

THE INDIAN LAW REPORTS

PUNJAB SERIES

APPELLATE CIVIL

Before Dulat and Kapoor, JJ.

SURAJ BHAN,—Appellant.

versus

RANDHIR SINGH,—Respondent.

First Appeal from Order No. 54 of 1958.

Representation of the People Act (XLIII of 1951)—Sections 55A and 100—"Not later than ten days"—Meaning of—Improper retirement—Whether avoids election—Improper rejection of nomination papers and improper retirement—Difference between—General Clauses Act (X of 1897)—Section 10—Weather applicable to Section 55A.

1958

May, 21st

Held, that Section 55A of the Representation of the People Act, 1951 does not talk of ten days' clear notice but merely says that retirement must be not later than ten days prior to the date of the poll. The date of the poll was the 10th March, 1957. One day prior to the poll would be the 9th March and 10 days prior to the poll would therefore be the 28th February, 1957. The retirement was not later than the 28th February, 1957 and obviously therefore it was within time.

Held, that Section 100 of the Representation of the People Act, 1951, which mentions all the grounds on which an election could be declared void, carefully avoids mentioning improper retirement as such a ground. Non-compliance with the provisions of the Act or any rule made under the Act is also mentioned as a ground for avoiding an election,

and it is possible to argue that an improper retirement contrary to section 55A of the Act would be non-compliance with the provisions of the Act, but such non-compliance does not, by itself, avoid an election unless it can be shown that such non-compliance has materially affected the result of the election which has not been established. There is no resemblance between the rejection of a nomination and the retirement of a candidate from the election contest, the first being an act of adjudication by an authority and the second being a totally voluntary act of a candidate, and the considerations in the two cases being therefore entirely different. There is no suggestion in the present case that Shri Mange Ram had not retired of his own will, nor that he had not intended to retire. His retirement from the election contest, even if there was some irregularity about it, could not have the result of avoiding the appellant's election.

Held, that Section 55A of the Representation of the People Act 1951, prescribes a period of time within which the act of retirement must take place and section 10 of the General Clauses Act is fully applicable and if the tenth day prior to the date of poll falls on a holiday; the retirement can be notified on the next following day.

First Appeal from the Order of Shri Jawala Dass, Election Tribunal, Rohtak, dated the 27th March, 1958, accepting the election petition and declaring the respondent's election to be void.

D. N. AGGARWAL, RAJINDAR NATH AGGARWAL and ANAND SARUP, for Appellant.

D. K. MAHAJAN, RAJINDAR SACHAR and H. L. SARIN, for Respondent.

JUDGMENT

Dulat, J.

DULAT, J.—Shri Suraj Bhan appellant was elected to the Punjab Legislative Assembly from Sampla Constituency in the Rohtak District. His election has, however, been declared void by the Election Tribunal. Hence this appeal.

To begin with, there were 11 candidates nominated for election to this particular seat. Seven of them, however, withdrew leaving four including the appellant in the field. Polling was fixed for and took place on the 10th March, 1957. On the 28th February, 1957, one of the four remaining candidates appeared before the Returning Officer and handed him a notice of retirement from the contest and this was duly published. The result of the election was declared on the 13th March, 1957, in favour of the appellant who had obtained the largest number of votes. His election was challenged by one of the contesting candidates, Shri Randhir Singh, and in the election petition a number of grounds were taken. Most of these were, however, not pressed and the election petition was fought out on a single issue and it was this that Shri Mange Ram had been improperly allowed to retire from the election contest which by itself, had the effect of nullifying the appellant's election. The argument in support of this contention was that under section 55A of the Representation of the People Act, 1951, a contesting candidate can retire from the contest only if he gives notice not later than ten days prior to the date fixed for the poll, that this means that ten days' clear notice of retirement is necessary which, in turn, means that the notice of retirement should have been given on the 27th February, 1957, and since the actual notice was one day later the retirement was improper and such improper retirement must be deemed to be an improper rejection of the nomination of Shri Mange Ram—which improper rejection would under section 100 of the Act avoid the election. It was admitted that the 27th February, 1957, was a public holiday, but it was argued that although by virtue of section 10 of the General Clauses Act a person is enabled to do what he could have done on a holiday, on the next working

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day, this can be of no help in the present case as section 10 of the General Clauses Act has no application at all. This line of reasoning found favour with the Election Tribunal, and before us objection has been taken to each step in this chain of reasoning. Mr. Aggarwal for the appellant contends that under section 55A of the Representation of the People Act, Shri Mange Ram could lawfully retire from the contest on the 28th February, 1957, and further that even if the last date for retirement be taken as the 27th February, 1957, he could still do so on the 28th as the 27th February was a public holiday. Further, learned counsel contends that assuming the retirement to have been irregular the election of the appellant cannot be declared void on such a ground, as section 100 of the Act does not mention irregular or improper retirement of a contesting candidate as a ground for declaring an election invalid, unless it can be shown that the result of the election was materially affected by such irregularity which has not been shown. In respect of this last matter I might mention here that the Election Tribunal did go into the question whether the improper retirement of Shri Mange Ram in any manner affected the result of the election, and came to the conclusion that it was not possible to say so, and this finding has not been challenged before us so that the question merely is whether, by itself, such irregular or improper retirement invalidates the election within the meaning of section 100 of the Act.

To take up the first question first we have to consider the meaning of section 55A of the Representation of the People Act, Sub-section (2) of this section, which is relevant, runs thus :—

“A contesting candidate may retire from the contest by a notice in the prescribed

form which shall be delivered to the returning officer between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon of any day not later than ten days prior to the date or the first of the dates fixed for the poll under clause (d) of section 30 * * *.”

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This section does not talk of ten days' clear notice but merely says that retirement must be not later than ten days prior to the date of the poll. The date of the poll was the 10th March, 1957. One day prior to the poll would be the 9th March, and 10 days prior to the poll would, therefore, be the 28th February, 1957. The retirement was not later than the 28th February, 1957, and obviously, therefore, it was within time. Mr. Mahajan for the respondent urges that the period of ten days mentioned in this section really means ten clear days and in this case, therefore, one day prior to the poll would be the 8th March, and not the 9th. I am wholly unable to agree and I can see no warrant for the suggestion that in connection with section 55A of this Act we should count the period in a special way. No authoritative decision concerning section 55A of the Act has been brought to our notice, but in (*H. H. Raja Harinder Singh v. S. Karnail Singh and others* (1)), the Supreme Court did deal with Rule 119 framed under the Representation of the People Act, 1951, as it then stood, and that Rule had also used the expression "not later than fourteen days" from the date of publication, etc., and while counting this period of fourteen days the Supreme Court did not allow fourteen clear days but took it that the expression "not later than fourteen days" meant the same thing as "within a period of fourteen days". It is true that

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in the Supreme Court there was not much argument about this particular matter, but I am mentioning this case only to indicate that the usual way of counting such period, where an expression like "not later than" is used, is the method suggested by Mr. Aggarwal, and I can see no reason why we should import anything into section 55A of the Representation of the People Act to hold that the intention was to allow ten clear days between the date of retirement and the date of the poll. I am, in the circumstances, unable to accept the conclusion of the Election Tribunal that Shri Mange Ram could not have retired from the contest on the 28th February, 1957, as he admittedly did. This really is sufficient to dispose of the appeal before us, for, if the retirement on the 28th February, 1957, was valid, no further question arises and the appellant's election cannot be disturbed. Since, however, the other two matters have also been argued before us at length it is, I feel, proper that we should express our views on those matters.

Mr. Aggarwal contends that even if the latest date for retirement be taken as the 27th February, the fact of that date being a public holiday authorised the retiring candidate to notify his retirement on the next working day. That, in my opinion, is the plain meaning of section 10 of the General Clauses Act. The Election Tribunal held that this section did not apply, because in this case there was no statute fixing the date of the poll and it could not, therefore, be said that any law had prescribed any period within which the notice of retirement had to be given. It has not been easy to follow this line of reasoning. It is clear that the date of the poll was fixed and undoubtedly fixed by virtue of the Act of Parliament, and it is no answer to that to say that the Act of Parliament itself does

not mention specifically any particular date for polling. It is also clear that, according to section 55A of the Representation of the People Act, the retiring candidate had to notify his intention within a specified period of time. He could not do so after the expiry of that period. The object of section 10 of the General Clauses Act has been fully explained by the Supreme Court in the very decision I have already referred to (*H. H. Raja Harinder Singh v. S. Karnail Singh and others* (1), where Venkatarama Ayyar, J., observed :—

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“Broadly stated, the object of the section is, to enable a person to do what he could have done on a holiday, on the next working day. Where, therefore, a period is prescribed for the performance of an act in a Court or office and that period expires on a holiday, then according to the section the act should be considered to have been done within that period, if it is done on the next day on which the Court or office is open.”

It is admitted before us that Shri Mange Ram could have retired from the contest on the 27th February, 1957, and since the 27th February, 1957, was a holiday it follows that he could have done so on the next working day, i.e., the 28th February, 1957. It is said in this connection that section 55A of the Representation of the People Act does not really prescribe any period within which a particular act is to be done, but merely mentions a condition precedent to the doing of an act. I am unable to see any point in this suggestion, it being quite clear that this provision of law does prescribe emphatically a period of time within which the act of retirement must take place, and I have, therefore, no doubt that section 10 of the General Clauses

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Act is fully applicable and the notice of retirement by Shri Mange Ram was well within time on the 28th February, 1957, even if ten days' clear notice were considered necessary.

The last matter argued before us concerns the effect of any irregular, or what Mr. Mahajan styles "any improper" retirement on the validity of the election. Mr. Mahajan says that such improper retirement really amounts to the improper rejection of a nomination within the meaning of section 100 of the Act and consequently the election must be declared void in view of sub-section (1) clause (c) of section 100. This argument, in fact, requires us to read something in section 100 which is not there at all, and I can see no justification for doing so. It is clear that when Parliament enacted section 100, they mentioned all the grounds on which an election could be declared void and carefully avoided mentioning improper retirement as such a ground. Non-compliance with the provisions of the Act or any rule made under the Act is also mentioned as a ground for avoiding an election, and is possible to argue that an improper retirement contrary to section 55A of the Act would be non-compliance with the provisions of the Act, but Mr. Mahajan's difficulty then is that such non-compliance does not, by itself, avoid an election unless it can be shown that such non-compliance has materially affected the result of the election which has not been established. Mr. Mahajan contends that it was impossible for him to prove that the retirement of Shri Mange Ram materially affected the result of the election, because in the nature of things no concrete evidence to prove such a fact could be called and in this state of affairs we should start with a presumption that the result was materially affected. This almost amounts to saying that if a party, who has

to prove a fact, can call no evidence to prove it, the Court should presume the fact in his favour—a proposition which even Mr. Mahajan did not consider reasonable. For his argument Mr. Mahajan relied on the frame of section 100 of the Act before it was recently amended and pointed out that previously improper rejection and improper acceptance of a nomination stood on the same footing and an election could be declared void only if the result of the election was materially affected either by the improper rejection or the improper acceptance of a nomination, but that the Courts in the case of an improper rejection always started with the presumption that the election result had been materially affected by it, because no evidence to establish that fact could be available, and we should also for similar reasons start with a presumption in his favour. I can, however, see no resemblance between the rejection of a nomination and the retirement of a candidate from the election contest, the first being an act of adjudication by an authority and the second being a totally voluntary act of a candidate, and the considerations in the two cases being, therefore, entirely different. There is no suggestion in the present case that Shri Mange Ram had not retired of his own will, nor that he had not intended to retire. I am, in these circumstances, unable to agree that the retirement of Shri Mange Ram from the election contest, even if it be assumed that there was some irregularity about it, could have the result of avoiding the appellant's election. In my opinion, therefore, the conclusions of the Election Tribunal must on all these matters be reversed and the present appeal allowed and the respondent's election petition dismissed with costs throughout.

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CAPOOR, J.—I agree.

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B.R.T.