

SH. MOHD. AYUB KHAN  
v.  
PROF. BHIM SINGH AND ORS.

MARCH 14, 1996

[K. RAMASWAMY, S.P. BHARUCHA AND  
K.S. PARIPOORNAN, JJ.]

*Representation of People Act, 1951 : Section 64-A.*

*Election Commission—Power to order repoll—Parliamentary election—Reference by Returning Officer—Direction for repoll by Election Commission—Challenge—High Court held that Commission had no power to direct repoll—It took note of the fact since previous Parliament stood dissolved and new constituted no order for repoll could be made—Appeal—Held direction given by High Court has only academic value—Supreme Court would not go into said academic question since no substantial relief could be given, if the matter is to be heard on merits.*

*Constitution of India, 1950 : Article 324.*

*Election Commission—Power of superintendence, Direction and control of elections.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4970 of 1992.

From the Judgment and Order dated 15.10.1992 of the Jammu & Kashmir High Court in E.P. No. 1 of 1988.

M.C. Bhandare and Ms. C.K. Sucharita for the Appellants.

L.R. Singh, Irshad Ahmed, A.M. Khanwilkar and Ashok Mathur for the Respondents.

The following Order of the Court was delivered :

The Election Commission had issued notification on May 16, 1988 for holding bye-elections to the 5-Udhampur Parliamentary Constituency in the State of Jammu & Kashmir and the result of the election was declared. Counting of the vote commenced on June 20, 1992. On a refer-

ence by the Returning Officer on June 21, 1988, the Election Commission directed repoll at certain polling stations. Accordingly, repoll was done in those booths. The result of the election was challenged in the Election Petition No. 1 of 1988. The High Court in the impugned order dated October 13, 1992 has set aside the election on the grounds that under Section 64-A of the Representation of People Act, 1951, the Election Commission had no power to order repoll and that, therefore, the election was void. The High Court, however, noted that since the previous Parliament stood dissolved and new Parliament was constituted, no order for repoll could be made.

Shri M.C. Bhandare, learned senior counsel appearing for the appellant, contended that the Election Commission has got power to order repoll and, therefore, the order of the High Court is clearly illegal. It is not necessary for us at this stage to go into that question since it is only an academic issue. The High Court having noticed that the previous Parliament to which the election came to be held stood dissolved and that a new Parliament was constituted, should have declined to go into the question. Nonetheless, the High Court has given its declaration which has only an academic value. We need not go into the said academic question since no substantial relief could be given, if the matter is to be heard on merits.

We are not expressing any opinion on merits since we have already held that the view expressed by the High Court is an academic issue. The findings recorded therein would not be treated as a binding precedent.

The appeal is dismissed accordingly. No costs.

Appeal dismissed.