

CIVIL WRIT.

Before Falshaw and Dua, JJ.

SARDAR PARTAP SINGH KAIRON,—*Petitioner*

versus

S. KARTAR SINGH CHADHA AND OTHERS,—*Respondents*

Civil Writ No. 1146 of 1957.

1953

October 7th

Representation of the People Act (XLIII of 1951)—Section 99—Notice to persons other than candidates named in allegations of corrupt practices—When to be issued—Constitution of India (1950)—Article 226—Petition for writ under—High Court, whether should decide matters falling within the jurisdiction of an Election Tribunal.

Held, that persons other than candidates named in allegations of corrupt practices made in an election petition are not to be impleaded as parties at the outset and it is only after the evidence of the parties is concluded that the question of issuing notice to them under section 99 can arise. It is not correct that notice under section 99 can only be issued to the persons concerned after the Election Tribunal had decided the election petition and had come to a definite conclusion that these persons had been guilty of corrupt practices.

Held, that the intention of the law is that at the conclusion of the evidence of parties the position has to be reviewed by the Tribunal. Obviously the fate of the election petition, and of the successful candidate, will depend not only on those allegations of corrupt practices which are made directly against himself or his recognised agents, but also on the allegations of corrupt practices made against other persons supposed to be acting on his behalf. Such persons, however, cannot be named under section 99(1)(a) (ii) unless and until they have been given notice and an opportunity to contest the matter and defend themselves in accordance with the terms of the proviso. It would be violating a fundamental principle of jurisprudence to hold that definite findings must be given against the persons who are later to be named under section 99 in the main judgment deciding the petition in one of the ways provided in section 98 before

notice can be issued to them under the proviso to section 99. Such a course might lead to the absurd result that after finding allegations of corrupt practices to be proved and declaring the election of the successful candidate to be void under section 98, the Tribunal might, after issuing notice to the persons to be named under section 99, and after the further cross-examination of the witnesses already produced and the examination of any witnesses produced by them in their defence, come to the conclusion that the allegations relating to them were not proved after all, and there would thus be conflicting decisions by the same Tribunal.

Held, that it is fundamentally wrong in principle that any Tribunal should only call on persons against whom allegations have been made to appear and allow them to be heard after a definite finding has already been given by the Tribunal that the charges are proved. The intention of sections 98 and 99 is that final order of the Tribunal deciding the election petition one way or another under section 98, and any orders passed under section 99 naming persons as guilty of corrupt practices in connection with the election must be passed simultaneously, and that if the decision to name particular individuals as guilty of corrupt practices under section 99 has any bearing on the fate of the election petition as such, then the findings even in the main election petition on those particular charges of corruption can only be given after the affected parties have been heard under section 99.

Held, that on a writ petition under Article 226 of the Constitution the High Court should not intervene during the pendency of an election petition and take upon itself the task of deciding matters which lie within the jurisdiction of the Election Tribunal.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of Certiorari, Mandamus or any other writ, order or direction be issued quashing the order, dated the 26th October, 1957, passed by the respondents Nos. 2 and 3 directing issue of notice to the petitioner.

H. S. DOABIA, for Petitioner.

H. L. SIBAL and S. S. BEDI, for Respondents.

ORDER

Falshaw, J.

FALSHAW, J.—These two petitions (Civil Writ Nos. 1146 of 1957 and 166 of 1958) under Articles 226 and 227 of the Constitution have been filed in the following circumstances by Sardar Partap Singh Kairon, Chief Minister, Punjab, and Sardar Daljit Singh, M.P.

In May, 1955, a bye-election was held to fill a vacancy in the Punjab Legislative Assembly which had arisen in the Hoshiarpur constituency. Five candidates filed nomination papers of whom two withdrew in time and the contest on polling day was between Amar Singh, Balbir Singh and Kartar Singh. Amar Singh headed the poll and was duly declared elected.

In July, 1955, Balbir Singh, who was second in the poll, filed an election petition challenging the election of Amar Singh on various grounds, including a number of allegations of corrupt practices in some of which the names of the present petitioners were involved.

The election petition, which was to be decided in accordance with the provisions of the Representation of the People Act of 1951, as it stood before it was amended in 1956, came before an Election Tribunal consisting of Mr. Kartar Singh Chadha Chairman and Mr. D. D. Seth and Mr. Badri Prasad Puri Members. The relevant provisions of the Act read—

“98. *Decision of the Tribunal.*—At the conclusion of the trial of an election petition the Tribunal shall make an order—

(a) dismissing the election petition; or

- (b) declaring the election of the returned candidate to be void; or
- (c) declaring the election of the returned candidate to be void and the petitioner or any other candidate to have been duly elected; or
- (d) declaring the election to be wholly void.

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99. *Other orders to be made by the Tribunal:*

(1) At the time of making an order under section 98 the Tribunal shall also make an order—

(a) Where any charge is made in the petition of any corrupt or illegal practice having been committed at the election, recording—

(i) a finding whether any corrupt or illegal practice has or has not been proved to have been committed by, or with the connivance of, any candidate or his agent of the election, and the nature of that corrupt or illegal practice; and

(ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt or illegal practice and the nature of that practice, together with any such recommendations as the Tribunal may think proper to make for

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the exemption of any persons from any disqualifications which they may have incurred in this connection under sections 141 to 143; and

- (b) fixing the total amount of costs payable, and specifying the persons by and to whom costs shall be paid;

Provided that no person shall be named in the order under sub-clause (ii) of clause (a) unless—

- (a) he has been given notice to appear before the Tribunal and to show cause why he should not be so named; and
- (b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by the Tribunal and has given evidence against him, of calling evidence in his defence and of being heard.

* * * *

In the present case, since allegations of conduct said to amount to corrupt practices had been made against the present two petitioners as well as against other persons in addition to the successful candidate, the question arose, at the conclusion of the evidence produced by the parties, of applying the relevant portions of section 99, since, if the finding was to be given in the main judgment on the election petition that allegations made against the persons other than successful candidate were established, they would have to be named under section 99(1) (a) (ii), and they

could only be so named after compliance with the provisions contained in the proviso regarding the issue of notice and the opportunity of cross-examining witnesses and producing defence evidence on their own account.

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In dealing with this matter the Chairman of the Tribunal in a lengthy order dated the 26th of October, 1957, has reviewed the whole of the evidence relating to the allegations made against the two present petitioners and a third man named Hari Singh and come to the conclusion that the allegations were not established and that, therefore, there was no necessity for issuing notice to any of them under section 99. In a somewhat briefer order of the same date Mr. D. D. Seth, came to the conclusion that while nothing was established against Hari Singh, one of the charges made against Sardar Partap Singh Kairon, and part of one of the other charges, required further consideration, as also did the charge levelled against Sardar Daljit Singh, and he, therefore, ordered the issue of notices to the two petitioners in respect of these allegations. The third Member Mr. Badri Parshad Puri agreed in a brief order with Mr. D.D. Seth. The decision of the majority, which became the order of the Tribunal, was thus for the issue of notices to the petitioners regarding these specific matters.

These are the orders which are challenged in the present petitions, which were filed early in December, 1957, and January 1958, and since stay of proceedings before the Election Tribunal was ordered on the admission of petitions it is unfortunate that they have taken nearly a year to come up for hearing, and that matters arising out of an election held in May, 1955, should be before this Court in October, 1958.

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The first point raised by the learned counsel for petitioners was that the order for issuing notices to them under section 99 was without jurisdiction, since there was no finding by the Tribunal that they were guilty of corrupt practices, and that the Tribunal had no jurisdiction to issue notices merely on the ground that there was a *prima facie* case which required further investigation. In this connection he relied on a decision of the Assam High Court in *Amjad Ali v. B. C. Barua and others* (1). In that case in an election petition the petitioner, in addition to praying for setting aside the election of the successful candidate, had applied for notice to be issued against certain persons to show cause why they should not be named in the order of the Tribunal as persons guilty of corrupt practices and notices were issued to these persons along with other parties made respondents in the petition. In these circumstances it was held that the persons did not come under the category of 'candidate' returned or contesting and, as such, they could not be made a party to the petition for setting aside the election, within the meaning of section 82, and it was only after the conclusion of the trial that the question of issuing notice on such persons within the meaning of the proviso to section 99 arose, provided the Court held, on the materials produced, that they were found guilty of such corrupt practices.

I do not see any reason for differing from this decision so far as it holds that persons other than candidates named in allegations of corrupt practices made in an election petition are not to be impleaded as parties, at the outset and that it is only after the evidence of the parties is concluded that

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the question of issuing notice to them under section 99 can arise. If, however, the decision was intended to go further than this, and to hold that notice under section 99 could only be issued to the persons concerned after the Election Tribunal had decided the election petition, and had come to a definite conclusion that these persons had been guilty of corrupt practices, I cannot, with respect, agree with it.

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What appears to me to be the intention of the law is that at the conclusion of the evidence of the parties the position has to be reviewed by the Tribunal. Obviously the fate of the election petition, and of the successful candidate will depend not only on those allegations of corrupt practices which are made directly against himself or his recognised agents, but also on the allegations of corrupt practices made against other persons supposed to be acting on his behalf. Such persons, however, cannot be named under section 99(1)(a) (ii) unless and until they have been given notice and an opportunity to contest the matter and defend themselves in accordance with the terms of the proviso. It seems to me that it would be violating a fundamental principle of jurisprudence to hold that definite findings must be given against the persons who are later to be named under section 99 in the main judgment deciding the petition in one of the ways provided in section 98 before notice can be issued to them under the proviso to section 99. Such course might lead to the absurd result that after finding allegations of corrupt practices to be proved and declaring the election of the successful candidate to be void under section 98, the Tribunal might, after issuing notice to the persons to be named under section 99, and after the further cross-examination of the witnesses already produced and the examination of any witnesses produced by them in

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their defence, come to the conclusion that the allegations relating to them were not proved after all, and there would thus be conflicting decisions by the same Tribunal.

Falshaw, J.

Apart from this it appears to me to be fundamentally wrong in principle that any Tribunal should only call on persons against whom allegations have been made to appear and allow them to be heard after a definite finding has already been given by the Tribunal that the charges are proved. It seems to me to be quite obvious that the intention of sections 98 and 99 is that the final order of the Tribunal deciding the election petition one way or another under section 98, and any orders passed under section 99, naming persons as guilty of corrupt practices in connection with the election must be passed simultaneously, and that if the decision to name particular individuals as guilty of corrupt practices under section 99, has any bearing on the fate of the election petition as such, then the findings even in the main election petition on those particular charges of corruption can only be given after the affected parties have been heard under section 99. There may possibly be cases in which the fate of the election petition may not depend on the naming or otherwise of persons as being guilty of corrupt practices, but even in such cases I should say that it would be better if the law were to be followed as stated above.

In these circumstances it seems to me that if we were to go into the grounds on which the present petitions are based on their merits, we would be usurping the functions of the Election Tribunal and taking upon ourselves to decide matters which as yet remain undecided, and for the decision of

which the Tribunal has been specifically constituted. Admittedly the question whether certain allegations of fact, if believed, would amount to a corrupt practice or not was decided on a petition under Article 226 of the Constitution during the pendency of an election petition by Mootham, C. J., and Mukherji, J., in *Mohd. Ibrahim v. Election Tribunal, Lucknow, and others* (1), but, with due respect to the views of the learned Judges in that particular case, I do not think that it is a practice which should generally be followed in the High Court to intervene during the pendency of an election petition and take upon itself the task of deciding matters which lie within the jurisdiction of the Election Tribunal. In the circumstances I think it would be better for us not to say anything at all which could in any way be taken by the Tribunal either as prejudicing its decision in the main election petition or prejudicing its decision on the matters regarding which notice was ordered to be issued to the present petitioners. The result is that I would dismiss both the petitions with costs. Counsel's fee Rs. 100 in each case.

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DUA, J.—I agree.

Dua, J.

B.R.T.

REVISIONAL CIVIL

Before Grover, J.

ROSHAN LAL AND OTHERS.—*Petitioners*

versus

M/s CHANAN MAL ACHHRU RAM,—*Respondents*

Civil Revision No. 533 of 1957.

*Code of Civil Procedure (Act V of 1908)—Section 66
and Order 21—Sale of Partnership assets by the Receiver*

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