1954
September 28.

JUMUNA PRASAD MUKHARIYA AND OTHERS.

v.

LACHHI RAM AND OTHERS.

[MEHR CHAND MAHAJAN C. J., MUKHERJEA, S. R. DAS, VIVIAN BOSE and GHULAM HASAN JJ.]

Constitution of India, Art. 19(1) (a)—Representation of the People Act (XLIII of 1951), ss. 123(5) and 124(5)—Whether ultra vires *the Constitution.*

Held, that sections 123(5) and 124(5) of the Representation of the People Act (XLIII of 1951) are not *ultra vires* article 19(1) (a) of the Constitution.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 156 of 1954.

Appeals by Special Leave against the Judgment and Order dated the 24th December, 1953, of the Election Tribunal, Gwalior, Madhya Bharat, in Election Petition No. 263 of 1952.

N. C. Chatterjee, (*S. K. Kapur* and *Ganpat Rai,* with him) for the appellants.

C. K. Daphtary, Solicitor-General for India (*S. P. Varma,* with him) for the respondents Nos. 1 and 5.

C. K. Daphtary, Solicitor-General for India (*C. P. Lal,* with him) for respondent No. 4.

1954. September 28. The Judgment of the Court was delivered by

BOSE J.—This is an appeal from a decision of the Election Tribunal of Gwalior in which the petitioner, an elector, sought to set aside the elections of the appellants (respondents 1 and 2 to the petition) who were the successful candidates. The constituency is Bhilsa, a double member constituency in Madhya Bharat. The petitioner seems to have been fighting on behalf of the 6th and 7th respondents to the petition because one of his prayers is that they be declared to have been duly elected in place of the appellants (respondents 1 and 2). The petitioner succeeded and the Tribunal declared the elections of the two appellants to be void and further declared that the 6th and 7th respondents had been duly elected.

We will first consider that part of the decision which declares the election of the two appellants to be void.

The Tribunal finds, among other things, that the appellant No. 1 (1st respondent) published certain pamphlets which contain statements listed as (a), (b), (c), (e), (f) and (g) by the Tribunal. The Tribunal holds that these statements are false and that the 1st appellant (1st respondent) did not believe them to be true. It also holds that these statements reflect on the personal character and conduct of the 6th respondent and are reasonably calculated to prejudice his prospects in the election. These findings were contested and the learned counsel for the appellants contended that the attack was on the public and political character of the 6th respondent and was a legitimate attack. We do not intend to examine this as a Court of appeal because this is a special appeal and all we are concerned to see is whether a Tribunal of reasonable and unbiased men could judicially reach such a conclusion. We have had some of these pamphlets read out to us and we are of opinion that the conclusion of the Tribunal is one which judicial minds could reasonably reach. We decline to examine the matter further in special appeal. Under the law the decision of the Tribunal is meant to be final. That does not take away our jurisdiction but we will only interfere when there is some glaring error which has resulted in a substantial miscarriage of justice. On those findings a major corrupt practice on the part of the 1st respondent (1st appellant here) under section 123(5) of the Representation of the People Act, 1951, is established.

The next finding concerns the 2nd respondent (appellant No. 2). The Tribunal finds that he made a systematic appeal to Chamhar voters to vote for him on the basis of his caste. There is evidence to support this finding. The leaflets marked N and O place that beyond doubt. This constitutes a minor corrupt practice under section 124(5) of the Act.

Both these provisions, namely sections 123(5) and 124(5), were challenged as *ultra vires* article 19(1)(a) of the Constitution. It was contended that article 245(1)

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prohibits the making of laws which violate the Constitution and that the impugned sections interfere with a citizen's fundamental right to freedom of speech. There is nothing in this contention. These laws do not stop a man from speaking. They merely prescribe conditions which must be observed if he wants to enter Parliament. The right to stand as a candidate and contest an election is not a common law right. It is a special right created by statute and can only be exercised on the conditions laid down by the statute. The Fundamental Rights Chapter has no bearing on a right like this created by statute. The appellants have no fundamental right to be elected members of Parliament. If they want that they must observe the rules. If they prefer to exercise their right of free speech outside these rules, the impugned sections do not stop them. We hold that these sections are *intra vires*.

In addition to these findings, the Tribunal found that both the appellants committed an illegal practice within the meaning of section 125(3) in that they issued a leaflet and a poster which did not have the name of the printer on them. This is a pure question of fact.

The result of committing any corrupt practice is that the election of the candidate is void under section 100(2)(b). It is not necessary to prove that the result of the election was materially affected thereby because clause (b) is an alternative that stands by itself. All that need be proved is that a corrupt practice has been committed, and that the Tribunal finds to be the fact. The Tribunal was accordingly justified in declaring the election of the first appellant to be void.

In addition to this the Tribunal found that the corrupt practice committed by the second appellant (respondent No. 2) also materially affected the result of the election. This was challenged but we need not go into that because the finding that the second appellant committed a minor corrupt practice and also an illegal practice is clear and so his case falls under clause (a) of sub-section (2) of section 100.

Sub-section (2)(a), so far as it is material here, runs —"......................if the Tribunal is of opinion—

(a) that the election of a returned candidate has been procured *or* induced *or* the result of the election has been materially affected, by any corrupt or illegal practice

* * *

the Tribunal shall declare the election of the returned candidate to be void."

The Tribunal finds as a fact that the second appellant's election was procured by a corrupt practice. His case therefore falls within the first of the three alternatives envisaged by clause (a), so it is not necessary to enquire whether it also falls under the third. We hold that this election was also rightly declared to be void. That disposes of the first and second appellants (respondents 1 and 2).

We now turn to respondents 6 and 7 to the petition. They are the 4th and 5th respondents before us, Ramsahai and Sunnu Lal. The Tribunal, acting under section 101(b), declared them to be duly elected. Here, we are of opinion that the Tribunal was wrong. Before this can be done, it must be proved that

"but for the votes obtained by the returned candidate by corrupt or illegal practices....such other candidate would have obtained a majority of the valid votes."

The Constituency was a double member constituency. The following stood for the General Constituency and obtained the votes shown against them :

Jamuna Prasad Mukhariya (Respt. No. 1)	13,669
Keshav Shastri (Respt. No. 3)	1,999
V. N. Sheode (Respt. No. 4)	1,350
Ram Sahai (Respt. No. 6)	12,750

The Tribunal says that the difference in votes between respondents 1 and 6 is 919. We presume that this is meant to show that the voting between them was close. From that the Tribunal jumps to the following conclusion :

"Considering the scandalous nature of the false statement regarding respondent No. 6 and the mode

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of systematic appeal on the basis of caste made by respondent No. 2 we have no doubt in our minds that ....respondent No. 1..........got more votes simply because of......corrupt practices and if these corrupt practices had not been there respondent No. 6........ undoubtedly would have obtained a majority of valid votes."

This, in our opinion, is pure speculation and is not a conclusion which any reasonable mind could judicially reach on the data set out above. There is nothing to show why the majority of the 1st respondent's voters would have preferred the 6th respondent and ignored the 3rd and 4th respondents.

An exactly similar process of reasoning was followed in the case of the 7th respondent. He was a Scheduled Caste candidate and the voting there was as follows :

Chaturbhuj Jatav (Respt. No. 2)	12,452
Hira Khusla Chamar (Respt. 5)	601
Sunnulal (Respt. 7)	10,889

Here, again, there is no basis for concluding that those who voted for the 2nd respondent would, if they had not done so, have preferred the 7th respondent to the 5th.

We set aside this part of the order.

The result is that the appeal fails in so far as it attacks the Tribunal's declaration voiding the election of the two appellants but succeeds against that part of the order which declares the 6th and 7th respondents to have been elected. In the circumstances there will be no order about costs in either Court.

Order accordingly.

GIPN—S5—87 S. C. India/59—27-11-61—1,000