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grant the landlords an order for the ejectment of the tenants who, however, may in the circumstances be allowed three months to vacate the premises. The parties will bear their own costs.

HARBANS SINGH, J.—I agree with the order proposed. In the present case, the sub-letting continued up to the date the application was brought and the question as to what will be the effect on the maintainability of application by the landlord if the sub-lessee had vacated the premises before the date of the application, does not arise in the present case and I should not be taken to have expressed any opinion with regard to this matter,in fact, I have, in another case coming before me sitting in Single Bench, referred this point for decision to a larger Bench.

B. R. T.

APPELLATE CIVIL

Before Inder Dev Dua and Jindra Lal, JJ.

HARNAM SINGH,—*Appellant.*

versus

TIRATH SINGH,—*Respondent.*

First Appeal From Order No: 10-E of 1963.

1963

Nov., 19th.

Representation of the People Act (XLIII of 1951)—S. 90—Code of Civil Procedure (V of 1908)—Order 6 Rule 17—Election petition—Amendment of written statement—Whether at par with an amendment of a written statement in a suit—Delay in disposal of the election petition—Whether of importance in considering amendments to pleadings—Exercise of discretion by the Election Tribunal—When to be interfered with by the Appellate Court—S. 33(2)—Omission to specify caste or tribe in a nomination paper—Whether fatal—Improper rejection of a nomination paper—Whether invalidates an election—Ss. 90(6) and 116-A(5)—Expeditious disposal of election petitions by the Tribunal and Appellate Courts—Importance of.

Held, that an election petition is not an action at law nor is it a suit in equity. It is a purely statutory proceeding created and governed by statute. The amendment of written statement to the election petition is governed by Order 6 Rule 17 of the Code of Civil Procedure. The power of amendment of pleadings conferred by the Code is undoubtedly wide and may be allowed at any stage of the proceedings. However, while considering the question of amendment of pleadings in an election petition, it would be legitimate for the Tribunal not to ignore but to give due weight to the consideration of expeditious disposal of election petitions. Amendment of written statement in an election contest cannot be treated with the same liberality with which the Court may be inclined to treat amendments of written statement in an ordinary suit, the element of delay being of fundamental importance in the disposal of an election petition.

Held, that order disallowing amendment is passed in the exercise of discretionary jurisdiction. Though this jurisdiction is as extensive as that of a civil Court, nevertheless, as is the case with all discretionary jurisdictions it has to be exercised in accordance with the well-recognised judicial principles in order to promote the cause of justice. It is true that section 116-A of the Representation of the People Act, 1951, does not in terms place any restriction on the power of the Court of appeal in reviewing the order appealed against and a discretionary order is as much open to scrutiny and review as any other order; at the same time it is clear that unless an appellate Court is satisfied that a discretionary jurisdiction has been wrongly exercised in violation of a well-settled rule and that it should have, in the interest of justice, been exercised in the contrary way, the impugned order is ordinarily not interefered with.

Held, that Form 2(B) has been prescribed under the Rules for candidates of both categories, those who are contesting a reserved seat as well as those who are contesting a general seat. If a candidate is not contesting a reserved seat, then obviously he is not enjoined by any statutory provision to specify in his declaration the particular caste or tribe of which he may be a member. As a matter of fact, even specification of a caste or a tribe to which a candidate alleges to belong cannot be and is not made conclusive by the statute and it would be open to another candidate to

question the declaration on this point. Omission to specify the caste or tribe, therefore; cannot be considered to be fatal on this ground.

Held, that improper rejection of a nomination paper invalidates the entire election under the mandatory provisions of the Representation of the People Act, 1951.

Held, that the Parliament has in its widsom taken special care to specifically emphasise the importance of expeditious disposal of election contests in sections 90(6) and 116-A(5) of the Representation of the People Act. 1951 which must always be kept in view by the Tribunals and appellate Courts. Indifference towards the time factor on the part of the Election Tribunal and of the High Court when dealing with the election contests at various stages or any lapse on their part in this matter of vital constitutional importance, in the face of categorical legislative mandate, must tend to defeat and frustrate the very object of election petitions—a result not easily possible to countenance. Even though the parties to the contest do not oppose delay, it would not absolve the Tribunal and the High Court of their duty to carry out and effectuate the constitutional legislative intent as manifested in the Act, in which the whole constituency, and not only the parties to the election petition, is vitally interested. Besides, since such a result can confer benefit (which may be undeserved) only on the person whose election is challenged, it may also tend to give rise to highly undersirable not certainly avoidable apprehensions or suspicions of partiality and bias, which may in fact be wholly unfounded. It is, therefore, of the greatest importance that at no stage of an election contest should the time factor be ignored or lost sight of; and this, in spite of lapses on the part of the parties to the election contest, for, in the performance of their statutory duty the Tribunal and the appeal Court are to discharge their own responsibilities in safeguarding the constitutional right of the constituency; the election contest not being a mere private dispute between the parties to the election petition.

First Appeal from order of the Court of Shri M. L. Puri, Member, Election Tribunal, Patiala, dated the 10th July, 1963, accepting the election petition against the returned candidate, Shri Harnam Singh and declaring it to be void and setting it aside and further ordering that respondent

shall pay Rs. 100 as costs of the petitioner.

ANAND SWAROOP, A. S. BAINS AND B. S. BINDRA, ADVOCATES, for the Appellant.

H. L. SIBAL, HARBHAGWAN SINGH AND H. L. SONI, ADVOCATES, for the Respondent.

JUDGMENT

DUA, J.—Only two questions arise for determination by us in this appeal under section 116-A. Representation of the People Act, 1951 : (1) whether the amendment of written statement was wrongly disallowed by the learned Tribunal and should now be allowed by us on appeal, and (2) whether the rejection of the nomination-papers in question is valid. Dua, J.

To state briefly the facts relevant at this stage, it may be recalled that general elections to the Punjab Legislative Assembly were held in 1962. On 27th January, 1962, Shri Gurdial Singh Mazhbi stated to be a member of a Scheduled Caste was also desirous of contesting the election to the Punjab Legislative Assembly from Mehal Kalan constituency, the other contestants being Shri Jagjit Singh, Shri Mohinder Singh, Shri Tirath Singh (respondent in this Court) and Shri Harnam Singh appellant who was successful in the election defeating Shri Jagjit Singh, Shri Mohinder Singh and Shri Tirath Singh. The nomination-papaers filed by Shri Gurdial Singh were in Form 2(B) prescribed by the Conduct of Election Rules 1961 (hereinafter called the Rules) but the particular caste or tribe of which he is a member was not specified therein. It is common ground that he had paid a sum of Rs. 125 by way of deposit as required by section 34 of the Representation of People Act, 43 of 1951 (hereinafter called the Act). At the time of scrutiny, the Returning Officer after examining Gurdial Singh's nomination-papers formed

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the opinion that the omission to mention his specific caste in the declaration by the candidate was a material omission amounting to a defect of a substantial character since it was not possible to verify that he actually belonged to one of the castes scheduled in the Scheduled Caste Order and was thus entitled to the concession in the deposit as contemplated by section 34(1)(a) of the Act. The certificate and the affidavit which were also noticed by the Returning Officer were not considered to be helpful and while rejecting the nomination-papers, he dealt with these documents in the following words:—

> ".....The certificate produced, affidavit filed does not cure the said material defect. Since it is not clear from the nomination-paper that the candidate belongs to one of the Scheduled castes and since he has only deposited Rs. 125 which he was entitled to only on proof thereof, the security deposit is not in accordance with the provisions of law. Hence rejected."

On an election petition having been presented by Shri Tirath Singh, the wrongful rejection of Shri Gurdial Singh's nomination-papers was the main plank on which the validity of Harnam Singh's election was challenged.

The pleadings of the parties gave rise to five issues, which were settled on 21st July, 1962. On 8th September, 1962, the date fixed for the petitioner's evidence. Shri Harnam Singh presented an application under section 90 of the Act read with Order 6, Rule 17, Code of Civil Procedure, and under the inherent powers of the Tribunal, statnig that he had failed to submit in his written statement, that Gurdial Singh whose nomination-papers had validly been rejected by the Returning Officer, Barnala on 29th January, 1962, had

not been validly proposed and nominated. His proposer Shri Gurdev Singh, son of Dulla Singh voter No. 441 of Chak Bhai Ka Mahal Kalan, constituency was uneducated and completely illiterate, not able even to read and write Punjabi. As this name occurred twice in the same list of voters, taking advantage of this discrepancy, Gurdial Singh had got hold of some unknown person to propose his name. This plea having inadvertenly been omitted from the written statement, amendment with the object of taking this additional plea was sought. This petition was resisted and it was urged on behalf of the petitioner that no case for amendment of the written statement at such late stage had been made out, and that the application for amendment had been filed merely for delaying the disposal of the election petition. Omission to raise this ground before the Returning Officer was also pleaded to operate as an estoppel. The prayer for amendment was disallowed by the learned Tribunal on 30th November, 1962 in a consolidated order dealing with two applications for amendment, the one dated 8th September, 1962 and the other dated 17th September, 1962. The other application, it may be observed, does not concern us at this stage.

By means of the final order dated 10th July, 1963, the Election Tribunal came to the conclusion that Gurdial Singh's nomination-papers were valid and in accordance with law, with the result that the order of rejection was erroneous and contrary to law. On the basis of this conclusion, the election petition was allowed and the election of the returned candidate Shri Harnam Singh appellant was declared void and set aside. Hence the appeal.

The first point raised by Shri Anand Swaroop is that the learned Tribunal was wrong in disallowing amendment of the written statement and in support of his contension he has placed reliance on *N. P. Paul*

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Steel Products Ltd., (1), where P. B. Mukharji J. has observed that amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principles, though some important general principles are common to both, such as that the application for amendment must be *bona fide* and for the purpose of determining the real controversy between the parties. Adding a new ground of defence or substituting or altering a defence does not, according to this authority, raise the same problem as adding, altering or substituting a new cause of action in the plaint, with the result that the Courts are inclined to be more liberal in allowing amendment of defence than of plaint; the question of prejudice being less likely to operate with the same rigour in the former than in the latter case. The second decision relied on, in his submission by the appellant, is a Single Bench decision of this Court in *Shri Har Sarup Gupta* v. *Shri S. Aggarwal etc.*, (2), where in a suit for possession by pre-emption, the plea of waiver had already been taken in the original written statement but certain additional factors were sought to be adduced in support of that plea by seaking amendment of the written statement. It was considered that no injustice was likely to be caused by the proposed amendment which could not be compensated by costs. The learned Judge on this view considered it to be a fit case in which amendment ought to have been allowed and so allowed it on revision, Reference has also been made to *H. C. Bajpai, etc.* v. *Triloki Singh* (3), for the proposition that where the amendment sought in proceedings before the Election Tribunal does not relate to the particulars of corrupt practices but to other matters, then the provisions of Order 6, Rule 17, C. P. C., would apply because he application of this

(1) A.I.R. 1953 Cal. 15.
(2) 1960 P.L.R. 694.
(3) A.I.R. 1957 S.C. 444.

provision is not excluded by section 33(3) of the Act. *Bhim Sain* v. *Gopali*, (4), has also been cited in support of the appellant's contention and it has been submitted that *Bajpai's case* (3), was again approved by the Supreme Court in this decision.

Shri Sibal has, on behalf of the respondent, at the outset, drawn our attention to the rules framed by this Court under clause 27 of the Letters Patent read with Article 225 of the Constitution of India relating to appeals under section 116-A of the Representation of the People Act, 1950, and has submitted that those rules have been violated by the appellant inasmuch as the interlocutory order disallowing amendment has not been included in the paper-book and that, therefore, it should be held that the appellant has not appealed from that order. The contention is unsustainable because in the memorandum of appeal, the challenge to the order disallowing amendment is specific and unambiguous in ground No. 5. Our attention has not been drawn to any rule framed by this Court which would militate against the competency of challenge to the interlocutory order on appeal from the final order merely because the certified copy of the interlocutory order has not been attached with the memorandum of appeal or merely because that order has for some reason not been included in the paper-book. The contention fails being too tenuous to found a serious argument on.

The respondent's counsel has next submitted that the application dated 8th September, 1962, in which prayer for amending the written statement was made was not supported by any affidavit and it has not been shown satisfactorily as to why the plea sought to be inserted by way of amendment was not taken in the original written statement. It has been stressed that the appellant was apparently not serious

(4), 22 E.L.R. 288 (S.C.).

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about the amended plea and it was merely intended to delay the proceedings. The counsel has also added that the interlocutory order disallowing amendment was discretionary and it does not call for interference without cogent grounds which have not been shown.

An election contest, as is well-settled, is not an action at law nor is it a suit in equity. It is a purely statutory proceeding created and governed by statute. Turning to the Act, therefore, we find that section 90 which prescribes the procedure to be followed by the Tribunal provides, *inter alia*, for trial of every election petition by the Tribunal to be as nearly as possible in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits, but this is expressly made subject to the provisions of the Act and the rules made thereunder. The provision of Order 6, Rule 17 of the Code would thus be attracted provided it is not inconsistent with any provision of the Act or the rules. The amendment of written statement would accordingly be governed by Order 6, Rule 17 of the Code and the considerations which control the amendment of election petitions by incorporating therein fresh charges would perhaps not stand in the way of the prayer for adding a new plea in defence. But apart from this consideration, all other facts which the Courts are enjoined or expected to keep in view in allowing or disallowing amendments would have to be borne in mind. The power of amendment of pleadings conferred by the Code is undoubtedly very wide and according to the language of Order 6, Rule 17, amendments may be allowed at any stage of the proceedings. At the same time, the power of amendment has been described to be discretionary. In *S. M. Banerji* v. *Sri Krishna Agarwal* (5), Subba Rao, J., speaking for the Court, spoke thus:—

> "At this stage we must guard against one possible misapprehension. Courts and tri-

(5) A.I.R. 1960 S.C. 368.

bunals are constituted to do justice between the parties within the confines of statutory limitation, and undue emphasis on technicalities or enlarging their scope would cramp their powers, diminish their effectiveness and defeat the very purpose for which they are constituted. We must make it clear that within the limits prescribed by the decisions of this Court the discretionary jurisdiction of the Tribunals to amend the pleadings is as extensive as that of a Civil Court. The same well-settled principles laid down in the matter of amendments to the pleadings in a suit should also regulate the exercise of the power of amendment by a Tribunal."

While considering the question of amendment of pleadings in an election contest, in my opinion, it would be legitimate for the Tribunal not to ignore but to give due weight to the consideration of expeditious disposal of election petitions. In section 90, the proviso to sub-section (1) empowers the Tribunal for reasons to be recorded in writing to refuse to examine any witness if, in its opinion, it is not material for the decision of the petition and the party tendering him is doing so, *inter alia,* with a view to delay the proceedings. Sub-section (6) makes an express provision that every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within 6 months from the date of publication of the copy of the petition in the Official Gazette. Similarly, in section 116-A, subsection (5), it is provided that endeavour should be made to determine the appeal finally within 3 months from the date on which the memorandum of appeal is presented to the High Court. In the background of these provisions, in my opinion, amendment of written statements in an election contest cannot be treated

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with the same liberality with which the Court may be inclined to treat amendment of written statement in an ordinary suit, the element of delay being of fudamenal importance in the disposal of an election petition.

In the case in hand a copy of the election petition in question was directed to be published on 18th April, 1962 and the written statement on behalf of the appellant (who was a respondent in the election petition) was filed on 16th July, 1962, though it should have been filed on 9th July, 1962. One week's time was granted to him on payment of costs. Issues were settled on 21st July, 1962 and 8th September, 1962, was fixed for the evidence of the petitioners on which date, as already noticed, the application for amendment was presented. No cogent ground was disclosed in the application for the omission of this plea from the written statement filed on 16th July, 1962, the only excuse mentioned being that the matter had inadvertently not been raised in the written statement. Even this reason was not supported by any affidavit; nor was the application verified. In these circumstances, in my opinion, the Tribunal was fully justified in disallowing the amendment, for, however, wide the power to allow amendment of written statement in an election contest and however liberal its exercise may be described to be, such amendment is not intended by law to be claimed as of right and for the mere asking, without establishing good grounds and justice in its support. If this were not so, then a returned candidate can be by merely seeking successive amendments of his written statement on payment of costs prolong the disposal of the election petition for the full or almost full duration of the Legislature and make the challenge to his election, at least for such duration, completely infructuous. This certainly cannot be, and, is, in my humble opinion, not the intention of

the law. Justice delayed in election contest might well be justice defeated. In my opinion, therefore, the amendment sought in the instant case could not have been allowed without injustice to the petitioner.

As suggested by the Supreme Court in Banerji's *case* (5) the order disallowing amendment is passed in the exercise of discretionary jurisdiction. Though this jurisdiction in as extensive as that of a civil Court, nevertheless, as is the case with all discretionary jurisdictions, is has to be exercised in accordance with the well-recognised judicial principles in order to promote the cause of justice; in the case in hand no such recognised judicial principle is shown to have been voilated by the Tribunal; nor am I convinced that the amendment sought would have suubstantially promoted the cause of justice or that the impugned order has occasioned any failure of justice. It is true that section 116-A does not in terms place any restriction on the power of the Court of appeal in reviewing the order appealed against and a discretionary order is as much open to scrutiny and review as any other order; at the same time it is clear that unless an appellate Court is satisfied that a discretionary jurisdiction has been wrongly exercised in violation of a well-settled rule and that it should have in the interest of justice been exercised in the contrary way, the impugned order is ordinarily not interfered with. I am unable in this case to hold that any such ground for interference has been made out.

I am not unmindful of the fact that it is not Gurdial Singh, whose nomination-papers were rejected, but it is a defeated candidate who is challenging the election, but this factor cannot be conclusive, for the simple reason that improper rejection of a nomination-paper is *per se* fatel to an election, irrespective of the personality of the petitioner in the election petition. It may be remembered that an election petition

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is not a matter in which the only person interested are the parties to the petition or the candidates who strove against each other at the election; the public and certainly the electorates are also interested in it because an election is an essential part of our democratic process. It is, therefore, not possible to interfere with the order disallowing amendment.

Coming to the second point, it is necessary at this stage to reproduce the relevant provisions of sections 33 and 34 of the Act :—

"33. Presentation of nomination paper and requirements for valid nomination.—(1) On or before the date appointed under "clause (a) of section 30 each candidate shall, either in person or by his proposer, between the hours of eleven O'clock in the forenoon and three O'clock in the afternoon deliver to the Returning Officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer.

(2) In a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Schedule Caste or, as the case may be, a Scheduled Tribe of the State.

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34. Deposits,—(1) A candidate shall not be deemed to be duly nominated for election

from a constituency unless he deposits or causes to be deposited—

(a) in the case of an election from Parliamentary constituency, a sum of five hundred rupees or where the candidate is a member of a Scheduled Caste or Scheduled Tribe, a sum of two hundred and fifty rupees; and

(b) in the case of an election from an Assembly or Council constituency, a sum of two hundred and fifty rupees or where the candidate is a member of a Scheduled Caste or Scheduled Tribe, a sum of one hundred and twenty-five rupees. * * * * *

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Now, it is common case of the parties that Gurdial Singh was not contesting a reserved seat with the result that section 33(2) in terms would clearly be inapplicable to his case. The contention raised on behalf of the appellant is that looking at Form 2(B) prescribed in the rules it is imperative that the candidate must specify in the declaration the particular Scheduled Caste or Tribe, as the case may be, of which he is a member. I am unable to sustain this contention. This form has been prescribed for candidates of both categories, those who are contesting a reserved seat as well as those who are contesting a general seat. If a candidate is not contesting a reserved seat, then obviously, he is not enjoined by any statutory provision to specify in his declaration the particular caste or tribe of which he may be a member. The language of the form cannot, in my opinion, by its own force give rise to a mandatory statutory requirement as appears to be suggested.

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The appellant's learned counsel has also put his argument in another way. He has submitted that if Gurdial Singh was desirious of taking advantage of the concession given by the statute under section 34 (1)(b) to members of Scheduled Castes or Scheduled Tribes, then he was bound to specify the particular caste or tribe of which he is a member as provided by section 33(2) so as to enable the Returning Officer to verify that he in fact belongs to the said caste or tribe. I am unable to persuade myself to sustain this contention. Under section 36 of the Act, the Returning Officer is entitled to decide all objections which may be made to any nomination after such summary enquiry, if any, as he considers necessary. If, therefore, an objection is raised on the score of a candidate not being a member of a Scheduled Caste or Tribe, then the Returning Officer can hold an enquiry to decide that objection. As a matter of fact, even specification of a caste or a tribe to which a candidate alleges to belong cannot be and is not made conclusive by the Statute and it would be open to another candidate to question the declaration on this point. Omission to specify the caste or tribe, therefore, cannot be considered to be fatal on this ground. No decided case nor any sound principle has been cited at the bar in support of the appellant's contention which must be repelled.

An election, it has been emphasised, by the appellant is not to be lightly set aside, and unless it is vitiated by substantial infirmities showing that persons elected are not the people's choice, the election of a returned candidate should not be declared void. The principle canvassed by the appellant undoubtedly appears to be unexceptionable. But it seems to me to be of little or no assistance to him on the facts and circumstances of this case. It is undeniable that the whole basis and foundation of our democratic set-up is that the people should select their representatives who are to be entrusted with the governmental functions. This

selection should, on account of its paramount importance, be, so far as humanly practicable, genuine, effective and free from fraud, corruption and other substantial defects encroaching on its effectiveness. This end has been sought to be achieved by enacting the Representation of the Peoples Act, 1950 and 1951, and the rules framed thereunder. It is indisputable that according to these provisions improper rejection of a nomination-paper invalidates an election and the mandatory provision is conclusive on the point.

Before closing the judgment, I consider it necessary to point out that in this case, for certain reasons, the object of enacting sub-section (6) of section 90 of the Act has not been achieved. The Tribunal on 14th June, 1962, directed the respondent before it to file his written statement on 9th July, 1962. As noticed earlier, on 8th September, 1962, the date fixed for the petitioner's evidence an application for the amendment of the written statement was presented by the present appellant. The hearing of the petition had to be adjourned on this account and costs were ordered to be paid to the petitioner. Arguments on the application for amendment were heard on 15th September, 1962 and the case was adjourned to 20th September, 1962 for orders. On that date, orders could not be announced because of several sessions cases which had to be tried by the Presiding Officer as the Sessions Judge between 15th and 20th September, 1962. On that date, another application was filed by the appellant, a reply to which was directed to be put in on 4th October, 1962, on which date he (Harnam Singh) wanted further time to file a replication. For this purpose the case was adjourned to 10th October, 1962. On that date, still another application was filed by the appellant of which notice was given to the opposite party and the case was adjourned to 24th October, 1962, for hearing both the applications and also for orders on the application for amendment of the written statement.

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On 24th October, 1962, arguments were heard and 1st November, 1962, was fixed for orders. On 1st November, 1962, the case was again adjourned to 5th November, 1962, on which date again, the case was adjourned to 15th November, 1962, as the Tribunal was busy on that date with the trial of a murder case. On 15th November, 1962, again an adjournment was granted to 22nd November, 1962, for the reason that the authorities cited by the parties had to be considered. On 22nd November, 1962, the case was again adjourned to 28th November, 1962, because there were other cases in which also similar arguments had been addressed and the Tribunal considered it proper to pass orders on all such applications at one time. On 28th November, 1962, again on account of two Sessions cases the orders could not be announced and the case was adjourned to 30th November, 1962, when ultimately the application for amendment was disposed of. I am not in a position on this record to express any opinion whether it was due to the lack of proper appreciation of the provision of section 90(6) of the Act or it was due to the Presiding Officer of the Tribunal being busy with the judicial work as a Session Judge, that the delay was caused.

I am quite alive to the importance of the speedy and expeditious disposal of Sessions cases but one must also keep in view and not throw into the background the importance which the Parliament has attached to the expeditious disposal of election contests. It may appropriately be pointed out there that it is not only in regard to the proceedings before the Tribunal but also before the High Court on appeal that the Parliament has in its wisdom taken special care to specifically emphasise the importance of expeditious disposal; in section 116-A (5) the High Court is enjoined to decide the appeal as expeditiously as possible and to endeavour to determine it finally within three months

of its presentation. This anxiety on the part of the Parliament is apparently motivated by the fact that the duration of the Legislatures has been fixed by the Constitution and the final determination of the validity of the election of the People's representatives to the Legislatures must not, therefore, be unduly delayed. Indifference towards the time factor on the part of the Election Tribunal and of the High Court when dealing with the election contests at various stages or any lapse on their part in this matter of vital constitutional importance, in the face of categorical legislative mandate, must tend to defeat and frustrate the very object of election petitions—a result not easily possible to continuance. The importance of time factor was also adverted to by the Supreme Court in *Veluswami* v. *Raja Nainar* (6), in which reference was also made to its earlier decision in *Bhikaji Keshao* v. *Brijlal Nandlal* (7). Even though the parties to the contest do not oppose delay, it would not absolve the Tribunal and the High Court of their duty to carry out and effectuate the constitutional legislative intent as manifested in the Act, in which the whole constituency, and not only the parties to the election petition, is vitally interested.

Besides, since such a result can confer benefit (which may be undeserved) only on the person whose election is challenged, it may also tend to give rise to highly undesirable but certainly avoidable apprehensions or suspicions of partiality and bias, which may in fact be wholly unfounded. It is, therefore, of the greatest importance that at no stage of an election contest should the time factor be ignored or lost sight of; and this, in spite of lapses on the part of the parties to the election contest, for, in the performance of their statutory duty the Tribunal and the appeal Court are to discharge their own responsibilities in safeguarding

(6) A.I.R. 1959 S.C. 422.
(7) A.I.R. 1955 S.C. 610.

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the constitutional right of the constituency, the election contest not being a mere private dispute between the parties to the election petition.

The history of this case discloses that the Tribunal was certainly seized of the election petition in June, 1962. A copy of the election petition must, therefore, have been published in the Official Gazette under section 86(1) of the Act much earlier. Even computing six months from June, 1962, the Tribunal should have endeavoured to conclude the trial by December, 1962; whereas it was decided on 10th July, 1963. Had the Presiding Officer of the Election Tribunal been relieved from the Sessions cases and other important criminal cases, then this election petition would perhaps have been decided somewhat earlier. We consider it our duty to bring the aspect mentioned above to the notice of the authorities concerned for appropriate action.

In the result this appeal fails and is hereby dismissed with costs.

JINDRA LAL, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before A. N. Grover, J.

H. L. JAIN,—*Appellant.*

versus

PUNJAB STATE,—*Respondent.*

First Appeal from order No. 34 of 1961

1963

Nov., 20th.

Arbitration Act (X of 1940)—Ss. 13(d), 14(1), 15, 16(1)(b) and Rule 3 of First Schedule—Award made by arbitrator not on a stamped paper and not specifying the amount due but amount due ascertainable by arithmetical calculation—Whether can be remitted—Order of remittal on grounds not