

the course of export out of the territory of India. It was, therefore, not proper for the Assessing Authority to hold that since the purchases of cotton were made by the Branch Office, Bhatinda and the cotton was then transferred to the Head Office at Bombay, which in turn exported it outside India, the exemption claimed by the petitioners under section 5(2) (a) (vi) of the Act, could not be granted. In this view of the matter, the Assessing Authority should have allowed the exemption claimed by the petitioners from their gross turn-over under section 5(2) (a) (vi) of the Act and the omission to do so invalidated the impugned order.

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Bhatinda,
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Sharma, J.

The respondents' objection that the writ petition did not lie because the petitioners had failed to avail of the remedies open to them by way of appeal and revision under sections 20 and 21 of the Act can not prevail. The petitioners alleged in paragraph 7 of the writ petition that the Assessing Authority had disallowed their claim in accordance with the instructions received by him from the Excise and Taxation Commissioner. This has not been controverted by the respondents and so has to be accepted as correct. In these circumstances the right of appeal had been reduced to a mere formality, if not rendered farcical. The petitioners would not have gained anything substantial by preferring an appeal. Their failure to file the appeal or revision is no bar to the filing of the present writ petition. This finds support from the decision in case *Messrs New Rajasthan Mineral Syndicate, Nizampur v. The State of Punjab and another* (2).

For the reasons given above, the civil writ is allowed with costs and the assessment order, dated 1st February, 1963, (copy annexure A), is quashed.

K.S.K.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan and S. K. Kapur, JJ.

BACHAN SINGH,—*Petitioner.*

versus

ELECTION COMMISSION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No. 477-D of 1964.

*Representation of the People Act (XLIII) of 1951—S. 88—
Place of trial of an election petition—Whether can be fixed outside
the State in which the election took place—Petition pending in*

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the Punjab—Whether can be transferred to a place outside that State for further trial.

Held that the main section 88 of the Representation of the People Act, 1951, and the proviso have to be read together and after they are so read, it is clear that the place of the trial of an election petition must be situate within the State in which the election to which the petition relates took place. Consequently an election petition pending at a place in the State of Punjab and relating to election which took place in that State cannot be transferred to a place outside the State of Punjab for further trial.

Petition under Article 226 and 227 of the Constitution of India praying that :—

- (i) *That this Hon'ble Court may be pleased to issue a writ of certiorari, mandamus or any other writ, order or direction calling for the records of the case and quashing the order of Respondent No. 1 dated 23rd May, 1964 and 6th August, 1964, changing the place of trial, from Ludhiana to Delhi.*
- (ii) *That this Hon'ble Court may be pleased to pass an order that the petition be tried by the District Judge, Ludhiana, who is on the list prepared under section 86 of the Act.*
- (iii) *That in any case, an order may be passed sending the petition to Respondent No. 1, directing it to transfer the Election petition to a duly constituted Tribunal at Ludhiana.*
- (iv) *That any other appropriate writ or order may be issued or passed which, in the opinion of the Hon'ble Court, is required to be passed in the circumstances of the present case; and*
- (v) *That costs may be awarded to the petitioner against the contesting opposite parties.*

K. C. SHARMA, ADVOCATE, for the Petitioner.

NEMO, for the Respondent.

ORDER

Kapur, J.

KAPUR, J.—By this petition the petitioner seeks to challenge the two orders passed by the Election Commission of India (Respondent No. 1), dated 23rd May, 1964, appointing Delhi as the place for the further trial of the Election Petition No. 225 of 1962, and dated 6th August, 1964, rejecting the application of the petitioner for retransfer of the petition to another Tribunal at Ludhiana.

The petitioner contested election to the Punjab Legislative Assembly from Ludhiana, North Constituency in February, 1962. He was elected and respondent No. 3 was one of the defeated candidates. Harbhagwan, respondent No. 3, filed an election petition being No. 225 of 1962, under sections 80 and 81 of Representation of the People Act, challenging the election of the petitioner. By notification No. 82/225/62, dated the 2nd June, 1962, the Election Commission, respondent No. 1, appointed Shri Chander Gupta Suri, the then District and Sessions Judge, Kapurthala, respondent No. 2, as a member of the Election Tribunal constituted for the trial of the said petition. The Commission, in exercise of powers under section 88, fixed Ludhiana as the place of trial. Shri Chander Gupta Suri, was then transferred as District and Sessions Judge, Ludhiana and he continued to try the petition. On 30th April, 1964, Shri Suri, was transferred to Delhi and he adjourned the case *sine die*. By notification No. 82/225/62/1051, dated the 29th May, 1964, (annexure A-1, to the petition) the Commission appointed Delhi as the place for further trial of the said election petition. The petitioner's application for transfer of case to some other Tribunal at Ludhiana was rejected by the Election Commission (Respondent No. 2) by order, dated 6th August, 1964 and the petitioner filed this Writ petition impugning the correctness of the said two orders.

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Mr. K. C. Sharma, learned counsel, for the petitioner, submits that on the correct construction of section 88 of the Representation of the People Act, the Election Commission respondent No. 1, was obliged to fix a place in Punjab for the trial of the said election petition and in appointing Delhi the Election Commission has acted outside its authority conferred on it under section 88. In the submission of the learned counsel the words "shall be held at such place as the Election Commission may appoint" in section 88 must mean at such place within the State in which the election to which the petition relates took place. He submits that the proviso and the section must be read together and when so read it becomes apparent that no place outside Punjab could be appointed for the trial of the petition. In proviso to section 88 of the Act, a Tribunal has been given a discretion to sit for any part of the trial at any other place in the State. According to the learned counsel the words "at any other place in the State" were

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indicative of the limitation that must be placed on other-wise wide language of the opening part of section 88. If under section 88, any place outside the State could be fixed then the words "any other place" would not have been used in the proviso. The words "any other place in the State" mean a place other than a place in the State appointed by the Election Commission. The learned counsel relies in this connection on *Hari Vishnu v. Ahmad Syed* (1), where it was held that "the argument of the learned counsel ignores from consideration the proviso to section 88. In my opinion the main section and the proviso have to be read together and after they are so read, it is clear that the place of the trial must be situate within the State from which the petition arises." It is well established that terms of an intelligible proviso may throw considerable light on the ambiguous import of the statutory words and a proviso may in certain cases be a useful guide in the selection of one or other of two possible constructions of the words in an enactment. We are in respectful agreement with the view expressed in the said Nagpur decision.

The order of the election Commission, respondent No. 1, dated the 29th of May, 1964, is, therefore, outside the scope of its authority under section 88 and has to be struck down. The order, dated the 6th August, 1964, is merely consequential and would fall with the order, dated the 29th May, 1964. In the result the petition is allowed, and the orders, dated the 29th May, 1964, and 6th August, 1964, of respondent No. 1, quashed. There will, however, be no order as to costs.

Mahajan, J.

D. K. MAHAJAN, J.—I agree.
B.R.T.

APPELLATE CIVIL

Before *Daya Krishan Mahajan and S. K. Kapur, JJ.*

MESSRS FANCY NETS LTD.,—*Appellant.*

versus

MESSRS KISHAN DASS KHIA RAM AND OTHERS,—*Respondents.*

Execution First Appeal No. 39-D of 1961.

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Provincial Insolvency Act (V of 1920)—Ss. 20 and 52—Receiver appointed under S. 20—Whether representative of the insolvent—Order passed under S. 52—Whether appealable—Code of Civil

(1) A.I.R. 1954 Nagpur 166 (182).