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learned Additional Sessions Judge expressed the view that the order of discharge was bad in law, and he thought that the order was not legally sustainable, but he had no jurisdiction to quash the order of discharge and to direct further enquiry. He referred to *Partap Singh* v. *Emperor* (1). The facts of that case were entirely different. There an application under section 107 was dismissed by a Magistrate on the ground that there was no apprehension of breach of peace and it was held that in such a case the District Magistrate had no power to order further enquiry. There is no such finding of the trial Court in this case. The order of discharge was passed not because there was no longer apprehension of breach of peace, but because the witnesses did not appear in his Court despite several adjournments. The fact is that the witnesses were never summoned though several adjournments had been granted.

In the circumstances, I allow this petition of revision and set aside the order of the Magistrate, dated 10th November, 1960, and direct him to proceed with the case after issuing summonses to the witnesses.

B.R.T.

CIVIL MISCELLANEOUS

Before D. Falshaw, C.J., and A. N. Grover, J.

HARKE,—*Petitioner.*

versus

GIANI RAM AND OTHERS,—*Respondents.*

Civil Writ No. 1263 of 1961.

1961

December, 22nd.

Punjab Gram Panchayat Act, 1952 (Act IV of 1953)—Section 8(2)(a)—Whether void and unconstitutional.

(1) (1931) 32 Cr. L.J. 21

Held, that section 8(2) (a) of the Punjab Gram Panchayat Act, 1952 (Act IV of 1953), is void and unconstitutional. In enacting this provision there has been an excessive delegation of legislative powers amounting to an abdication of its functions by the legislature. Neither the preamble of the Act nor section 8 nor the rules made under the Act contain any such principle by which it can be said with certainty that the legislature has laid down any rules for the guidance of the prescribed authority for setting aside an election. A vague expression 'failure of justice' has been used by the legislature without declaring its policy and purposes so as to guide the prescribed authority constituted under the Act with regard to the grounds on which it would come to the conclusion that there has been a failure of justice. No appeal has been provided against the decision of the prescribed authority with the result that there is no machinery by which its decision setting aside an election on the ground of failure of justice can be challenged before any superior Tribunal which would serve as a check or curb on its acting arbitrarily. It is true that it cannot be presumed that the prescribed authority will not act in a reasonable way and will set aside an election in an arbitrary manner but the prescribed authority itself will not know in what set of circumstances it must hold that a failure of justice has occurred in the matter of an election. Even the procedure for enquiry has been left by sub-section (2) of section 8 to be regulated by the prescribed authority according to whatever it considers to be necessary. This again introduces an element which can well bring about discrimination. One authority may consider that evidence may be examined on affidavits while another may be of the view that only some of the witnesses out of those tendered by either of the parties should be examined and the statements of others need not be recorded. Discretion has thus been vested in the prescribed authority clothing it with unguided powers which may well enable it to discriminate. The existence of the extraordinary powers conferred by Article 226 of the Constitution on the High Court cannot be considered enough for serving as a check on any arbitrary exercise of power by the prescribed authority under section 8. The High Court cannot possibly take the place of a Court of Appeal nor can the powers under Article 226 of the Constitution be regarded such as to give a right to an aggrieved party to approach a superior

authority and ask for review of the decision appealed against on the merits.

Case referred by Hon'ble Mr. Justice A. N. Grover on 22nd September, 1961, to a larger Bench for decision owing to the importance of the question of law involved in the case. The case was finally decided by a Division Bench consisting of Hon'ble the Chief Justice Mr. D. Falshaw and Hon'ble Mr. Justice Grover on 22nd December, 1961.

Petition under Articles 226 and 227 of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the order, dated 31st August, 1961, passed by respondent No. 5.

ANAND SWAROOP, ADVOCATE, for the Petitioner.

H. L. SIBBAL, ADVOCATE, for Respondent. No. 1, and L. D. KAUSHAL, DEPUTY ADVOCATE-GENERAL, for the State.

JUDGMENT

Grover, J. GROVER, J.—This petition was referred to a Division Bench by me as the vires and validity of section 8(2)(a) of the Punjab Gram Panchayat Act, 1952, had been challenged in addition to certain other points which had been raised.

The petitioner was elected a Sarpanch of Kheri Gangan Gram Panchayat in the election held on 26th November, 1960. Respondents 1 to 4 were also candidates for the office of the Sarpanch but they were defeated at the poll. No objection was raised by any one of these respondents to the nomination of the petitioner at the time of scrutiny of nomination papers by the returning officer. After the result of the election had been declared, respondent No. 1 filed an election petition challenging the election of the petitioner as Sarpanch. This petition was filed under section 8 of the Punjab Gram Panchayat Act, 1952 (to be referred to as the Act). The election petition was tried by respondent No. 5 being the prescribed authority. It appears that the main ground on which the election had been challenged was that the petitioner was a tenant or a lessee under the Gram Panchayat as

he was holding plot No. 55-11/6 belonging to the said Panchayat and was, therefore, disqualified under section 6(5)(1) of the Act for being elected to the office of the Sarpanch. The finding arrived at by the prescribed authority in the order, dated 31st August, 1961, was that the present petitioner had forcibly occupied a portion of the aforesaid plot belonging to the Gram Panchayat. The following portion of its order deserves to be reproduced:—

> "The idea of the legislature in making a tenant or a contractor under a Gram Panchayat ineligible for election to the office of Sarpanch or Panch of that Panchayat is much too obvious. It was envisaged that a person with such interests is not likely to act impartially; at any event, it would not be desirable to allow a person with such interests to hold any of these offices. In the present case, however, this disqualification assumes greater importance as the respondent has forcibly occupied the land belonging to the Gram Panchayat.
>
> Accordingly I hold that Harke, respondent No. 1, was not entitled to contest election to the office of Sarpanch, Gangan Kheri, and his nomination paper was improperly accepted. As it is a statutory disqualification he cannot be allowed to continue to be a Sarpanch."

Sections 4 and 5 of the Act provide for the demarcation of Sabha areas and establishment and constitution of Gram Sabha. Section 6 deals with the constitution of the Gram Panchayats and disqualifications to be members thereof which are detailed in sub-section (5). Section 7 provides for the powers and jurisdiction of Gram and Adalti Panchayats. Then comes section 8 which is as follows:—

[His Lordship read section 8 and continued:]

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Section 101 relates to the rule-making power of the Government. The Gram Panchayat Election Rules of 1953, were promulgated by means of Punjab Government notification, dated 13th June, 1953. These rules deal with the manner in which the nominations are to be made for election and how the poll is to be taken and other similar matters. The votes are to be taken by ballot and detailed provisions are made with regard to the manner in which the votes are to be recorded and counted as also how the ballot-papers are to be rejected and finally the return is to be made with regard to the result of the election. Rules 42 to 47 deal with election petitions. According to rule 42, the election petition has to be preferred to the Ilaqa Magistrate within whose jurisdiction the Sabha area is situate who shall be the prescribed authority. Rule 43 deals with the contents of the petition. Rule 46 provides for the place and procedure of enquiry. The challenge to the constitutional validity of section 8(2)(a) of the Act is based principally on the ground that in enacting this provision there has been an excessive delegation of legislative power amounting to an abdication of its functions by the legislature, or that the discretion vested in the prescribed authority for setting aside an election is uncanalized and unguided as to amount to a *carte blanche* to discriminate—to borrow the language of their Lordships in *Joyti Pershad* v. *Union Territory of Delhi* (1). The learned counsel for the petitioner relied on the earlier pronouncements in *In re Article* 143, *Constitution of India, etc.* (2), *Messrs Dwarka Prasad* v. *State of U.P* (3), *Harishankar Bagla* v. *The State of Madhya Pradesh* (4), and *Rajnarain Singh* v. *Chairman, Patna Administration Committee* (5), but the latest decision in *Jyoti Pershad's* case contains a discussion of all the relevant authorities and the present case will have to be decided in accordance with the principles enunciated therein.

(1) A.I.R. 1961 S.C. 1602
(2) A.I.R. 1951 S.C. 332
(3) A.I.R. 1954 S.C. 224
(4) A.I.R. 1954 S.C. 465
(5) A.I.R. 1954 S.C. 569

Now, section 8(2) (a) leaves it to the prescribed authority to find after such enquiry as it may deem necessary that a failure of justice has occurred and if it so finds, the election can be set aside and a fresh election shall thereupon be held. It is contended that the effect of this provision in the section is that it is left entirely to the choice of the prescribed authority to regulate its own procedure in the manner of enquiry and that it has the discretion to decide as to how much evidence should be allowed to be examined and what type of evidence can be examined. The other important objection that has been raised is that no grounds whatsoever have been indicated for setting aside the election or for declaring it void as is to be found in almost every similar legislation or rules relating to elections. It is urged that on the face of the statute there can be discrimination in the absence of any specification and indication by the legislature as to the grounds on which the election is to be set aside and that it is left to the whim and caprice of each prescribed authority to apply whatever conception it may have of the expression "failure of justice". Thus the legislature, it is said, has failed to indicate with certainty the policy and purpose underlying section 8 and that a discretion has been given to the prescribed authority who is of the status of an Ilaqa Magistrate without there being any provision for appeal against his order to apply his own notions of justice which is a very general word and the definitions of which are legion.

Before the validity of the argument that has been raised on behalf of the petitioner is examined more closely, it is necessary to be clear about the true scope and ambit of the principles which have been invoked. In *Jyoti Pershad's case* the validity of certain provisions of the Slum Areas (Improvement and Clearance) Act, 1956, had been attacked on account of excessive delegation of legislative power and abdication of functions by the legislature as also arbitrary and uncanalized discretion having been vested in certain authorities capable of discriminate use. Section 19

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of that Act provides *inter alia* that notwithstanding anything contained in any other law for the time being in force no person who has obtained any decree or order for the eviction of a tenant from any building in a slum area shall be entitled to execute such decree or order except with the previous permission in writing of the competent authority. Certain landlords who had obtained decrees under the Delhi Rent Control Act impugned the validity of section 19 as being violative of Article 19(1)(f) and Article 14 of the Constitution. The argument under the latter Article was confined to the competent authority having been vested with power to withhold eviction in pursuance of decrees or orders of Courts without affording any guidance or laying down any principles for its guidance on the basis of which it could exercise discretion. Their Lordships, after referring to the preamble of the aforesaid enactment and other provisions contained therein, came to the conclusion that it was clear from the policy and purpose of the enactment and the object which it sought to achieve that the restrictions would only be for a period which would be determined by the speed with which the authorities would be able to make other provisions for affording the slum dweller-tenants better living conditions. The Act, no doubt, according to their Lordships "looks at the problem not from the point of view of the landlord, his needs, the money he has sunk in the house and the possible profit that he might make if the houses were either let to other tenants or were reconstructed and let out, but rather from the point of view of the tenants who have no alternative accommodation and who would be stranded in the open if an order for eviction were passed." The following observations at page 1612 contain a summary of the principles applicable in such matters :—

> "In the context of modern conditions and the variety and complexity of the situations which present themselves for solution, it is not possible for the Legislature to envisage in detail every possibility and make provision for them.

> The Legislature, therefore, is forced to leave the authorities created by it an ample discretion limited, however, by the guidance afforded by the Act. This is the ratio of delegated legislation, and is a process which has come to stay, and which one may be permitted to observe it not without its advantages. So long, therefore, as the Legislature indicates, in the operative provisions of the statute with certainty, the policy and purpose of the enactment, the mere fact that the legislation is skeletal, or the fact that a discretion is left to those entrusted with administering the law, affords no basis either for the contention that there has been an excessive delegation of legislative power as to amount to an abdication of its functions, or that the discretion vested is uncanalized and unguided as to amount to a *carte blanche* to discriminate."

Dealing with the argument that the competent authority could grant or withhold permission to execute the decree at its sweet will and pleasure, it was observed that it was not at the "sweet will and pleasure" of the competent authority that permission to evict could be granted or refused, but on principles gatherable from the enactment, as explained earlier. In this decision their Lordships referred to the previous decision in *Ramakrishna Dalmia* v. *S. R. Tendolkar* (6), in which the second rule laid down was :—

> "The enactment or the rule might not in terms enact a discriminatory rule of law but might enable an unequal or discriminatory treatment to be accorded to persons or things similarly situated. This would happen when the legislature vests a discretion in an authority, be it the Government or an administrative official acting either as an executive

(6) A.I.R. 1958 S.C. 538

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officer or even in a quasi-judicial capacity by a legislation which does not lay down any policy or disclose any tangible or intelligible purpose, thus clothing the authority with unguided and arbitrary powers enabling it to discriminate."

Thus what will have to be seen is whether there can be found with certainty in the preamble of the Act or within section 8 itself or within the four corners of its other provisions or the rules framed thereunder any such policy and purpose which can furnish enough guidance to the prescribed authority in the matter of setting aside an election. Under other election laws and rules relating to elections framed under other statutes the grounds on which an election can be set aside have been particularized with great care and elaboration. The object or purpose necessarily is not to set aside an election lightly since it involves a great deal of expense not only to the Government or the statutory bodies who hold the elections but also to the candidates who participate therein. Moreover, once a particular candidate has been duly nominated and elected by a majority of votes in accordance with the procedure prescribed, his election cannot be set aside without there being specific and precise grounds for doing so: otherwise the element of uncertainty and arbitrariness will be present in the matter of setting aside elections which will be highly prejudicial to the functioning of any democratic institution.

Turning first to the Representation of the People Act, 1951, the disputes regarding elections are dealt with in Part V. Section 100 gives the grounds for declaring the election to be void. Sub-section (1) makes it imperative that the Tribunal shall declare the election to be void, if it is of the opinion—

"(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by a person other than that candidate or his election agent or a person acting with the consent of such candidate or election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act."

Section 123 gives what may be called "corrupt practices" for the purposes of the aforesaid Act. The Tribunal is confined to setting aside the election only if grounds are made out as given in subsection (1) of section 100. Clause (d) of that provision deserves particular notice as it provides that in certain eventualities the tribunal shall have to see that the result of the election has been materially affected by the matters mentioned therein which means that unless it has been so affected, the election shall not be declared to be void. Under the Punjab Municipal Act, the Municipal Election Rules have been framed and rule 51 gives definition of a corrupt practice," the same being of a very precise and detailed nature. The expression "material irregularity" has also been defined. Rule 54 deals with the contents of the election petition and sub-rule (2) lays down that the

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petition shall be accompanied by a list signed and verified setting forth full particulars of any corrupt practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed any corrupt practice and the date and place of the commission of each such practice. Rule 63 gives the grounds on which an election can be set aside which may be reproduced with advantage :—

> "(a) the election of a returned candidate has been procured, or induced or the result of the election has been materially affected, by a corrupt practice, or
>
> (b) any corrupt practice specified in sub-clause (i), (ii) or (iii) or (iv) of clause (a) of rule 51 has been committed, or
>
> (c) there has been any material irregularity, or
>
> (d) the election has not been a free election by reason of the large number of cases in which the corrupt practices specified in sub-clause (i) or (ii) of clause (a) of rule 51 have ben committed * * * * * *."

There are similar rules called the District Board Election Rules, 1952, promulgated under the Punjab District Boards Act, 1883. The statutes relating to Gram Panchayats of other States seem to contain fairly detailed and specific provisions defining "corrupt practices" and stating the grounds on which an election to the Panchayat can be declared to be void. In the Central Provinces and Berar Panchayats Act, 1946, being Act No. I of 1947, section 13 defines "corrupt practices" for the purposes of the Act. In the U. P. Panchayat Raj Act, 1947, section 12-C deals with the application for questioning the elections. The grounds given are—

> "(a) the election has not been a free election by reason that the corrupt practice of

bribery or undue influence has extensively prevailed at the election, or

(b) that the result of the election has been materially affected—

(i) by the improper acceptance or rejection of any nomination; or

(ii) by gross failure to comply with the provisions of this Act or the rules framed thereunder."

Sub-section (2) provides in detail for what shall be deemed to be corrupt practices of bribery or undue influence for the purposes of the Act. Rule 24 of the U. P. Panchayat Raj Rules, 1947, lays down that an application under sub-section (1) of section 12-C of the Act shall be presented before the Sub-Divisional Officer and it shall specify the ground or grounds on which the election of the respondent is questioned and contain a summary of the circumstances alleged to justify the election being questioned on such grounds. Section 9 of the Bombay Village Panchayats Act, 1933, as amended by Bombay Act No. 23 of 1956, deals with determination of validity of elections by Collector. After such enquiry as he considers necessary, if he is satisfied that any member has been elected in contravention of the provisions of section 8 or that any corrupt practice or irregularity has been committed in connection with such election or that any error has been committed by any officer charged with carrying out the rules and that such illegality, corrupt practice, irregularity or error has materially affected the result of the election, he can declare the election of such member to be invalid. Corrupt practices are defined by sub-section (2) of section 9 of the above Act. An examination of all the aforesaid provisions would show that although the basic grounds on which an election can be set aside embody certain common features, namely, commission of corrupt practices and contravention of the statutory provisions or the rules which have materially affected the result of the election but the definitions of

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corrupt practices as also the precise grounds for setting aside the elections are different and divergent and vary in accordance with particular local and other requirements.

The learned Deputy Advocate-General, who appears for the State has relied on the preamble of the Act as also the expression "failure of justice" appearing in section 8(2)(a) as indicative of the policy and purpose of the legislature underlying the aforesaid section. The preamble simply is—

> "An Act to provide for better administration in the rural areas of Punjab by Panchayats."

This can possibly furnish no guidance for the reasons or grounds on which an election can be set aside under section 8(2)(a). According to the learned Deputy Advocate-General, if the prescribed authority is of the opinion that any candidate has been elected who has committed some such act which is not conducive to better administration of the rural areas, then it will be open to the prescribed authority to set aside his election. This would introduce an element of absolute vagueness and uncertainty and it furnishes no guidance for setting aside the election for which precise and cogent grounds have to be provided as has been done in almost every election law. As regards the expression "failure of justice" it is contended that it connotes certain basic principles of equity, fairplay and good conscience and, therefore, the prescribed authority can decide whether a failure of justice has occurred in a particular case. This expression has been employed in certain statutory provisions but there it is possible to attribute some definite meaning to it in accordance with the context where it is to be found. According to section 21 of the Code of Civil Procedure, no objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases

where issues are settled at or before such settlement, and unless there has been a consequent failure of justice. The objection of the legislature in enacting this principle of law is that when the Court of first instance after giving an affirmative finding on jurisdiction takes proceedings on the merits of the case, the latter should not be rendered abortive and all the time and labour spent thereon should not be wasted simply by reason of the fact that the higher Court comes to a contrary finding on the preliminary point of jurisdiction. What the Court normally examines in such cases is whether by reason of the suit proceeding in the wrong Court the parties were deprived of a proper opportunity to produce all the evidence that they wanted to produce and for that reason prejudice has been caused. In other words, although the first Court had no territorial jurisdiction and has tried out the case upon the merits in such a way, (1) that all the available evidence which either party wanted to call has been called, (2) that the hearing and trial was satisfactory as a matter of procedure, and (3) that the decision appears to be right in fact, the question of the territorial jurisdiction is relegated to obscurity *vide Ratti Ram* v. *Kundan Lal* (7), and *Lachha Ram* v. *Virji* and others (8). The position is similar with regard to section 11 of the Suits Valuation Act where the language employed is "has prejudicially affected the disposal of the suit or appeal on its merits". Thus in all these cases the Court is in a position to apply certain definite rules and principles and then decide whether any failure of justice has resulted.

Section 537 of the Code of Criminal Procedure also employs the expression "failure of justice". The section itself mentions the eventualities which are more of a procedural nature by reason of which the sentence of finding can be set aside if failure of justice has occurred. Such failure must relate to the matter mentioned in the section itself. The section is more of a curative nature and

(7) 87 P.R. 1914.
(8) A.I.R. 1921 All. 66.

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removes any defect which may otherwise lay the judgment or order of the Court vulnerable to attack on account of certain irregularities. According to Blacker, J., in *Mt. Jawai* v. *Emperor* (9), a failure of justice does not merely mean an erroneous decision or conclusion. It means that that procedure has not been followed which in the ordinary course would give the accused person or the person with regard to whom proceedings are taken a fair opportunity to appear and clear his position. The Judicial Committee in *Pulukuri Kotaya* v. *Emperor* (10), has laid down that if a trial is conducted substantially in the manner prescribed by the Code of Criminal Procedure but some irregularity occurred in the course of such conduct, the irregularity can be cured under the aforesaid section and nonetheless so because the irregularity involves a breach of one of the provisions of the Code. The expression "miscarriage of justice" has been employed in certain constitutional and statutory provisions in the United States of America. In Words and Phrases, Volume 27, the following statement is to be found at page 305:—

> "The presumption of prejudice from error does not obtain, and the phrase in the statute, providing that there be 'no reversal for errors which have not 'resulted in a miscarriage of justice', means an error not affecting the substantial rights of a party, and before the Court is warranted in reversing a judgment it must be satisfied that some substantial right of accused has been affected. *State* v. *Nell* (11), 'Miscarriage of justice', as used in constitutional provision to the effect that no judgment shall be reversed except for errors resulting in a 'miscarriage of justice', has no hard and fast definition; but, where errors have been committed and it is doubtful that without such

(9) A.I.R. 1942 Lah. 214.
(10) A.I.R. 1947 P.C. 67
(11) 202 P. 7, 8, 117 Wash. 142

> errors the verdict rendered would not have been given, then errors which otherwise would not be considered seriously prejudicial will require a reversal, and such rule applies in both civil and criminal cases. Const. art. 6, 41/2. *Herbert* v. *Lankershim* (12).

It would seem that wherever the expression "failure of justice" or "miscarriage of justice" has been employed it has reference to and has been construed in the light of the substantive or procedural provisions of a particular law in the observance of which there has been some irregularity or error and the Court has to satisfy itself that the same has not led to failure or miscarriage of justice before interfering with the sentence, order or judgment.

It has already been seen that neither the preamble of the Act nor section 8 contains any such principle by which it can be said with certainty that the legislature has laid down the rules for guidance for setting aside an election. As it is legitimate to turn to the other provisions of the Act as also the rules which have been framed thereunder let us examine whether any such principle or policy can be found therein which may be relevant and which may furnish the true measure of guidance to the prescribed authority. Section 6(5) contains the disqualifications for being members of the Panchayat. If a person is disqualified, he is not entitled to stand for the election and, therefore, his election has got to be set aside if his nomination has been wrongly accepted at the time of scrutiny of nominations. This leaves hardly any room or choice for deciding whether an election should be set aside or not. The rules provide for the manner in which the election is to be held. As is to be found in other election laws, if serious irregularities have been committed in the matter of holding the election and the same has been conducted according to the prescribed rules an election can be set aside but in most of

(12) 71 P. 2d. 220, 254, 9 Cal. 2d. 409

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the election rules which have been noticed there is a further provision that the result of the election should have been materially affected thereby. It is possible to hold that if there has been contravention of these rules and if failure of justice has occurred in the sense that the result of the election has been materially affected thereby the prescribed authority can set aside an election under section 8 but this still leaves another matter which is of vital importance in elections unprovided for and to which no provision of the Act or rule can possibly have any reference and that is "corrupt practices". It cannot be predicated that the legislature could have tolerated an election being sustained even if corrupt practices have been adopted in a particular election. But what kind of corrupt practices would invalidate an election has been left to be decided entirely by the prescribed authority at its sweet will and pleasure, there being no uniform definition of corrupt practices which the prescribed authority can apply in all cases coming before it. Is it going to adopt the definition given in the Representation of the People Act or the Municipal or District Boards Election Rules or the Central Provinces and Berar Panchayats Act or the U.P. Panchayat Raj Act or the Bombay Village Panchayats Act or some other similar enactment or is it going to evolve some definition of its own of a corrupt practice ? No satisfactory answer can be found to this nor indeed has any been suggested by the learned Deputy Advocate-General.

It is noteworthy that under section 100(2), Representation of the People Act, even if the Tribunal is of the opinion that certain corrupt practices have been committed, the Tribunal can still decide not to declare the election of the returned candidate void if in its opinion a returned candidate has been guilty by an agent other than his election agent of any corrupt practice and that it was committed contrary to the orders and without the consent of the candidate or his election agent and it was of a trivial and limited nature and the candidate and his election agent took all reasonable means for preventing the commission

of such corrupt practices. Similarly rule 63(2) of the Municipal Election Rules lays down that if the Election Commision reports that a returned candidate has been guilty by an agent of any corrupt practice which does not amount to any form of bribery other than treating as explained or to the procuring or abetment of personation and that the corrupt practice was committed contrary to the orders and without the sanction or connivance of such candidate, etc., the Commission can say that the election of such candidate should not be deemed to be void. In the case of the prescribed authority under the Act it cannot be said that there is any rule or principle indicated in the Act which can enable that authority not to set aside an election even if any corrupt practice has been committed but other circumstances exist which would justify a decision that the election need not be set aside. There is no uniform definition of corrupt practices so far as election law is concerned to which the prescribed authority can have recourse for determining whether such a corrupt practice has been followed which would justify the setting aside of an election on the ground that there has been failure of justice. In this situation it cannot be held that the legislature has not decided its policy and purpose so as to guide the prescribed authority constituted under the Act with regard to the grounds on which it would come to the conclusion that there has been a failure of justice. No appeal has been provided against the decision of the prescribed authority with the result that there is no machinery by which its decision setting aside an election on the ground of failure of justice can be challenged before any superior Tribunal which would serve as a check or curb on its acting arbitrarily. It is true that it cannot be presumed that the prescribed authority will not act in a reasonable way and will set aside an election in an arbitrary manner but the whole difficulty that arises is that the prescribed authority itself will not know in what set of circumstances it must hold that a failure of justice has occurred in the matter of an election. As has been mentioned before, even the procedure for enquiry has been left by sub-section (2) of

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section 8 to be regulated by the prescribed authority according to whatever it considers to be necessary. This again introduces an element which can well bring about discrimination. One prescribed authority may consider that evidence may be examined on affidavits. Another prescribed authority may be of the view that only some of the witnesses out of those tendered by either of the parties should be examined and the statements of others need not be recorded. Discretion has thus been vested in the prescribed authority clothing it with unguided powers which may well enable it to discriminate.

The learned Deputy Advocate-General submitted that the existence of the extraordinary powers conferred by Article 226 of the Constitution on the High Court is enough to serve as a check on any arbitrary exercise of power by the prescribed authority under section 8. The High Court cannot possibly take the place of a Court of Appeal nor can the powers under Article 226 of the Constitution be regarded such as to give a right to an aggrieved party to approach a superior authority and ask for review of the decision appealed against on the merits. The other justification suggested for using such a general and wide expression as "failure of justice" in section 8 is that the legislature did not want to lay down rigid and elaborate grounds for setting aside elections to Panchayats and the matter was left deliberately in a flexible state. It is difficult to uphold the validity of section 8(2)(a) on these considerations because if the legislature has failed to indicate, "in the imperative provisions of the statute with certainty, the policy and purpose of the enactment and the discretion which has been vested is uncanalised and unguided as to amount to a *carte blanche* to discriminate" then the aforesaid section must be struck down as unconstitutional within the meaning of the pronouncements of their Lordships of the Supreme Court referred to before.

In the present petition even on the merits it must be held that there was an error apparent in

the order of the prescribed authority in holding the petitioner was entitled to contest the election as he was a trespasser. No such disqualification is imposed by section 6(5) of the Act. The ground on which his election has been challenged was that he was a tenant of the Panchayat but the prescribed authority did not find that it was so and declared his election invalid only on the ground that he was a trespasser. The trend of the order is that it was not desirable to allow such a person to hold any of these offices. The learned Deputy Advocate-General was prepared to justify the present order which admittedly is outside the ambit of section 6(5) of the Act and in which there is no question of any violation of the rules by showing that since the petitioner has been found to be a trespasser he could not be regarded to be a suitable person to perform the functions of a member of a Panchayat. This demonstrates the extent to which the prescribed authority can have the licence to misdirect itself by applying its own idea of what is meant by failure of justice.

In the result, it must be held that section 8(2)(a) of the Act is void and unconstitutional and that the order made by the prescribed authority was without jurisdiction. There was also an error apparent in the impugned order of the nature pointed out above. Consequently the petition succeeds and the order of the prescribed authority is hereby quashed. In view of the nature of the points involved, there will be no order as to costs.

D. Falshaw, C.J.—I agree.

Falshaw, C. J.

B.R.T.

REVISIONAL CIVIL

Before S. S. Dulat and J. S. Bedi, JJ.

CHHOTEY LAL AND OTHERS,—*Petitioners.*

versus

PARBATI DEVI AND ANOTHER,—*Respondents.*

Civil Revision No. 252-D of 1961

1961

December, 26th.

Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—Section 35—Petition for revision under—Courtfee