

KUMARANAND

v.

BRIJ MOHAN LAL

August 24, 1964

(P. B. GAJENDRAGADKAR, C.J., J. C. SHAH AND N. RAJAGOPALA
AYYANGAR JJ.)

Representation of the People Act, 1951 (43 of 1951), s. 119-A—Election Petition—Appeal—Security deposit—Deposit with Registrar's Office of the High Court instead of Government Treasury—Whether appeal to be dismissed.

On a petition by the respondent, challenging the election of the appellant to the State Legislative Assembly, the Election Tribunal declared the election void under s. 100(1)(b) of the Representation of the People Act. Against the order of the Tribunal, the appellant appealed to the High Court. Instead of enclosing with the memorandum of appeal a Government Treasury receipt showing that a deposit of Rs. 500 had been made in favour of the Election Commission, the appellant through his Advocate tendered the amount in the office of the Registrar of the High Court. The amount tendered was accepted and was duly credited in the name of the appellant as "security deposit". At the hearing of the appeal it was contended by the respondent, *inter alia*, that the appellant had failed to enclose with the memorandum of appeal a Government Treasury Receipt showing that a deposit of five hundred rupees had been made by him in favour of the Election Commission as security of the costs of the appeal, and his appeal was, on that account, not maintainable. The High Court held that the appellant had failed to comply with the provisions of s. 119-A of the Act and on that account the appeal filed by him was incompetent, and dismissed the appeal. In appeal by special leave :

HELD : The failure to comply with the requirements of s. 119-A does not necessarily result in the dismissal of the appeal, for the Act imposes no express penalty for non-compliance with the requirements of that section. The Court had therefore jurisdiction having regard to the circumstances, either to permit rectification of the mistake, or to decline to proceed with the appeal which did not comply with the statutory requirements. In the present case the High Court erred in not taking into consideration the conduct of the office of the Registrar in accepting the deposit of costs and also a defective presentation of the appeal which contributed to the irregularity of the procedure adopted by the appellant. [122B-D].

Jagan Nath v. Jaswant Singh, [1954] S.C.R. 892, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 644 of 1964.

Appeal by special leave from the judgment and order dated February 25, 1964, of the Rajasthan High Court in D. B. Election Appeal No. 93 of 1963.

R. K. Garg, for the appellant.

B. D. Sharma, for respondent No. 1.

A The Judgment of the Court was delivered by

Shah J. At the last general elections held in February 1962 the appellant Kumaranand contested a seat in the Rajasthan Legislative Assembly from the Beawar constituency and was declared elected. Brij Mohan Lal who was a candidate at the election then presented a petition challenging the election of the appellant on the ground that the appellant had in the course of the election committed corrupt practices within the meaning of s. 123(4) of the Representation of the People Act, 1951, by publishing a poem containing false statements of fact relating to the personal character and conduct of the applicant Brij Mohan Lal and which were highly prejudicial to his election prospects. The Election Tribunal declared the appellant's election void under s. 100(1)(b) of the Act. Against the order of the Tribunal, the appellant appealed to the High Court of Rajasthan at Jodhpur. At the hearing of the appeal it was contended by the respondent Brij Mohan Lal, *inter alia*, that the appellant had failed to enclose with the memorandum of appeal a Government Treasury receipt showing that a deposit of five hundred rupees had been made by him in favour of the Election Commission as security for the costs of the appeal, and his appeal was, on that account, not maintainable. The High Court held that the appellant had failed to comply with the provisions of s. 119A of the Act and on that account the appeal filed by him was incompetent. The High Court declined to accede to the request made by the appellant to condone the delay, if any, in the filing of the appeal under the proviso to s. 116A(3) and to rectify the defect arising from the appellant's failure to enclose a Government Treasury receipt for Rs. 500 as required by s. 119A, and dismissed the appeal. With special leave, this appeal has been preferred by the appellant.

The facts bearing on the plea which has found favour with the High Court of Rajasthan and the relevant provisions of the Representation of the People Act in force at the material time may be briefly stated. Section 119A of the Act which was added by s. 64 of Act 27 of 1956 and was further amended by Act 58 of 1958 reads as follows :

"Every person who prefers an appeal under Chapter IVA 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."

Instead of enclosing with the memorandum of appeal a Government Treasury receipt showing that a deposit of Rs. 500 had been made in favour of the Election Commission, the appellant through his Advocate Vijay Chandra Mehta tendered on October 21, 1963, the amount of Rs. 500 in the office of the Registrar of the High Court. The amount tendered was accepted and was duly credited in the name of the appellant as "security deposit". The tender form for payment into Court of the security for costs, as completed by the office of the Registrar, High Court, Rajasthan, was as follows :

"Original tender : 771/21-10-63

R.R.D. No. 239/31-10-63.

In the High Court of Judicature for
Rajasthan at Jodhpur

Jaipur Bench

Instruction to applicant. Fill up accurately columns 1 to 4.

1. Name of party on whose behalf the money is tendered	Shri Kumaranand.
2. Name of parties and number of the suit	Kumaranand v. Brij Mohan Lal D. B. Election appeal/63.
3. Nature of payment	: Security Deposits.
4. Amount tendered	: Rs. 500 (Rs. Five hundred only).
5. Office report	: May be deposited.
Sd./-Vijay Chandra Mehta	Sd/- Illegible 21-10-63 Signature of Cashier

Stamp

Dated

Dated

Receipt acknowledged in Register No. R.R.D. No. 239/31-10-63 only by credited, dated to S.B. Ch. No. 157/54/21-10-63.

Sd/- Mohammed Hsiji

31-10-63

Signature of Receiving Officer

A *N.B.*—To be filed with the record.

Sd/- Prem Raj

31-10

Signature of Accountant.”

B It is clear from the terms of the tender that the amount was deposited in the High Court on behalf of the appellant Kumaranand as “security deposit” in the proceeding “Election appeal Kumaranand v. Brij Mohan Lal”, and the cashier endorsed on the tender form that the amount paid “may be deposited”. The receipt was then entered in the Register and it was ordered by the Accountant that it may be filed with the record. This deposit of Rs. 500 in the
 C High Court manifestly did not comply with the requirements of s. 119A of the Act. The tender form did not indicate that the deposit was at the disposal of the Election Commission or that it was to be utilised in the manner authorised by law. Even it did not recite that the Election Commission had control over the amount or was payable on proper application being made in that
 D behalf.

Section 121 of the Act, insofar as it is material, by sub-s. (1) provides that if any direction for payment of costs by any party to any person is made under Part VI such costs shall be paid in full out of the security deposit and the further security deposit,
 E if any, made by such party, on an application made in writing in that behalf to the Election Commission by the person in whose favour the costs have been awarded. Section 119A is enacted with a view to secure the costs of the successful party and for that purpose the Legislature has enacted that the deposit should be made in a Government Treasury in favour of the Election Commission so that the Election Commission would pay the amount
 F to the person entitled to the costs. But failure to comply with the requirements of s. 119A does not necessarily result in the dismissal of the appeal, for the Act imposes no express penalty for non-compliance with the requirements of that section. Under s. 90(3) the Tribunal is bound to dismiss an election petition
 G which does not comply with s. 81 or s. 82 notwithstanding that it had not been dismissed by the Election Commission under s. 85. No similar penalty is prescribed by the Legislature in the matter of failure to comply with the requirements of s. 119A. It may also be observed that by cl. (4) of s. 90 as originally enacted for failure to comply with the provisions of s. 117 of
 H the Act which required a petitioner to enclose with an election petition a Government Treasury receipt showing that a deposit of two thousand rupees had been made by him either in a Govern-

ment Treasury or in the Reserve Bank of India in favour of the Election Commission as security for the costs of the petition, it was provided that the Tribunal *may* dismiss an election petition. This clause was later modified and renumbered as cl. (3) by Act 27 of 1956, and it was enacted that the Tribunal *shall* dismiss an election petition which does not comply, amongst others, with the provisions of s. 117. By the amendment made by Act 40 of 1961, reference to s. 117 was, however, omitted. The Legislature therefore has deliberately made a distinction between failure to comply with certain requirements of the statute. In respect of certain defaults the Election Tribunal is obliged to dismiss the election petition, but for default in complying with the provisions of s. 119A no such penalty is imposed. As observed in *Jagan Nath v. Jaswant Singh and Ors.*⁽¹⁾ by Mahajan, C.J. :

“The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and the Court possesses no common law power. It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law. None of these propositions however have any application if the special law itself confers authority on a tribunal to proceed with a petition in accordance with certain procedure and when it does not state the consequence of non-compliance with certain procedural requirements laid down by it. . . . In cases where the election law does not prescribe the consequence or does not lay down penalty for non-compliance with certain procedural requirements of that law, the jurisdiction of the tribunal entrusted with the trial of the case is not affected.”

The question which then has to be considered is whether in case of failure to comply with the requirements of s. 119A the High Court had jurisdiction to rectify the mistake committed in making the deposit for costs. There can be no doubt that an amount of Rs. 500 was intended to be and was in fact deposited by the appellants as security for costs of the respondent, though it was described in the tender by the somewhat inappropriate caption “security deposit”. It appears that the Advocate appearing for the appellants in the High Court did not properly appreciate the scope

(1) [1954] S.C.R. 892, 895.

A of the amendment made in the Act by Act 56 of 1956, which incorporated s. 119A. He proceeded as if this was an ordinary civil appeal in which security for costs was required by law to be deposited in Court. In not acquainting himself with the statutory provisions applicable to the due lodgment of the memorandum of appeal, the Advocate undoubtedly acted negligently, and if that was the only circumstance governing the disposal of the appeal, we would not be justified in interfering with the order of the High Court. There are, however, certain other considerations which have not been given due effect by the High Court before dismissing the appeal. In the absence of any penalty prescribed by the Legislature for failure to comply with the requirements of s. 119A

C the jurisdiction of the High Court to entertain the appeal is not affected or jeopardised. The appellant was it is true not entitled on that account to ignore the statutory provision requiring that a Government Treasury receipt for the requisite amount in favour of the Election Commission as security for the costs of the appeal shall be enclosed. But when there is default in complying with the requirement, it is for the Court in each case to consider whether it will exercise its discretion to proceed with the appeal after rectifying the mistake committed or it will decline to proceed with the appeal.

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E In the present case as observed earlier the Advocate failed to acquaint himself about the provisions of s. 119A. It is also somewhat unfortunate that the office of the Registrar of the High Court shared the ignorance of the Advocate. The tender form which was produced before the High Court clearly discloses that the amount of Rs. 500 was intended to be deposited as security for costs of the respondent in the Election appeal: *Kumaranand v. Brij Mohan Lal*. Instead of depositing that amount in a Government Treasury or in the Reserve Bank, the amount was deposited in the High Court. The amount was accepted and the receipt was filed with the record, and this was regarded as sufficient compliance with the requirements of s. 119A. The Deputy Registrar of the High Court accepted the presentation and numbered the appeal without raising any objection to the procedure followed. This would justify an inference that the office of the Registrar of the High Court was misinformed, as the Advocate was, as to the statutory requirements imposed by the Representation of the People Act in the matter of deposit of security for costs of the appeal.

G If the memorandum of appeal had not been accepted by the Registrar's office, because it was not accompanied by a Government Treasury receipt as required by the statute, the defect could have been cured by the appellant. But the memorandum of appeal

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was accepted, and was numbered as an appeal, and notice of the appeal was issued to the respondent. The objection to the regularity in the procedure was, it appears, brought to the notice of the Court only at the hearing. That the Advocate for the appellant was negligent cannot be gainsaid. But the conduct of the office of the Registrar of the High Court in accepting presentation of the appeal which did not comply with the requirements of s. 119A has largely contributed to the irregularity of the procedure followed. It is a trite saying that it is duty of the Court to take care that the act of the Court does no injury to any suitor. The Court is by statute not obliged to dismiss the appeal for failure to comply with the requirements of s. 119A: it has therefore jurisdiction having regard to the circumstances, either to permit rectification of the mistake, or to decline to proceed with the appeal which does not comply with the statutory requirements. In the present case we think that the High Court erred in not taking into consideration the conduct of the office of the Registrar in accepting the deposit of costs and also a defective presentation of the appeal which contributed to the irregularity of the procedure adopted by the appellant. In our view the High Court should have directed that the amount which had been deposited under the tender form on October 21, 1963, be deposited in the Government Treasury in the name of the Election Commission, and a Government Treasury receipt be obtained in favour of the Election Commission as security for costs of the appeal preferred before the High Court.

Accordingly we set aside the order passed by the High Court and direct that the High Court do give an opportunity to the appellant to rectify the error committed in the matter of securing the costs of the appeal in the manner already set out and that the High Court do proceed to hear the appeal on the merits after the Government Treasury receipt in favour of the Election Commission as security for the costs of the appeal has been obtained and filed in the record. We do not think that because of the failure to file the Government Treasury receipt, the jurisdiction of the High Court is affected or that the appeal may be regarded as otherwise barred by the law of limitation.

The appeal is allowed. The appellant had acted irregularly and somewhat negligently and the respondent was justified in bringing to the notice of the High Court the defect in the presentation of the appeal. Even at the hearing of the appeal he tried to justify his action. In the circumstances the appellant must pay the costs of the respondent of this appeal. Costs in the High Court will be costs in the appeal.

Appeal allowed.

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