payment too would be made only to an agent or the Reserve Bank. The "Receiving Cashier" receiving moneys from a constituent is not the Reserve Bank himself but an agent of the Reserve Bank receiving the money for and on behalf of that Bank. We have already shown that the State Bank is also merely an agent of the Reserve Bank. What difference would it make then that instead of one agent, the "Receiving Cashier" of the Reserve Bank, another agent viz. the State Bank accepts the amount? Both are agents of the Reserve Bank and both can equally accept the deposit. Indeed it seems to us that a corporation like the Reserve Bank can only act through its agents and in the matter of agency there can be no difference between a human being like the Cashier being an agent and a corporation like the State Bank being an agent. Their capacity to act for their principal is the same except in so far as it may be expressly limited or enlarged, in any case, which is not urged here. We have no doubt that the deposit was validly made and that the challan Exh. 32 is

a Government Treasury Receipt.

18. The question thus raised is: Whether if the money is not directly paid in the Reserve Bank, but is paid into the hands of the Agent of the Reserve Bank, Section 117 has been complied with or not? Once again, we may observe that this is a highly technical objection and having regard to the weighty remarks of their Lordships of the Supreme Court which we have quoted, we do not think that such an objection ought to be sustained. In fact, on the evidence of the agent of the Bank, it is clear that the money has gone into the hands of the State Government and is under control of or available to the Election Commission for utilisation towards the costs whenever the Election Commission so orders.

19. A large number of rules were referred to by Mr. Masodkar from the Bombay Treasury Rules, 1960, particularly rules Nos. 112, 117 and 118. He also referred to the fact that in Rule 408 and the other rules a particular form No. B. T. R. 6 has been referred to as the form which should be used for the deposit of moneys. As to this again, the then officer-in-charge of the Wardha Treasury Vithal Purushottam Jobsite has been examined as P. W. 1. The witness was the Treasury Officer at Wardha since April 1962 and when the deposit in question was made on 26-9-1962. He was deposing with reference to the relevant documents brought from the Treasury and reading the challan he has stated that the amount purports to have been brought by Vithal Rajaram Hingwe, the applicant for substitution. He has stated that the challan was received in the Treasury from the State Bank of India, Wardha Branch; that the amount was credited to Government and "we cannot refund it without the sanction of competent authority". He has also added,

"No cash is kept in the treasury. All the money transactions on behalf of the Govt. are conducted by the State Bank. There is no branch of Reserve Bank at Wardha."

He was asked about the forms and he has admitted that the Bombay Treasury Rules, 1960, were in force at the time of the deposit in this case and that the Form B. T. R. 6 which ought to be the correct form was not used. He was then asked why he accepted the amount and he added: "As it was on Govt. account, we received the challan. Our treasury does not accept deposits. Reserve Bank of India directly accepts the deposits." In re-examination he added,

"The deposit would not be allowed to be withdrawn by orders of Khan (the departmental officer who has signed on it), because it was for election petition."

20. Once again, we may say that! even assuming that the proper form was not utilised it is patent upon the evidence of the Treasury Officer and the Bank Agent that the deposit in the instant case was made towards the payment of the costs of an election petition. It was made with the Agent of the Reserve Bank of India and the money was available for payment by the Election Commission whenever it so chose to order. That a particular form was used or not used is, in our opinion, a very technical objection and the amount which was paid into the State

Bank and received by the officials of the Bank and the officials of the Treasury was in substantial compliance with the provisions of Section 117. In this view, both the second and the third objections cannot, in our opinion, be sustained.

21. We then turn to the last objection that the Treasury receipt was not in favour of the Election Commission. The endorsement on the face of Exh. 32 indicating the Head of Revenue to which the deposit was to be credited is as follows:

"Central (Civil) Section P-Deposits and advances --Part II Deposits not bearing interest--(c) Other deposits accounts civil deposits -- Revenue Deposits -- Deposit for election petition."

It may be mentioned here that the petitioner claimed that he had made this endorsement upon the challan in compliance with the instructions in Chapter XIII, instruction 4, (at page 43 of the 1961 Edition) contained in "A Hand Book for Candidates for election to the House of the People and the Legislative Assemblies", issued under the authority of the Election Commission of India by the Chief Election Commissioner. In fact, the instruction at page 44 quotes the very words which have been reproduced in the challan. It seems to us, therefore, that the applicant for substitution has in terms made out the challan to show that the deposit was to be credited to the very account to which the Election Commission expects deposits u/s 117 to be credited. The main point which Mr. Masodkar made was that in both the Supreme Court cases the Election Commission or the Secretary to the Election Commission was referred to in making the deposit whereas in this endorsement it is not shown that the amount is held to the credit of the Election Commission or that it has been placed under its control.

22. Once again, we think that the objection is extremely technical and any such objection is clearly met by the evidence of the Treasury Officer and of the Bank Agent to which we have already adverted. Both the Treasury Officer and the Bank Agent say that it was held at the discretion of Government and whoever was the proper authority could alone order that amount to be refunded or paid. Since the endorsement on the face of the challan is in compliancy with the instructions issued by the Election Commission itself, we have absolutely no doubt that in this case this deposit was properly made out and though in terms the words "in favour of the Election Commission" are not used in the challan nonetheless, the amount was payable at the orders of the Election Commission and directly under its control so that the condition of Section 117 that the applicant for substitution should furnish security for the costs was fulfilled. We have already referred to the decision of the Madhya Pradesh High Court in Kesheo Prasad's case 1961 MPLJ 1021 in this connection. That case is authority for holding that even if the words "in favour of the Election Commission" were not there still the entry in the challan that the amount was for the election petition was plain enough to show that the deposit was in favour of the Election Commission.

23. Much the same argument was advanced in *K. Kamaraja Nadar Vs. Kunju Thevar and Others*, . There it was not shown that the deposit was in favour of the Secretary to the Election but was made out in favour of the Election Commission. We do not say that the circumstances were identical, but when, as here, the deposit is made put for an election petition we cannot see how there is any greater difference than the one which existed in that case. A similar contention was negatived by Mr. Justice Bhagwati who delivered the judgment of the Court in the following words:

"It would be absurd to imagine that a deposit made either in a Government Treasury or in the Reserve Bank of India in favour of the Election Commission itself would not be sufficient compliance with the provisions of Section 117 and would involve a dismissal of the petition u/s 85 or Section 90(3). The above illustration is sufficient to demonstrate that the words "in favour of the Secretary to the Election Commission" (the words in the present section after amendment are "in favour of the Election Commission") used in Section 117 are directory and not mandatory in their character." (The Words, in the brackets are ours).

Then follows the passage which we have already quoted. In our opinion, the same reasoning would apply to the words to be found in the section as it stands today "in favour of the Election Commission" in Section 117 of the Act. We have no doubt that the deposit in the instant case was substantially under the control of the Election Commission and, therefore, complied with the requirements of Section 117.

24. Then we turn to the contention on behalf of the second respondent that we are precluded from considering all these questions in a writ petition and that in taking a contrary view we are acting as a court of appeal. We have already stated that initially this was filed as a First Appeal, but in the view that we took in our order dated 14th March 1963 in First Appeal No. 11 of 1963 *Vithalrao Rajaram Hingwe Vs. M.K. Joshi and Others*, we have permitted the memorandum of first appeal to be converted into a Special Civil Application. In view of that, no doubt, Mr. Masodkar is entitled to urge that in the exercise of our jurisdiction, under Article 226 or 227, we are strictly confined to the limits laid down in the several decisions of the High Courts and of the Supreme Court of India. On this question Mr. Masodkar relies on two decisions, viz. *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, and *Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale*, . We have already reproduced the remarks of the Supreme Court in *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, that Election Tribunals are subject to the superintendence of the High Courts under Article 227 of the Constitution and that superintendence is both judicial and administrative. But in that very case their Lordships also pointed out that while in a writ of certiorari under Article 226 the High Court can only annul the decision of the Tribunal, it can, under Art. 227, do that and also issue further directions in the matter. The Supreme Court also pointed out and that is the passage on which Mr. Masodkar relies:

"The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal, even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior Court were to rehear the case on the evidence and substitute its own findings in certiorari."

In *Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale*, their Lordships further indicated as to what was the extent and scope of permissible interference with finding of fact in exercise of the jurisdiction under Article 226. That was in an appeal by Special leave from a judgment of this Court. There the question involved was under the Bombay Tenancy and Agricultural Lands Act, 1948, and the remarks of Mr. Justice Das Gupta on the question before us were relied upon:

"Is the conclusion wrong and if so, is such error apparent on the face of the record? If it is clear that the error if any is not apparent on the face of the record, it is not necessary for us to decide whether the conclusion of the Bombay High Court on the question of notice is correct or not. An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. As the above discussion of the rival contentions show the alleged error in the present case is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments. We do not think such an error can be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ."

These are weighty pronouncements and absolutely binding upon this Court and, therefore, we have scanned with anxious care the decision of the Election Tribunal to find if this Court has at all jurisdiction to interfere upon the question of the applicability of Section 117 of the Act. It seems to us that this is pre-eminently a case where a Court exercising supervisory jurisdiction ought to interfere, for, as we shall presently point out. On a perusal of the judgment of the Election Tribunal itself there does not appear to be only a finding of fact involved but on the other hand there appear to be patent errors on the face of the record. We shall try to delineate them as succinctly as the requirements of clarity permit.

25. In the first place, the learned Judge quoted Section 117 in paragraph 11 of the judgment and then he proceeded as follows:

"The important question which requires to be determined in the case is (1) whether Ex. 32 is a Govt. Treasury receipt showing the deposit of Rs. 2000/- made by the petitioner in Govt. Treasury. It will further have to be seen (2) whether the deposit of Rs. 2000/- was made in Govt. Treasury and (3) was in favour of the Election Commission and again (4) whether it was as a security for

the costs of the election petition in question. It will also have to be seen (5) if the deposit was made by the petitioner himself."

(The numbers in brackets have been supplied by us in order to emphasize the five points which the Judge thought arose upon Section 117). Now, the discussion of the learned Judge as to whether Section 117 had been complied with or not continued upto paragraph 21 wherein he summed up his conclusion on the question of the applicability of Section 117. It will be seen that the learned Judge having quoted Section 117 has throughout the discussion from paragraph 1J to paragraph 21 applied it literally and strictly and in terms of the section. In other words, his entire finding amounts to saying "ita scripted est (So, it is written.)." It is only after giving all these findings that in paragraphs 22 to 26 he proceeded to consider the case law cited by the parties. This mode of treatment of the facts and the case law cited in two distinct and separate compartments had the inevitable result that while the learned Judge did deal with each individual case, cited and distinguished it-- we shall presently show; that he distinguished those cases only on facts -- he failed to apply the principle of those cases at the apposite moment to the apposite facts. We now proceed to demonstrate how this was done.

26. As we have said, in paragraph 11 he quoted Section 117 and made out five points for his decision. Now it seems to us that the points posed for decision in the passage quoted above were framed without any reference whatsoever to the principle as laid down by the Supreme Court. For instance, to have remarked "It will have to be seen if the deposit was made by the petitioner himself" (point No. 5) amounted merely to begging the question. The learned Judge was plainly trying to find out whether the very words of Section 117 were complied with. In doing so he failed to notice that the Supreme Court had clearly stated that what has got to be seen is: Whether Section 117 has been substantially complied with or not? We see from a discussion of the point also that the learned Judge merely applied the very text of the section and did not advert to the question whether in spite of its language, it had been substantially complied with--What is more, on this point, the learned Judge's finding is completely contrary to the decision of the Madhya Pradesh High Court to which we have already referred, wherein that High Court, relying upon the Supreme Court decision, ruled that another person depositing money on behalf of the petitioner would be in substantial compliance with Section 117.

26a. In dealing with this point, the Election Tribunal observed as follows in paragraph 12:

"Although the name of the petitioner is shown under col. No. 1 of Ex 32 under the caption "by whom brought", still that does not per se lead to the conclusion that the petitioner had deposited the amount himself. The Words showing "a deposit, made by him" are not capable of any interpretation. I am asked by Shri Chendke to construe, "by him" as on behalf of him. I feel that the object behind the provision is that the applicant must have genuine and keen interest in

challenging the election and should not entrust the important function of making the deposit to any other person who might show lethargy in making the deposit and commit errors in description as has been done in this very case. I, therefore, hold that there is no satisfactory evidence to prove, or to say the least, even substantial compliance of one of the important conditions u/s 117 ibid namely that deposit was made by the petitioner himself."

The whole of this passage is, in our opinion, wrong in law in view of the decision of the Madhya Pra-desh High Court which is direct authority for holding to the contrary and in view of the observations of the Supreme Court. In our opinion, therefore, this is an error patent upon the record and an error which would certainly entitle us to interfere even under our constitutional powers.

27. In paragraph 13, in dealing with the question whether the amount was deposited in the Government Treasury or in the Reserve Bank of India, the learned Judge reproduced the evidence of the Treasury Officer and remarked:

"Reliance was placed on the evidence of the Treasury Officer (P. W. 1) who stated that no cash is kept in the Treasury and all the money transactions, on behalf, of the Govt. are conducted by the State Bank which is authorised to receive monies on behalf of the Govt. as per Bombay Treasury Rules." Then the learned Judge quoted rules 117 and 188 of the Bombay Treasury Rules and went on:

"It appears to my mind an idle supposition that no deposit could be made in the Treasury Office and no receipt of the Treasury " Officer could be obtained by the petitioner. The provisions of the section ibid do not permit the deposit being made in any scheduled Bank acting as agent of Govt. Treasury."

Here again, therefore, the learned Judge gave effect to the very terms of Section 117 and failed to see whether it was substantially complied with or not. In fact, upon the very evidence of the Treasury Officer, to which he referred, and the provisions of Section 45 of the Reserve Bank Act it is clear that it was substantially complied with because the Treasury Officer had stated that no cash is kept in the Treasury and all the money transactions on behalf of the Government are conducted by the State Bank. We do not see how the learned Judge could have wiped out the effect of this evidence and by the section quoting the two rules, especially when those two rules were not put to the witness when he was giving evidence. At least upon the evidence the finding is not borne out and is, in fact, directly contrary to the provisions of law. Here again, therefore, is an error apparent on the face of the record.

28. In paragraph 16, in dealing with the question whether Exh. 32 amounted to a Treasury receipt, the learned Judge stated:

"In the first place it cannot be denied that Ex. 32 is a Bank receipt. The petitioner's witness No. 2 (i.e. the agent of the State Bank)"1 clearly admits this fact. Again the section in categorical terms says that the amount must be deposited in a Govt. Treasury. The circumstances that Govt monies are deposited

in the State Bank in pursuance of an arrangement between the State and Central Governments on one hand and the State Bank on the other is of little consequence. It is the duty of the Court to act as far as possible according to the letter and spirit of the enactment"

(The portion in the brackets is ours). Therefore, in terms, the learned Judge says here that he was going to apply the very letter of the enactment which is precisely what the Supreme Court says he ought not to do. Of course, in the remark of the learned Judge he has also referred to the spirit of the enactment, but it is clear that that word has been inadvertently used by him as is clear from the subsequent passage which immediately follows the passage we have quoted. That passage is as follows:

"It is riot permissible to travel beyond the scope of Section 117 of the Act *ibid*. It is not the Concern of the Court to see whether strict compliance of the Section 117 would cause hardship to any party. The principle is settled that the Court has to proceed on the footing that the legislature intended what it has said."

No clearer pronouncement can be made that the Judge intended to apply Section 117 literally and strictly and yet, and it seems to us that that js precisely what the Supreme Court said, ought not to be done. Here again, therefore, is a glaring error on the face of the record, an error which compels us to interfere with the findings reached by the learned Judge.

29. It is unnecessary to add anything more. A further instance is to be found at the end of paragraph 16 where the learned Judge remarked:

"The whole argument of the petitioner boils down to this, that the Court should construe the-expression" Government Treasury receipt used in Section 117 *ibid* as a receipt given by the Bank as the agent of the Govt. Treasury. If legislature intended the deposit being made in the Bank, it should have provided in that way u/s 117, *ibid*. The Court is prohibited from supplying any extraneous material to make up deficiencies which might be left in an enactment. Their Lordships in the above referred case have clearly held that where there are defects it is for others to remedy the same "

These remarks show that the Election Tribunal did not grasp what was the true contention on behalf of the first respondent before him. The contention was not that anything should be added to the wording of the section, or that when the section says "a Government Treasury receipt" or "in a Government Treasury" that words like "or the State Bank of India acting for Government Treasury" should be added. The contention was that though the section refers to a government Treasury receipt or a Government Treasury, depositing the amount with the Agent of the Government Treasury is substantial compliance with the requirements of a deposit in the Treasury or with the requirements of obtaining a Government Treasury receipt. That contention was completely missed by the learned Judge.

30. No doubt, in discussing the case law, the learned Judge referred to the decision of the Supreme Court in K. Kamaraja Nadar Vs. Kunju Thevar and Others, and in Chandrika Prasad Tripathi Vs. Siv Prasad Chanpuria and Others, and he has distinguished each of those cases upon the own facts. We also think that the facts in those cases were not the same as in the present case. But what the learned Judge failed to see was that any principle laid down by their Lordships as to the general interpretation of Section 117 was absolutely binding upon him, as it is on us, and that it is that principle which he should have applied to the facts of the present case, which, in our opinion, he has failed to do. He failed to do so, because as we have said, he first discussed the facts separately strictly applying Section 117, summed up his conclusions upon that view of Section 117 and then proceeded to discuss all the cases cited in a bunch separately. That sort of treatment must inevitably lead to his committing errors such as we have pointed out.

31. In our opinion, Section 117 was in this case fully complied with by the production, of. Ex. 32 which is a Government Treasury receipt. Though signed by an official of the State Bank it is truly a Government Treasury receipt and the money was deposited in compliance with Section 117.

32. At this stage we may stress the other point to which we have referred, viz. that it is one thing to consider the application of Section 117. directly to an election petition and quite another thing to consider the applicability of Section 117 to an application like the one involved in the present case for substitution made under the provisions of Section 115, and here we may point out another and a very important error in the judgment of the learned Judge. In. the whole of his discussion of the facts from paragraph f 1 to paragraph 21 where he sums up his conclusion upon the evidence the learned Judge has nowhere referred to Section 115 at all. In fact, it was that section and that alone which was material for consideration and it was that section alone which was not considered. Now, Section 115 does not say that the application for substitution should comply with the provisions of Section 117. All that it says is "upon compliance with the conditions of Section 117 as to security". Therefore, what has to be complied with is the conditions contained in Section 117 relating to security and not necessarily every term or provision thereof. Moreover the section also does not speak of the "conditions, relating to the furnishing of security" but only says "conditions relating to security". Therefore so far as Section 115 is concerned [the manner of furnishing the security is not made plenary by the law,

33. In this respect we derived some assistance by contrasting Section 115 with the provision of Section 85 in the Representation of the People Act. 1951 and other provisions. Originally there was provision made both in Section 85 and in Section 90 for the case where Section 117 has not been complied with. u/s 85, if the provisions of Section 117 have not been complied with, the Election Commission is bound to dismiss the petition. The power, it must be noted, is that of the Election Commission, that is to say. before the petition is sent to an

Election Tribunal. After it is sent to an Election Tribunal, the provisions of Section 90 come into play, and the original Sub-section (3) of Section 90 ran as follows:

"The Tribunal shall dismiss an election petition which does not comply with the provisions of Section 81, Section 82 or "section 117" notwithstanding that it has not been dismissed by the Election Commission u/s 85."

(underlining (here in single quotation marks -- Ed.) is ours.) Section 90 has undergone several amendments, but the one with which we are concerned, was made by Section 19 of Act 40 of 1961, whereby reference to Section 117 was deleted. The Sub-section, therefore, after amendment now stands as follows:

"The Tribunal shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 notwithstanding that it has not been dismissed by the Election Commission u/s 85."

Today, therefore, the position is that, so far as Section 90 is concerned, the power of the Tribunal to dismiss an. election petition for non-compliance with Section 117 which was originally there in Sub-section (3) does not exist. We may guard ourselves to this extent that we do not hold that there is no other power to dismiss the petition; but we are merely indicating the remarkable difference that has been made in Section 90(3) in contrasting it with the provisions of Section 85. The Election Commission still retains the power under the existing Section 85 to dismiss the election petition if Section 117 has not been complied with, but that power has been taken away from the Election Tribunal. If then the Election Tribunal has no power to dismiss an election petition for non-compliance with Section 117, we do not think that u/s 115 power could be conferred to dismiss an application for substitution for non-compliance with Section 117. That is why we say that the difference has been made in the language used in Section 115 "upon compliance with the conditions of Section 117 as to security", and not "upon compliance with the provisions of Section 117". This is one aspect of the matter which arises upon a consideration of the other provisions of the Representation of the People Act, 1951,

34. The other aspect is that where the legislative draftsman intended to provide for non-compliance with the provisions of Section 117, he has directly said so, e.g. in Section 85 where he has provided. "If the provisions of Section 117 have not been complied with, the Election Commission shall dismiss the petition." The words used here are not as used in Section 115 if "the conditions of Section 117 relating to security" have not been complied with. Therefore, for the purposes of Section 115 we have only to find out what are the conditions relating to security that Section 117 lays down. The condition as to security which Section 117 lays down, in our opinion, is substantially that two thousand rupees shall have been deposited as security for the costs of the petition, and nothing more.

35. But apart from this, as we have said a perusal of the provisions relating to the abatement of petitions shows that Section 117 cannot in terms apply to

those proceedings. Section 112 says that "an election petition shall abate only on the death of a sole petitioner". We are not here concerned with the case contemplated by the section of several petitioners. Then sections 113 and 114 contain two provisions as to what is to happen when a petition abates before the appointment of a Tribunal and what is to happen when a petition abates after the appointment of a Tribunal. We are concerned with the latter case, because the abatement in the instant case took place after the appointment of the Tribunal and the receipt of the petition by the Election Tribunal at Wardha. Section 114 requires that where an election petition abates, u/s 112, notice of the abatement shall be published in the Official Gazette by the Tribunal. Now, it is clear upon the provisions of these two sections that where a sole petitioner dies, the election petition comes to an end. It abates and, therefore, there is no-more an election petition pending before the Tribunal, The legislative draftsman clearly saw the difficulty of applying Section 117 to such a case, because Section 117 speaks of "the petitioner" and says:

"The "petitioner" shall enclose "with the petition" a Government Treasury receipt showing that a deposit of two thousand rupees has been made "by him" either in a Government" Treasury or in the Reserve Bank of India in favour of the Election Commission as security for the "costs of the petition". "

(The underlining (here in single quotation marks --Ed.) is ours).

The words which we have underlined (here in single quotation marks--Ed.) in the section would be completely inapposite in their application to an application for substitution upon the abatement of an election petition.

36. Then come the provisions of Section 115, and Section 115 says:

"115. Substitution on death of petitioner--After a notice of the abatement of an election petition is published u/s 113 or Section 114, any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner and upon compliance with the conditions of Section 117 as to security shall be entitled to be so substituted and to continue the proceedings upon such terms as the Tribunal may think fit" It will be seen from the provisions of Section 115 that the legislative draftsman had in mind three distinct stages which we may analyse and state as under:

(1) "Any person who might himself be a petitioner, may, within fourteen days of such publication, apply to be substituted as petitioner".

(2) "upon compliance with the conditions of Section 117 shall be entitled to be so substituted"

(3) "to continue the proceedings upon such terms as the Tribunal may think fit." Each of these three stages have been referred to in Section 115 and are coupled together by the connecting word "and". Therefore, where an application for substitution is made, first of all, the applicant has to prove that he himself might have been a petitioner. When he succeeds in doing that, comes the next stage

"compliance with the conditions of Section 117" as to security upon which he shall be entitled to be substituted. Then comes the third stage after he is substituted, viz. that he may continue the proceedings upon such terms as the Tribunal may think fit. The three stages are thus,

- (1) application
- (2) entitlement
- (3) continuance.

37. It is clear that the legislative draftsman had in mind these three distinct stages in enacting Section 115. It is clear also that Section 117 cannot directly apply to all the three stages, because until the applicant for substitution proves that he might himself have been a petitioner, he cannot claim to be substituted and if only that part of his claim is not proved, then his substitution application would be dismissed in limine and on question would arise of his being entitled to be so substituted, which is the second stage. It seems to us that the legislative draftsman clearly saw that it is only upon the applicant for substitution proving that he himself might have been a petitioner that the former election petition, which had abated, could at all revive and it is only consequent upon the revival that the question of security could at all arise. Therefore, in our opinion, u/s 115 read with Section 117, it is not essential that the deposit towards security contemplated in Section 117 should be made at the time of the presentation of the application for substitution. On the other hand, it seems to us that Section 115 reacquires that that deposit should be made only at the time the petitioner being entitled to be substituted is so substituted. In other words Section 117 comes into play only after the first two stages contemplated in Section 115 are surmounted i.e. after "application" is made and "entitlement" proved. Then and then only does the abated proceeding revive and become a petition and then and then only does Section 117 begin to apply, and any question of a "petitioner" furnishing security for costs arise.

38. In the present case the question before the Election Tribunal was only whether the applicant for substitution might have been a petitioner. Once that was decided and his "entitlement" proved it was open to the petitioner even at that stage to comply with the conditions of Section 117 as to security. The learned Judge, on the other hand, thought that unless the treasury challan accompanied the application for substitution, the application for substitution must be dismissed.

39. We also do not think that the Election Tribunal had no power to extend the time for the fulfilment of the condition of Section 117 as to security in case he found that Exh. 32 did not comply with the conditions of Section 117. That was one of the points raised before us. In our opinion he could have called upon the applicant for substitution to rectify the error, if any, and furnish security within the time granted. But that was not done. However in the view we have taken no question of extension of time arises. We do not think that the dismissal of the

application for substitution in limine on the ground that the applicant for substitution had not complied with the conditions of Section 117 as to security was a correct decision.

40. We accordingly set aside the judgment of the Election Tribunal and hold that the petitioner before us had complied with the conditions of Section 117 as to security. The original record will now go back to the Election Tribunal, Wardha, for further disposal of the election petition. Subject to the directions given in this judgment the Tribunal may decide for itself whether the petitioner may continue the proceedings and, if so, upon what terms, as the Tribunal may think fit.

41. When we had decided First Appeal No. 11 of 1963, we had reserved the question of costs after we have finally disposed of the matter arising upon the order of the Election Tribunal. The petitioner has succeeded in the present petition, but the respondent No. 2 had succeeded in the First Appeal. In that view, we think that both parties should bear their costs as incurred. The present petitioner who was the appellant in F. A. No. 11 of 1963 will be entitled to a refund of his security deposit u/s 119-A for the appeal.

42. Petition allowed.