SUPREME COURT

Before Bijan Kumar Mukherjea, C. J., T. L. Venkatarama Ayyar and Syed Jafer Imam, JJ.

SHRI VIRINDAR KUMAR SATYAWADI.—*Appellant.*

versus

THE STATE OF PUNJAB.—*Respondent.*

Criminal Appeal No. 62 of 1954

1955

Nov., 24th

Representation of the People Act (XLIII of 1951)—Section 36—Returning Officer acting under—Functions and Powers of—Whether a Court for purposes of Section 195(1)(b) of the Code of Criminal Procedure (Act V of 1898)—Proceedings before the Election Tribunal and Returning Officer—Difference between—Code of Criminal Procedure (Act V of 1898)—Sections 195, 476 and 476-B—Declaration on oath or solemn affirmation made by a candidate under Section 33 of Representation of People Act,

before the District Magistrate as Returning Officer found to be prima facie *false—District Magistrate ordering action to be taken and filing complaint for prosecution of the candidate for offences under Sections 181, 182, and 193 of the Indian Penal Code (Act XLV of 1860)—Order, whether appealable—Complaint, whether competent—Discretion exercised by Court under Section 195—Whether can be interfered with—Difference between a Court and quasi-judicial Tribunal, stated.*

Held, that under Section 36(2) of the Representation of the People Act, 1951, the Returning Officer has to examine the nomination paper and decide all objections which may be made thereto. This power is undoubtedly judicial in character. But in exercising this power he is authorised to come to a decision "after such summary enquiry, if any, as he thinks necessary". That means that the parties have no right to insist on producing evidence which they may desire to adduce in support of their case. There is no machinery provided for summoning of witnesses, or of compelling production of documents in an enquiry under section 36. The Returning Officer is entitled to act *suo motu* in the matter. In other words, the function of the Returning Officer acting under section 36 is judicial in character but he is not to act judicially in discharging it. The Returning Officer deciding on the validity of the nomination paper is not a Court for the purpose of section 195(1)(b) of the Code of Criminal Procedure and the result is that even as regards the charge under section 193, the order of the Magistrate was not appealable, as the offence was not committed in or in relation to any proceeding in a Court.

Held, that there is a great difference between the proceedings before the Election Tribunal under sections 90 and 92 of the Representation of the People Act, 1951, and the proceedings before the Returning Officer under section 36 of the said Act. While the proceedings before the Election Tribunal approximate in all essential matters to proceedings in civil courts, the proceedings under section 36 present a different picture. There is no *lis*, in which persons with opposing claims are entitled to have their rights adjudicated in a judicial manner, but an enquiry such as is usually conducted by an *ad hoc* Tribunal entrusted with a quasi-judicial power.

Held, that if the complaint relates to offences mentioned in sections 195(1)(b) and 195(1)(c), an appeal would be competent, but not if it relates to offences mentioned in section 195(1)(a). Section 193 makes it an offence to give false evidence whether it be in a judicial proceeding or not and it likewise makes it an offence to fabricate false evidence for use in a judicial proceeding or elsewhere. If the offence is not committed in a judicial proceeding, then it will fall outside section 195(1)(b) which applies only when it is committed in or in relation to a proceeding in Court. and there is in consequence no bar to complaint being made in respect thereof unaffected by the restrictions contained in section 195(1)(b) but if the offence under section 193 is committed in or in relation to a proceeding in Court, then it will fall under section 195(1)(b). and the order directing prosecution under section 476 will be appealable under section 476-B.

Held, that no doubt section 476 must be taken to be exhaustive of all the powers of a Court as such to lay a complaint, and that a complaint filed by it otherwise than under that section should not be entertained. But section 476 does not preclude the officer presiding over a Court from himself preferring a complaint, and the jurisdiction of the Magistrate before whom the complaint is laid to try it like any other complaint is not taken away by that section.

Held, that whether action should be taken under section 195 is a matter primarily for the Court which hears the application and its discretion is not to be lightly interfered with in appeal, even when that is competent. But where the legislature does not provide for an appeal, it is preposterous on the part of the appellant to invite the Supreme Court to interfere in special appeal.

Held, that it may be stated broadly that what distinguishes a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of the parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the

evidence adduced and in accordance with law. When a question, therefore, arises as to whether an authority created by an Act is a Court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court.

(*Appeal by special leave from the judgment and order, dated the 10th June, 1953, of the Punjab High Court at Simla, in Criminal Revision No. 86 of 1953, arising out of the judgment and order, dated the 7th January, 1953, of the Court of Sessions Judge, Karnal, in Criminal Appeal No. 355 of 1952*).

For the Appellant: MR. N. C. CHATTERJI, Senior Advocate (MR. VIR SEN SAWHNEY and MR. RAJINDER NARAIN, Advocates, with him).

For the Respondent: MR. GOPAL SINGH and MR. P. G. GOKHALE, Advocates.

JUDGMENT

The judgment of the Court was delivered by

Venkatarama Ayyar, J.

VENKATARAMA AYYAR, J.—The appellant was a candidate for election to the House of the People from the Karnal Reserved Constituency during the last General Elections. The proviso to section 33(3) of the Representation of the People Act (XLIII of 1951), omitting what is not material, enacts "that in a constituency where any seat is reserved for the Scheduled Castes, no candidate shall be deemed to be qualified to be chosen to fill that seat unless his nomination paper is accompanied by a declaration verified in the prescribed manner that the candidate is a member of the Scheduled Castes for which the seat has been so reserved and the declaration specifies the particular caste of which the candidate is a member and also the area in relation to which such caste is one of the Scheduled Castes". Rule 6 of the Election Rules provides that the declaration referred to in the above

proviso shall be verified by the candidate on oath or solemn affirmation before a Magistrate. Schedule II contains the form of nomination paper to be used, with the terms in which the declaration is to be made by the candidate and verified by the Magistrate. On 5th November, 1951 the appellant signed two nomination papers, each containing the following declaration :—

> " I hereby declare that I am a member of the Balmiki Caste which has been declared to be a Scheduled Caste in the State of Punjab ".

The Balmiki Caste is one of the castes declared to be a Scheduled Caste under the " Constitution (Scheduled Castes) Order, 1950 ". The above declaration was made on solemn affirmation before the First-Class Magistrate, Karnal, and the nomination papers with the above declaration were filed before the District Magistrate, Karnal, who was the returning officer. One Jai Ram Sarup, a member of the Chamar caste, which is one of the Scheduled Castes, was also a candidate for the seat, and he raised the objection that the appellant was not a Balmiki by caste, and that he was therefore not qualified to stand for election to the reserved Constituency. Acting on the declaration aforesaid, the returning officer overruled the objection, and accepted the nomination paper of the appellant as valid. At the polling, the appellant got the majority of votes, and on 6th March, 1952, he was declared duly elected.

On 27th August, 1952, Jai Ram Sarup filed the application out of which the present appeal arises, under sections 476 and 195 of the Code of Criminal Procedure before the District Magistrate, who functioned as the returning officer. He therein alleged that the declaration made by the appellant that he

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belonged to the Balmiki caste was false, that, in fact, he was born a Muslim and had been converted to Hinduism, and that therefore "in the interests of justice" and "for safeguarding the interests of the Scheduled Castes", proceedings should be taken for his prosecution. In his counter-affidavit the appellant stated :

> "I am not a Muhammadan by birth. On the other hand, I was born in Balmiki Hindu family. I am a Hindu".

The District Magistrate held an enquiry in which one Prithi Singh Azad, President of the Depressed Classes, Delhi, gave evidence that the appellant was a Muslim of the name Khaliq Sadiq, that in 1938, he applied to the Suddhi Sabha to be converted to Hinduism, that he was so converted, and that thereafter he came to be known as Virindar Kumar. In cross-examination, he stated that the appellant had admitted before him that he was a Muslim by birth. He added that he had two Muslim wives living at the time of the conversion. The applicant, Jai Ram Sarup, also produced ten letters stated to be in the handwriting of the appellant in proof of the above facts. On 17th September, 1952, the Magistrate passed an order that there was a *prima facie* case for taking action, and on 29th September, 1952, he filed a complaint before the First Class Magistrate, Karnal, charging the appellant with offences under sections 181, 182 and 193 of the Indian Penal Code.

Against this order, the appellant preferred an appeal to the Court of the Sessions Judge, Karnal, who dismissed the same on the ground that the returning officer was not a Court, that the proceedings before him did not fall under section 476, and that therefore, no appeal lay under section 476-B. The appellant took the matter in revision before the High

Court, Punjab, and that was heard by Harnam Singh, J., who held, differing from the Sessions Judge, that the returning officer was a Court, and that his order was therefore appealable. He, however, held that on the merits there was no case for interference, and accordingly dismissed the revision. It is against this order that the present appeal by special leave is directed.

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On behalf of the appellant Mr. N. C. Chatterjee argues that having held that the order of the returning officer was appealable, the learned Judge ought to have remanded the case for hearing by the Sessions Judge on the merits, and that his own disposal of the matter was summary and perfunctory. The contention of Mr. Gopal Singh for the respondent is that the view of the Sessions Judge that the returning officer was not a court and that his order was not, therefore, appealable was correct, and that further the order of the High Court in revision declining to interfere on the merits was not liable to be questioned in special appeal in this Court.

The first question that arises for our decision is whether the order of the District Magistrate passed on 17th September, 1952, as returning officer is open to appeal. The statutory provisions bearing on this point are sections 195, 476 and 476-B of the Code of Criminal Procedure. Section 195(1)(*a*) provides that no court shall take cognizance of any offence punishable under sections 172 to 188 of the Indian Penal Code except on the complaint in writing of the public officer concerned or of his superior. Section 195(1)(*b*) enacts that no Court shall take cognizance of the offences mentioned therein, where such offence is committed in, or in relation to, any proceeding in any *Court*, except on the complaint in writing of such Court or a Court to which it is subordinate. The

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offence under section 193 is one of those mentioned in section 195(1)(*b*). Section 476 prescribes the procedure to be followed where a Court is moved to lay a complaint, and that applies only to offences mentioned in sections 195(1)(*b*) and 195(1)(*c*) and not to those mentioned in section 195(1)(*a*). Section 476-B provides for an appeal from an order passed under section 476 to the appropriate Court. The result then is that if the complaint relates to offences mentioned in sections 195(1)(*b*) and 195(1)(*c*), an appeal would be competent, but not if it relates to offences mentioned in section 195(1)(*a*). Now, the order of the Magistrate dated 17th September, 1952, directs that the appellant should be prosecuted for offences under sections 181, 182 and 193. There is no dispute that the order in so far as it relates to offences under sections 181 and 182 is not appealable, as they fall directly under section 195(1)(*a*). The controversy is only as regards the charge under section 193. Section 193 makes it an offence to give false evidence whether it be in judicial proceeding or not, and it likewise makes it an offence to fabricate false evidence for use in a judicial proceeding or elsewhere. If the offence is not committed in a judicial proceeding, then it will fall outside section 195(1)(*b*), which applies only when it is committed in or in relation to a proceeding in Court, and there is in consequence no bar to a complaint being made in respect thereof unaffected by the restrictions contained in section 195(1)(b). But if the offence under section 193 is committed in or in relation to a proceeding in Court, then it will fall under section 195(1)(*b*), and the order directing prosecution under section 476 will be appealable under section 476-B. The point for decision therefore is whether the returning officer in deciding on the validity of a nomination paper under section 36 of the Act can be held to act as a Court.

The question thus raised does not appear to be covered by authority, and has to be decided on the true character of the functions of the returning officer and the nature and the extent of his powers.

"There has been much difference of opinion as to the precise character of the office of a returning officer, viz., as to whether he is a judicial or ministerial officer", says Parker in Election Agent and Returning Officer, Fifth Edition, page 30. The true view, according to him, is that he partakes of both characters, and that in determining objections to nomination papers, he is a judicial officer. That is also the view taken in Indian decisions. But before we can hold that the proceedings before a returning officer resulting in the acceptance or rejection of a nomination paper fall within section 195(1)(*b*) of the Code of Criminal Procedure, it must be shown not merely that they are judicial in character but that further he is acting as a Court in respect thereof. It is a familiar feature of modern legislation to set up bodies and tribunals, and entrust to them work of a judicial character but they are not Courts in the accepted sense of that term, though they may possess, as observed by Lord Sankey, L. C. in *Shell Company of Australia* v. *Federal Commissioner of Taxation* (1), some of the trappings of a Court. The distinction between Courts and tribunals exercising quasi-judicial functions is well-established, though whether an authority constituted by a particular enactment falls within one category or the other may, on the provisions of that enactment, be open to argument.

There has been considerable discussion in the Courts in England and Australia as to what are the essential characteristics of a Court as distinguished from a tribunal exercising quasi-judicial functions.

(1) (1931) A.C. 275, 296

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Vide *Shell Company of Australia* v *Federal Commissioner of Taxation* (1), *R.* v. *London County Council* (2), *Cooper* v. *Wilson* (3), *Huddart Parker and Co.* v. *Moorehead* (4), *and Rola Co.* v. *The Commonwealth* (5). In this Court, the question was considered in some fulness in *Bharat Bank Ltd.* v. *Employees of Bharat Bank Ltd.* (6). It is unnecessary to traverse the same ground once again. It may be stated broadly that what distinguishes a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question therefore arises as to whether an authority created by an Act is a Court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court.

We have now to decide whether in view of the principles above stated and the functions and powers entrusted to the returning officer under the Act, he is a court. The statutory provision bearing on this matter is section 36. Under section 36(2), the returning officer has to examine the nomination paper and decide all objections which may be made thereto. This power is undoubtedly judicial in character. But in exercising this power, he is authorised to come to

(1) [1931] A.C. 275, 296
(2) [1931] 2 K.B. 215
(3) [1937] 2 K.B. 309
(4) [1908] 8 C.L.R. 330
(5) [1944] 69 C.L.R. 185
(6) [1950] S.C.R. 459

a decision " after such summary enquiry, if any, as he thinks necessary ". That means that the parties have no right to insist on producing evidence which they may desire to adduce in support of their case. There is no machinery provided for summoning of witnesses, or of compelling production of documents in an enquiry under section 36. The returning officer is entitled to act *suo motu* in the matter. When one compares this procedure with that prescribed for trial of election petitions by the Election Tribunal under sections 90 and 92 of the Act, the difference between the two becomes marked. While the proceedings before the Election Tribunal approximate in all essential matters to proceedings in civil courts, the proceedings under section 36 present a different picture. There is no *lis*, in which persons with opposing claims are entitled to have their rights adjudicated in a judicial manner, but an enquiry such as is usually conducted by an *ad hoc* tribunal entrusted with a quasi-judicial power. In other words, the function of the returning officer acting under section 36 is judicial in character, but he is not to act judicially in discharging it. We are of opinion that the returning officer deciding on the validity of a nomination paper is not a Court for the purpose of section 195(1)(*b*) of the Code of Criminal Procedure, and the result is that even as regards the charge under section 193, the order of the Magistrate was not appealable, as the offence was not committed in or in relation to any proceeding in a Court. In this view, the learned Sessions Judge was right in dismissing the appeal as incompetent, and the question argued by Mr. N. C. Chatterjee that the learned Judge of the High Court ought to have remanded the case for hearing by the Sessions Judge on the merits does not arise.

It was next argued for the appellant that as the application for initiating prosecution under section

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193 was made under section 476 on the assumption that the returning officer was a Court, the order passed thereon must, in the view that he was not a Court, be quashed as without jurisdiction. But then, it should be noted that the application was presented under section 195 also, and it was necessary to move the returning officer under section 195(1)(*a*) with reference to the offences under sections 181 and 182, and there could be no question of quashing the order as without jurisdiction. Even as regards section 193, the position is this. It has no doubt been held that section 476 must be taken to be exhaustive of all the powers of a Court as such to lay a complaint, and that a complaint filed by it otherwise than under that section should not be entertained. But there is abundant authority that section 476 does not preclude the officer presiding over a Court from himself preferring a complaint, and that the jurisdiction of the Magistrate before whom the complaint is laid to try it like any other complaint is not taken away by that section. Vide *Meher Singh* v. *Emperor* (1), *Emperor* v.*Nanak Chand* (2), *Har Prasad* v. *Emperor* (3) and *Channu Lal* v. *Rex* (4). There is thus no legal impediment to a returning officer filing a complaint under sections 181 and 182 as provided in section 195(1)(*a*) and charging the accused therein with also an offence under section 193. In this connection, it should be mentioned that the appellant himself took the objection before the Magistrate that *qua* returning officer he was not a Court and that the proceedings under section 476 were incompetent, and that that was overruled on the ground that it was an enabling section. There is, therefore, no ground for holding that the order dated 17th September, 1952 was without jurisdiction.

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(1) A.I.R. 1933 Lah. 884
(2) A.I.R. 1943 Lah. 208
(3) A.I.R. 1947 All. 139
4) [1950] 51 Cr. L.J. 199

It was finally contended that the Magistrate was under a misapprehension in stating that the appellant had declared that he was born a Balmiki, whereas, in fact, he only declared that he was a Balmiki by caste. But it was the appellant himself who pleaded in his counter-affidavit that he was not a Muslim by birth, and was born in a Balmiki Hindu family, and the observation of the Magistrate has obvious reference to what was pleaded and argued by the appellant. And it should also be noted that no objection was taken either in the grounds of appeal to the Sessions Court or in revision to the High Court with reference to the above remark. Moreover, the charge as laid in the complaint is that the declaration of the appellant in the nomination paper that he " was a member of the Balmiki caste " was false. There is accordingly no substance in this contention.

It must be emphasised that in the view that the order of the Magistrate dated 17th September, 1952, was final, this appeal being really directed against that order there must be exceptional grounds before we can interfere with it in special appeal, and none such has been established. On the other hand, whether action should be taken under section 195 is a matter primarily for the Court which hears the application, and its discretion is not to be lightly interfered with in appeal, even when that is competent. But where, as here, the legislature does not provide for an appeal, it is preposterous on the part of the appellant to invite this Court to interfere in special appeal.

This appeal is accordingly dismissed.