

Lilawati
and others
v.
Sovinder Singh
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The case will not go back for decision to a Single Bench. Office is directed to fix these cases for hearing in the first week of September, 1963. Costs will abide the event.

Mahajan,
J.

SHAMSHER BAHADUR, J.—I agree.

Shamsher Bahadur,
J.

K. S. K.

CIVIL MISCELLANEOUS

Before Gurdev Singh, J.

NET RAM,—*Petitioner*

versus

ELECTION COMMISSION AND OTHERS,—*Respondents.*

Civil Writ No. 1373 of 1963

1963
August, 23rd

Representation of the People Act (XLII of 1951)—S. 117—Two persons filing election petition jointly and making security deposit of Rs. 2,000—Whether sufficient—Ss. 85 and 90—Non-compliance with section 117—Whether election petition can be dismissed by Election Tribunal.

Held, that it is true that the word "petitioner" has been used in section 117 of the Representation of the People Act, 1951, but in accordance with the provisions of section 13 of the Central General Clauses Act 10 of 1897, which lays down that the words in singular shall include the plural and *vice versa*, section 117 would apply even to those cases in which there is more than one petitioner. So construing section 117, the conclusion is irresistible that Rs. 2,000 which has to be deposited as security for costs of the petition before the election petition is presented to the Election Commission, will cover the cases in which the election petition is made by more than one person and it is not necessary for each petitioner to deposit the requisite security of Rs. 2,000. The security deposit of Rs. 2,000 made in a joint petition being on behalf of all the petitioners, there will be no difficulty

in the respondent realizing his costs out of that deposit irrespective of the fact whether the deposit has been made jointly by all the petitioners or by one of them on behalf of all.

Held, further that all that section 117 of the Representation of the People Act, 1951, requires is that the deposit of Rs. 2,000 be made as security for costs of the election petition. Neither the Election Commission nor the Tribunal is concerned with the source from which that money comes. So long as the requisite deposit is made by one of the petitioners, it is enough for the purposes of section 117, and it is no part of the duty or function of the Election Commission or the Tribunal to enquire whether the deposit has been made by one of the several petitioners or by all of them, and in what proportion.

Held, that if an election petition does not comply with the provisions of section 117 of the Act, the Election Commission shall dismiss it as provided by section 85 of the Act. If the Election Commission does not dismiss it and sends it for trial to an Election Tribunal, the Tribunal has no right to dismiss it on that ground having regard to the provisions of section 90 of the Act.

Petition under articles 226 and 227 of the Constitution of India praying that a writ of certiorari; mandamum or any other appropriate writ, order or direction be issued quashing the order of the election tribunal, respondent No. 2, dated the 29th April, 1963, and dismissing the election petition

R. SACHAR, ADVOCATE, for the Petitioner.

ANAND SWAROOP & R. S. MITAL, ADVOCATES, for the Respondents.

ORDER

GURDEV SINGH, J.—The main question arising for decision in this petition under Articles 226 and 227 of the Constitution is whether in an election petition brought by more than one person jointly, a deposit of Rs. 2,000 as security for costs of the petition is not proper compliance with the provisions of section 117

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of the Representation of the People Act, 43 of 1951. The matter has arisen in the following manner:—

In the last General Elections to the Punjab Legislative Assembly held in February, 1962, the petitioner, Net Ram, Jat, was elected from the Hissar Sadhar Constituency. Indraj Singh, respondent No. 3, one of the defeated candidates, and Raghbir Singh, respondent No. 4, an elector of the constituency, challenged his election by means of a joint election petition under sections 80 and 81 of the Representation of the People Act, 43 of 1951. This petition, when presented to the Election Commission was accompanied by a receipt for Rs. 2,000 deposited by the said Indraj Singh and Raghbir Singh (petitioners in the election petition) as security for the costs of the petition. In accordance with the provisions of section 86 of the Representation of the People Act (hereinafter called the Act), this election petition was entrusted for trial to the Election Tribunal at Rohtak. After the filing of the written statement and other necessary proceedings, the Tribunal framed issues and evidence in the case commenced. No issue regarding the adequacy of the security deposit was claimed.

On 17th April, 1963, after the proceedings had been going on before the Tribunal for nearly a year, Net Ram made an application to the Tribunal praying for the dismissal of the election petition against him without trial on merits on the sole ground that the provisions of section 117 of the Act had not been properly complied with inasmuch as a sum of Rs. 2,000 only had been deposited as security for costs of the petition. It was contended before the Tribunal that since the petition was made by two persons, it was necessary for each one of them to deposit Rs. 2,000 as security for costs of the petition, and in absence of the full deposit of Rs. 4,000 the Election Commission was not competent to entrust the petition for trial

to an Election Tribunal. Finding no force in this contention, the learned Tribunal rejected the application on 29th April, 1953, leaving the parties to bear their own costs. Net Ram has now invoked the jurisdiction of this Court under Articles 226 and 227 of the Constitution praying that the order of the Election Commission (respondent No. 1) entrusting the election petition for trial to the Election Tribunal (respondent No. 2) and all proceedings taken subsequent thereto be quashed and a writ of *certiorari* be issued to the respondents.

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Section 81 of the Act provides that where an election to the State Legislature or the Parliament is challenged, it shall be done by means of an election petition presented to the Election Commission by any elector or candidate at such an election. Section 82 of the Act refers to the persons that have to be joined as respondents, while section 83 lays down what the petition for election should contain. Section 84 relates to the relief that can be claimed. Then comes section 85, which empowers the Election Commission to dismiss an election petition for non-compliance with the provisions of section 81 or 82 or section 117 of the same Act. If the Election Commission does not dismiss the election petition under this provision of law, then in accordance with section 86 the Election Commission has, after publication of the petition and serving a copy of the same upon each of the respondents, to refer it for trial to an Election Tribunal appointed for the purpose. The procedure that has to be followed by the Tribunal for trial of the petition is laid down in section 90 of the Act, subsection (1) whereof provides that subject to the provisions of this Act and any of the 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

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Civil Procedure, 1908, to the trial of suits. Sub-section (3) of section 90 of the Act empowers the Tribunal to 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 under section 85. It may be mentioned that non-compliance with the provisions of section 117 of the Act empowers the Election Commission to dismiss the petition, but if it does not do so, no such power vests in the Election Tribunal.

The first contention raised on behalf of the petitioner is that since section 85 of the Act provides that if the provisions of section 117 of the Act are not complied with, the Election Commission shall dismiss the petition, the failure of the Commission to pass such an order is a violation of the mandatory provision of law, and the Election Commission has no power or jurisdiction to refer the petition for adjudication to an Election Tribunal.

The petitioner's counsel has contended:—

- (i) that under the provisions of section 117 of the Representation of the People Act the deposit of Rs. 2,000 as security for the costs of the petition was inadequate as the election petition was made by two persons, and it was necessary for each one of them to deposit Rs. 2,000;
- (ii) that as there was no proper compliance with the provisions of section 117, the Election Commission was bound to dismiss the petition, as enjoined by section 85 of the Representation of the People Act, and its order referring the election petition for trial to the Election Tribunal was null and void and without jurisdiction;

(iii) that since the election petition had been entrusted to the Tribunal in disregard of the mandatory provision of section 85, the Election Tribunal could not take cognizance of the same, and all proceedings taken by it thereon were invalid;

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(iv) that, in any case, the Election Tribunal should have dismissed the election petition for non-compliance of the provisions of section 117 of the Act, and its order, dated 29th April, 1963, rejecting the present petitioner's prayer to that effect being patently wrong should be quashed by issuing a writ of *certiorari* or other appropriate direction or order.

Before preceeding further, it will be convenient to deal here with the last contention. What is to happen to the election petition which did not comply with the provisions of section 117 of the Act is provided in section 85. It lays down that "the Election Commission shall dismiss the petition". If rightly or wrongly the Election Commission does not make such an order, then the election petition has to be referred to an Election Tribunal for trial. The cases in which the Election Tribunal is empowered to dismiss the election petition without trial are enumerated in subsection (3) of section 90 of the Act, which lays down:—

"90(3). 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 under section 85."

From this it is evident that the power to dismiss an election petition for non-compliance of section 117

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vests only in the Election Commission and not in the Election Tribunal. Prior to the amendment of the Representation of the People Act 43 of 1951 by the Central Act XL of 1961 the Election Tribunal was also empowered to summarily dismiss an election petition which did not comply with the provisions of section 117 of the Act. As a result of the amendment, the words "section 117" were deleted from subsection (3) of section 90. It is thus obvious that whereas originally the legislature had conferred power not only on the Election Commission but on the Tribunal as well to dismiss an election petition for non-compliance of the provisions of section 117, it subsequently in its wisdom took away that power from the Election Tribunal. It is thus obvious that even if it be assumed for the sake of argument that the election petition out of which these proceedings have arisen did not properly comply with the provisions of section 117 of the Representation of the People Act, the Tribunal had no power to dismiss the same, summarily, and the only course open to it was to proceed with its trial in accordance with law. On that short ground the petitioner's prayer for quashing the Tribunal's order, dated 29th April, 1963, must be refused. That order is not only in conformity with the provisions of law but was also made in valid exercise of its jurisdiction by the Tribunal.

This brings us to the consideration of the question whether the amount of Rs. 2,000 deposited by the Respondents 3 and 4 as security for costs of the petition was not proper compliance with the provisions of section 117 of the Representation of the People Act, and it was necessary for them to deposit Rs. 2,000 each. Section 117 of the Act, the breach whereof is complained, 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."

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It is evident that the deposit required by this provision of law is to remain with the Election Commission as security for the costs of the petition. The object of such a provision is to discourage frivolous petitions challenging an election, and the security is for "the costs of the petition". It is not disputed, and in fact it cannot be, in view of the provisions of section 110 and 112 of the Act, that several persons who are entitled under the provisions of section 81 to file an election petition can join together and make a single petition challenging the election of a successful candidate, and they will all be styled as "petitioners". On its plain reading I find nothing in section 117 even to indicate that in case of such a joint election petition each of the petitioners has to deposit the full amount of Rs. 2,000 as security for costs of the petition. If the legislature intended that in case of a joint petition, each of the petitioners should deposit the full amount of Rs. 2,000 nothing could have prevented it from saying so or adding the words "in case where there are more petitioners than one, each of them shall deposit Rs. 2,000 as security for costs of the petition", or some similar expression.

It is true that the word "petitioner" has been used in section 117, but in accordance with the provisions of section 13 of the Central General Clauses Act 10 of 1897, which lays down that the words in singular shall include the plural and *vice versa*, section 117 would apply even to those cases in which there is more than one petitioner. So construing section 117, the conclusion is irresistible that Rs. 2,000

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which has to be deposited as security for costs of the petition before the election petition is presented to the Election Commission, will cover the cases in which the election petition is made by more than one person.

In contending against such a construction and urging that each of the petitioners must deposit Rs. 2,000 as security for costs, Shri Sachar has argued that the construction put on the provisions of section 117 by the Tribunal would defeat the very object of this provision of law, as it would encourage persons to join together to question the election of a successful candidate without incurring much risk by contributing a paltry sum or nothing. It is true that if more than one person join, their contribution to the security deposit would be considerably reduced and even there may be cases where one of them alone may deposit the entire amount and the others incur no risk in making the election petition. That, however, would not make the provision contained in section 117 ineffective as the aggregate amount thus deposited would still be the same which the legislature considered sufficient to serve as security for costs of the petition.

Apart from this, the Act makes ample provision for the protection of a respondent in cases where it is apprehended that the initial deposit of Rs. 2,000 made by the petitioner may not be sufficient to defray the costs of the petition. Section 118 of the Act expressly empowers the Tribunal to call upon the petitioner to give such further security for costs as it may consider necessary at any stage of the proceedings and authorizes it to dismiss the petition for non-compliance of its order regarding such further security.

Referring to the history of section 117 of the Representation of the People Act 43 of 1951, we find

that originally the amount of security deposit which is required to accompany the petition was fixed at Rs. 1,000. Subsequently by section 21 of the Representation of the People (Amendment) Act, 40 of 1961, this provision was amended and the amount of the security deposit was raised to Rs. 2,000. As has been observed earlier, by section 19 of the same Act amendment was also made in sub-section (3) of section 90 of the Representation of the People Act, 43 of 1951, which took away the power of the Tribunal to dismiss an election petition for non-compliance with the provisions of section 117 of Act 43 of 1951. In the year 1953 long before this amendment, the Election Tribunal, Poona, had held in *Marutrao Bhauro and others v. Gulabrao Dadasaheb and others* (1), that security deposit of Rs. 1,000 was sufficient for a joint election petition made by more than one person. This decision has held the field throughout. If it did not correctly interpret the provisions of section 117 of the Act, the Parliament would not have hesitated to effect appropriate amendment when in the year 1961 it had expressly dealt with this provision of law in the amending Act XL of 1961.

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Shri Sachar then argued that in cases where an election petition is made by more than one person and only one of them deposits the full amount of Rs. 2,000, difficulty would arise if the person making the deposit wishes to withdraw the petition, as on such withdrawal he would be entitled to the refund of the entire amount leaving his co-petitioners to prosecute the case but without any security deposit to protect the interests of the respondent in case the petition fails. This argument is based upon misunderstanding of the provisions of the Representation of the People Act. The provisions regarding withdrawal of election petitions are contained in Chapter IV of the Act. The

(1) 5 Election Law Reports 303.

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procedure for withdrawal of election petitions is laid down in section 110 of the Act. Sub-section (1) thereof says that if there are more petitioners than one, no application to withdraw an election petition shall be made except with the consent of all the petitioners. It is thus obvious that if an election petition has to be withdrawn, then all the petitioners must join together in making an application for withdrawal. There is no provision in the Representation of the People Act under which one of the petitioners alone can withdraw election petition made by him jointly with others. Thus, the contingency which Shri Sachar contemplates can never arise.

Learned counsel then referred to the possibility of the Tribunal awarding costs only against one of the several joint petitioners, and argued that if each one of the petitioners did not deposit separate security of Rs. 2,000 the result would be that the security furnished by a petitioner other than the one against whom costs are allowed would not afford any protection to the successful respondent. This argument again is fallacious. Once it is held that the security deposit of Rs. 2,000 made in a joint petition is on behalf of all the petitioners, there will be no difficulty in the respondent realizing his costs out of that deposit irrespective of the fact whether the deposit has been made jointly by all the petitioners or by one of them on behalf of all.

A similar provision for deposit of security for costs is to be found in section 119-A of the same Act and in the Rules framed by this Court regarding civil appeals to the Supreme Court. Rule 3 of Chapter 8-A, Volume V, of the Punjab High Court Rules and Orders, provides:—

“3. When the Court grants a certificate, which shall be in Form B appended to these rules,

the petitioner shall be required to deposit within ninety days, or such further period not exceeding sixty days, as the Court may, upon cause shown, allow from the date of the decree complained of, or within six weeks from the date of the grant of the certificate (whichever is the later date) a sum of Rs. 2,500 as security for the respondent's costs.

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In any special case the Court may, if it thinks fit upon the application of the respondent, require security to a larger amount, but in no case exceeding rupees five thousand."

It has never been held that in case an application for leave to the Supreme Court is made by more than one petitioner, each one of them must deposit Rs. 2,500 as security for the respondent's costs.

Section 119-A of the Representation of the People Act is in these terms:—

"119-A. Security for costs of appeal.—*Every person* who prefers an appeal under Chapter IV-A shall enclose with the memorandum of appeal a Government Treasury receipt showing that a deposit of five hundred 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 appeal."

The opening words of this section are in direct contrast with those of section 117. Whereas the latter section provides that "the petitioner" shall deposit the security, the expression used in section 119-A is

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“every person who prefers an appeal shall”
Despite this difference in the phraseology of the two sections, no decision has been cited in which it may have been held that in a joint appeal a deposit of Rs. 500 was not proper. Even if there be such a decision, that would not affect the interpretation of section 117 in view of the difference in the opening words of the two sections.

That in cases where there is more than one petitioner the deposit of the security of costs can be made by one or more of them, and not necessarily by all of them, is apparent from the provisions of section 121, which lays down that if any balance is left after defraying the costs of the respondent, the same shall be refunded “on an application made in that behalf in writing to the Election Commission *by the person by whom the deposits have been made*, or if such person dies after making such deposits, by the legal representative of such person, be returned to the said person or his legal representative, as the case may be.”

All that section 117 requires is that the deposit of Rs. 2,000 be made as security for costs of the election petition. Neither the Election Commission nor the Tribunal is concerned with the source from which that money comes. So long as the requisite deposit is made by one of the petitioners, it is enough for the purposes of section 117, and it is no part of the duty or function of the Election Commission or the Tribunal to enquire whether the deposit has been made by one of the several petitioners or by all of them, and in what proportion.

From whichever angle the matter is considered, I find that the contention raised on behalf of the present petitioner is untenable and there is no justification for interference with the proceedings before the

Election Tribunal. The petition must, accordingly, fail and is dismissed. By taking a frivolous objection the petitioner, who is a sitting Member of the Assembly has succeeded in prolonging the disposal of the election petition brought against him. He must, accordingly, pay the costs of these proceedings, which I fix at Rs. 150.

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LETTERS PATENT APPEAL.

Before D. Falshaw, C.J., and A. N. Grover, J.

THE STATE OF PUNJAB AND ANOTHER,—Appellants.

versus

SADDA RAM AND OTHERS,—Respondents.

Letter Patent Appeal No. 296 of 1960.

Punjab New Capital (Periphery) Control Act, 1952 (I of 1953)—S. 12(1) and (2)—Person acquitted of an offence under sub-section (1)—Whether can be proceeded against under sub-section (2).

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August, 27th.

Held, that the Deputy Commissioner cannot ignore any decision given by a competent Court in proceedings initiated by the Deputy Commissioner himself for the punishment of an offence under sub-section (1) of section 12 of the Punjab New Capital (Periphery) Control Act, 1952. If a person has been acquitted of that offence on the finding that no breach of the provisions of sub-section (1) has been committed by him, it is not open to the Deputy Commissioner to go behind or re-open that decision and take action under sub-section (2) of section 12.

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of the Hon'ble Mr. Justice D. K. Mahajan in C.W. No. 399 of 1995, decided on 25th May, 1960.

C. D. DEWAN, DEPUTY ADVOCATE-GENERAL, for the Appellants.

SURINDER SINGH, ADVOCATE, for the Respondents.