Roshan Lal
v.
The Regional Transport Authority, Patiala and another

Grover, J.

that there is no such bar to the issuing of a second permit after the expiry of the period of the first permit for a period not exceeding four months at a time. It has been pointed out in the present case on behalf of the petitioner that this process can be continued *ad infinitum*, with the result that the provisions of the statute with regard to grant of permanent permits can be circumvented and power given under section 62 can be exercised arbitrarily and with ulterior motives. We have no doubt that if such a case is made out, the Courts would certainly interfere but we are not satisfied that any such case has been established up to the present time. It will, however, be open to the petitioner to move a fresh petition if a case of abuse of power is sought to be made out at a later stage. We have also no doubt that the authorities concerned will not continue issuing temporary permits indefinitely when the proper course to adopt would be to have proceedings initiated under section 57 of the Act.

The petition, however, is dismissed, but in the circumstances the parties are left to bear their own costs.

Falshaw, C. J.

D. FALSHAW, C.J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before A. N. Grover, J.

GIANI ZAIL SINGH,—*Petitioner.*

versus

ELECTION TRIBUNAL II, CHANDIGARH AND OTHERS,—*Respondents.*

Civil Writ No. 1748 of 1963

1963

Oct., 18th.

Representation of the People Act (XLIII of 1951)—S. 90 and Code of Civil Procedure (Act V of 1908)—Order XVIII rule 2—Election petitioner refusing to produce full

evidence—Supporting respondent—Whether entitled to lead evidence in support of the petition.

Held, that section 90 of the Representation of the People Act, 1951, makes the provisions of the Code of Civil Procedure applicable to the trial of election petitions. By virtue of the provisions of Order XVIII of rule 2 of the Code, a defendant who supports the plaintiff can examine his evidence before the contesting defendant is called upon to lead his evidence. On the parity of reasoning a respondent in an election petition who is supporting the case of the petitioner is entitled to lead his evidence in support of the petitioner's case in the absence of any express or implied provision in the Representation of the People Act creating a bar to production of such evidence. There is no such provision in the Act and it is not only proper but also necessary in the interest of justice that in a case where the petitioner showed slackness or deliberately wanted to defeat his petition, a respondent who expressed a desire to support the petition, should be given full chance to suport it. From a careful reading of the Act the anxiety of the Legislature is clear that an election petition should not be defeated on account of the indifference and deliberate inaction of the petitioner because the election petitions do not merely concern the parties but affect the entire constituency. The Tribunal, however, has the power to refuse for reasons to be recorded in writing to examine any witness or witnesses if it is of the opinion that their evidence is not material for the decision of the petition or that the party tendering such witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

Petition under Article 226 of the Constitution of India praying that a writ of mandamus, certiorari, or any other appropriate writ, order, or direction be issued quashing the order of Election Tribunal II, Chandigarh, permitting Respondent No. 2 to lead evidence to suport the petition.

C. L. LAKHANPAL, ADVOCATE, for the Petitioner.

A. S. BAINS, and HARBHAGWAN SINGH, ADVOCATES, for the Respondents.

ORDER

GROVER, J.—This is a petition under Article 226 of the Constitution which is directed against the order of the Election Tribunal II, Chandigarh, Grover, J.

Giani Zail Singh
v.
Election Tribunal, II, Chandigarh and others

Grover, J.

dated 28th August, 1963, by which it allowed respondent Kanwarani Jagdish Kaur to produce evidence in support of the allegations made by Fauza Singh whose petition is pending before the Tribunal challenging the election of the present petitioner Giani Zail Singh to the Punjab Vidhan Sabha from the Faridkot constituency. Fauza Singh one of the voters in the constituency, had filed a petition under section 81 of the Representation of the People Act, 1951 (hereinafter to be referred to as the Act) calling in question the election of the present petitioner and for declaring his election void and further declaring that respondent Kanwarani Jagdish Kaur had been duly elected to the said constituency. Shri Chetan Dev was also impleaded as a respondent as he was one of the contesting candidates. It is common ground (according to facts stated at the Bar by counsel for the parties) that before the Tribunal, Fauza Singh had submitted a list of a large number of witnesses out of whom about fifty had been produced before 19th December, 1961. On that date he filed an application that Sepoy Mukhtiar Singh might be examined on commission as he was on active duty in the NEFA area and his examination was material in view of the allegations contained in sub-paragraph (6) of paragraph 8 of the election petition. On 4th January, 1963, Fauza Singh applied to the Tribunal that he had withdrawn the power of attorney which he had given in favour of Shri Shamsher Singh Bedi who had hitherto been conducting the case on his behalf and he had engaged a new counsel Shri Harbhagwan Singh. He further stated that he had no more witnesses to produce. It appears that at that stage respondent Kanwarani Jagdish Kaur made a prayer to the Tribunal to allow her to lead additional evidence in support of the allegations contained in the election petition on the ground that Fauza Singh had started

acting in collusion with the returned candidate. On objections having been raised to such a course being followed, arguments in the matter continued on various dates. On 27th March, 1963 Fauza Singh stated that he wanted to examine himself as a witness as also the Handwriting Export, Shri K. S. Puri. This was allowed by the Tribunal on 28th March, 1963. After the specimen signatures of Giani Zail Singh had been taken by Shri K. S. Puri and after he had filed a report in June, 1963, Fauza Singh and his counsel made a prayer in August, 1963 for production of another Expert. This was disallowed. On 28tt August, 1963, the Tribunal made the order which has been challenged.

The main argument of the learned counsel for the petitioner Giani Zail Singh is that the respondent, Kanwarani Jagdish Kaur, could not be allowed to lead evidence to support the allegations made in the petition as it was for the petitioner in the election petition to prove his case in any manner that he chooses to do. It is contended that Part VI of the Act containing Chapters I to V constitutes a self-contained code governing the trial of election petitions. My attention has been drawn to the various sections of the Act commencing with section 80 and ending with section 119 for the purpose of showing that there is no provision under which respondent Kanwarani Jagdish Kaur could ask the Tribunal to allow her to produce evidence in support of the allegations contained in the election petition. It will be useful at this stage to briefly refer to these sections. Section 80 merely provides that no election shall be called in question except by an election petition presented in accordance with the provisions of Part VI. Section 81 deals with the presentation of petitions and section 82 with the question of persons who are to be joined as parties to the petition and it is provided

Giani Zail Singh
v.
Election Tribunal, II, Chandigarh and others

Grover, J.

that a petitioner shall join as respondent to his petition:—

"(a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition"

Section 83 deals with the contents of the petition which is to contain a concise statement of the material facts as also the full particulars of any corrupt practice that the petitioner alleges etc. and which is to be signed by the petitioner and verified by him. It is also to be accompanied by an affidavit in the prescribed form if the petitioner alleges any corrupt practice. Section 84 says that a petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected. Section 85 deals with a situation where the Election Commission can dismiss the petition for non-compliance with the provisions of section 81 or section 82 or section 117. It is unnecessary to refer to sections 86 to 89 which relate to the appointment of the Election Tribunal, place of trial etc. Section 90, however is of importance and it is necessary to set out the material parts of that section:—

"90. (1) Subject to the provisions of this Act and of any rules made thereunder,

every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908), to the trial of suits:

Provided that the Tribunal shall have the discretion to refuse for reasons to be recorded in writing to examine any witness or witnesses if it is of the opinion that their evidence is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) The provisions of the Indian Evidence Act, 1872 (1 of 1872), shall, subject to the provisions of this Act be deemed to apply in all respects to the trial of an election petition.

(3) The Tribunal shall dismiss an election petition which does not comply with the provisions of section 81, or section 82 notwithstanding that it has not been dismissed by the Election Commission under section 85.

Explanation.—An order of the Tribunal dismissing an election petition under this sub-section shall be deemed to be an order made under clause (e) of section 98.

(4) Any candidate not already a respondent shall, upon application made by him to the Tribunal within fourteen days from the date of commencement of the trial

Giani Zail Singh
v.
Election Tribunal, II, Chandigarh and others

Grover, J.

and subject to the provisions of section 119, be entitled to be joined as a respondent.

(5) The Tribunal may, upon such terms as to costs and otherwise as it may deem fit allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

Section 91 relates to appearance before the Tribunal and section 92 confers powers on the Tribunal of the same nature as are vested in a Court under the Code of Civil Procedure when trying a suit in respect of the matters set out in the section. It further empowers the Tribunal to summon and examine *suo motu* any person whose evidence appears to be material. Section 93 is to the effect that no document shall be inadmissible in evidence at the trial on the ground that it is not duly stamped or registered. Section 94 lays down that no witness or other person shall be required to state for whom he has voted at an election. Section 95 relates to answering of criminating questions and certificate of indemnity and section 96 to expenses of witnesses. Section 97 deals with a situation where in an election petition a declaration has been sought that any candidate other than the returned candidate has been duly elected; the returned candidate or any other party can give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been

presented calling in question his election. The returned candidate or such other party cannot give evidence unless within fourteen days from the date of the commencement of the trial he gives notice to the Tribunal of his intention to do so and has also given the security and further security referred to in sections 117 and 118 respectively. It is unnecessary to refer to sections 98 to 108. Section 109 provides for withdrawal of petitions after appointment of the Tribunal by means of an application. Section 110 says that if there are more petitioners than one, no application to withdraw an election petition shall be made except with the consent of all the petitioners. Sub-section (2) is important and deserves to be set out:—

> "(2) No application for withdrawal shall be granted if in the opinion of the Election Commission or of the Tribunal, as the case may be such application has been induced by any bargain or consideration which ought not to be allowed."

Section 111 relates to the report of withdrawal by the Tribunal to the Election Commission. Sections 112 to 116 provide for abatement of election petitions, out of these particular mention may be made to sections 112 and 115. It is provided by them that an election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners. After a notice of abatement has been published in the Official Gazette, any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner and upon compliance with the conditions of section 117 as to security he shall be entitled to be so substituted and to continue the proceedings upon such terms as the Tribunal may think fit. There are similar provisions with regard to substitution in case of

Giani Zail Singh
v.
Election Tribunal, II, Chandigarh and others

Grover, J.

abatement by reasons of the death of the sole respondent (section 116). Finally reference may be made to section 117 providing for deposit of security by the petitioner and section 118 for——— further security for costs during the pendency of the petition and section 119 which is to the effect that no person shall be entitled to be joined as a respondent under sub-section (4) of section 90 unless he has given such security for costs as the Tribunal may direct.

Mr. C. L. Lakhanpal, the learned counsel for the petitioner, has submitted that according to the entire scheme of the provisions contained in Part VI of the Act, a right is conferred on the petitioner to claim a declaration that the election of all or any of the returned candidates is void and, in addition to claim a further declaration that he himself or any other candidate has been duly elected. The security for costs is also to be deposited by the petitioner and not by the respondent who has been made a party under the provisions contained in section 82. Therefore, it is the petitioner alone who is to prove his case and if he fails to do so, the petition has to be dismissed. According to Mr. Lakhanpal, the Parliament has taken good care to provide for all eventualities like withdrawal of the election petition and its abatement. Special provisions have been made in this behalf keeping in view the well-known principle that an election is not a matter in which the only persons interested are the candidates who fought out the elections but the public are also substantially interested in it and it is a proceeding in which the constituency itself is the principal party concerned. The counsel argues that if the Parliament had any intention whatsoever of providing for a contingency where the petitioner either due to collusion or otherwise with the returned candidate becomes slack or abstains from prosecuting the election petition in a

proper manner it would have made some provision in the Act. It is said that the Parliament was fully alive to what might happen if the election petition was sought to be withdrawn by the petitioner or if it was to abate and that is why specific provisions were made to overcome th edifficulties that would arise in those cases. The burden of the argument is that the Parliament has made no provision whatsoever for giving a right to a respondent to virtually prosecute the petition once the petitioner himself does not prosecute it with fervour and zeal. Even otherwise the respondent has no right to lead evidence to support the allegations in the petition, although he may be supporting the case of the petitioner in its entirety. There would be a certain amount of force in these submissions if the provisions of the Code of Civil Procedure or the Indian Evidence Act were not applicable to election petitions. The real point for determination, therefore, is to what extent the procedure prescribed by the Code would be applicable to election petitions. The real point tried by the Tribunal in view of the provisions contained in section 90, sub-sections (1) and (2) of the Act.

Mr. Lakhanpal has relied a great deal on the decision of their Lordships in *Inamati Mallappa Basappa* v. *Desia Basavaraj Ayyappa* (1), in which the question was the extent to which the provisions of Order XXIII, rule 1 of the Code could be made applicable to election petitions. There, the appellant and respondents 1 to 3 were the contesting candidates for election to the Mysore Legislative Assembly from the Dharwar constituency. The appellant had been declared elected. Respondent No. 1 presented an election petition wherein besides claiming a declaration that the election of the appellant had been declared elected. Respondent No. 1,

(1) A.I.R. 1958 S.C. 698.

Giani Zail Singh
v.
Election Tribunal, II, Chandigarh and others

Grover, J.

that he (respondent No. 1) had been duly elected as he had secured the next highest number of valid votes. Later on respondent No. 1 submitted before the Election Tribunal an application under Order XXIII, rule 1 saying that he wanted to abandon a part of his claim, namely, "that it be further declared that the petitioner has been duly elected as the petitioner has secured the next highest number of valid votes". He wanted to confine his claim to have the election of respondent No. 1 declared void. The Tribunal held that by virtue of section 90(1) under Order XXIII, rule 1 of the Code respondent No. 1 had a right to abandon a part of his claim. It was in that context that after examining the relevant provisions, their Lordships observed that if the whole election petition once presented could not be withdrawn it would not be possible for the petitioner to withdraw or abandon a part of his claim. The follwing observations at page 704 deserve to be reproduced:—

> "The effect of all these provisions really is to constitute a self-contained Code governing the trial of election petitions and it would appear that inspite of S. 90(1) of the Act, the provisions of 0.23 R. 1 of the Code of Civil Procedure would not be applicable to the trial of election petitions by the tribunals. If the withdrawal of a petition cannot be permitted and any person who might have been a petitioner is entitled to continue the proceedings, on a parity of reasoning, the withdrawal of a part of the claim also could not be permitted without allowing another person who might have been a petitioner an opportunity of proceeding with that part of the claim by substituting himself in

place and stead of the petitioner who withdraws or abandons the same."

Now, the distinguishing feature of this decision is that in the Act itself in Part VI there are specific provisions which deal with the question of withdrawal and, therefore, if withdrawal of the petition or of any part of the claim in it is to be made, that has to be regulated by the provisions contained therein. The position apparently was this that Order XXIII, rule 1 could not be made applicable owing to the existence of a specific provision governing the question of withdrawal of an election petition. Section 90(1) itself provides that the procedure applicable under the Code would govern the trial of election petitions "subject to the provisions of this Act". This decision cannot be pressed into service for contending (as has been done by Mr. Lakhanpal) that even though there may be no specific provision on a particular process or stage of the trial of the election petition in the Act itself the procedure obtaining under the Code would not be applicable. Indeed, their Lordships in an earlier case, *Harish Chandra Bajpai* v. *Triloki Singh* (2), observed while deciding the scope of applicability of Order VI, rule 17 of the Code to election petitions:—

> "The last contention is based on the provision in S. 90(2) that the procedure prescribed in the Code of Civil Procedure is to apply subject to the provisions of the Act and the rules. It is argued that S. 83(3) is a special provision relating to amendments, and that it must be construed as excluding Order 6, R. 17. The result, according to the appellants, is that if an amendment could not be ordered under S. 83(3), it could not be ordered

(2) A.I.R. 1957 S.C. 444.

Giani Zail Singh
v.
Election Tribunal, II, Chandigarh and others

Grover, J.

under 0.6, R. 17. This contention appears to us to be wholly untenable. The true scope of the limitation enacted in S. 90 (2) on the application of the procedure under the Civil Procedure Code is that when the same subject-matter is covered both by a provision of the Act or the rules and also of the Civil Procedure Cod, and there is a conflict between them, the former is to prevail over the latter. This limitation cannot operate when the subject-matter of two provisions is not the same. Section 83(3) relates only to amendment of particulars, and when the amendment sought is one of particulars, that section will apply to the exclusion of any rule of the Civil Procedure Code which might conflict with it though it does not appear that there is any such rule."

Following the law as laid down in the above case, it has next to be decided whether under the Code a defendant who supports the case of the plaintiff can be allowed to lead evidence in respect of the case of the plaintiff. The matter is not *res integra* and there are at least two decisions which may be referred to with advantage. As long ago as 1908 it was ruled by the Bombay High Court in *Haji Bibi* v. *H. H. Sir Sultan Mahomed Khan* (3), that the plaintiff and such of the defendants as support the plaintiff's case, wholly or in part, must address the Court and call their evidence in the first place, and then the other party namely, the persons opposed to the plaintiff's case and that of the other defendants, must address the Court and call their evidence and that would be the legal and consistent manner of proceeding with the case.

(3) I.L.R. 32 Bom. 599.

Harnam Singh J. in *Nanak Chand* v. *Durga Pershad Brinja* (4), after referring to the provisions of Order XVIII, rule 2 of the Code and the Bombay case and another case [*In re Dukshina Mohun Roy* (5)] observed:—

> "That being the procedure prescribed by the Code, I have no doubt that when an issue of fact arises between the plaintiff and one of the defendants, the other defendants who support the defendant's case cannot be prevented from examining evidence on that issue."

On a parity of reasoning it is not possible to see how a respondent in an election petition who is supporting the case of the petitioner can be debarred from leading evidence in support of the petitioner's case in the absence of any express or implied provision in the Act creating a bar to production of such evidence. My attention has been invited to a decision of the Election Tribunal, Patiala, in *Lehri Singh* v. *Attar Singh* (6), in which a similar point arose. The only question which the Tribunal was called upon to determine at that stage was about the right of a respondent to lead evidence in support of the grounds on which the election of the returned candidate was being called in question by the petitioner. The Election Tribunal gave certain reasons for coming to the conclusion that he could do so which are very cogent and may be adverted to as they have been adopted by way of argument by the learned counsel appearing for Kanwarani Jagdish Kaur:

1. The provisions in the Act as regards election petitions are made with the

(4) A.I.R. 1953 Punj. 102.
(5) 29 Cal. 32.
(6) 3, E.L.R. 403.

Giani Zail Singh
v.
Election
Tribunal, II,
Chandigarh and
others

Grover, J.

purpose of ensuring that elections should be free and fair and that any which are not found to have been so, should be set aside.

2. The provisions in the Act about making all persons respondents who, at any time, had concerned themselves with the election as candidates (old section 82) is with the purpose of giving them a chance to have a say at the trial of the petition so that the Tribunal may be in a position, at the trial, to get all facts relating to the election from all possible sources besides the petitioner and the returned candidate though only the returned candidate would be directly interested in opposing the petition.

3. The Tribunal is also given wide powers to collect all the necessary material in order that a fair and effectual trial of the petition may be had. It has powers to even examine any person *suo motu* whose evidence appears to be material if the parties have failed to cite them.

4. The provisions in the Act show that the Tribunal is left free to get the material evidence from all available sources as may be indicated by the parties and is not restricted to only looking at such evidence "as the petitioner and the contesting respondents, i.e., the candidate successful at the election may choose to produce.

5. There is no provision in the Act debarring any respondents other than the elected candidate from adducing evidence in support of the case and if the

Civil Procedure Code gives to a party in his position the right to lead evidence and if that right will not be inconsistent with any provision of the Act, it should be available to the respondent.

6. Such a right being reserved to a party joined as a respondent may be inferred from the provisions in the Act relating to the procedure to be followed if the petitioner is found to be contemplating a withdrawal of the petition or when the petition is found to abate on his death. Any respondent can, in such cases, claim to be substituted as a petitioner. This ensures that the grounds urged against election of the successful candidate are not to be left uninvestigated by the mere unwillingness or inability of the petitioner to prosecute the petition.

7. The Legislature could not have intended to leave the Tribunal powerless in the matter of having a fair and effective trial of the petition in order to determine if the election had been fair and free or not, when it is alleged that the petitioner, though not openly withdrawing the petition, is trying collusively to keep back the available evidence for sustaining the grounds taken in the petition. To shut out reception of such evidence on the ground that it was being produced not by an unwilling petitioner but by one of the respondents would be tantamount to encouraging the petitioner in his unhelpful attitude towards the Tribunal and in his attempt to prevent a fair and effectual trial of the election petition.

Giani Zail Singh
v.
Election Tribunal, II, Chandigarh and another

Grover, J.

This decision of the Election Tribunal was relied upon a great deal in a subsequent decision of another Tribunal in *Roop Chandra Sogani* v. *Rawat Man Singh,* (7). There, the petitioner had failed to appear on a date to which an election petition had been adjourned and it was held that the Tribunal was not bound to dismiss the petition summarily for default of appearance because the election petitions did not merely concern the parties but affected the entire constituency. The Tribunal observed that it was not only proper but also necessary in the interest of justice that in a case where the petitioner showed slackness or deliberately wanted to defeat his petition, a respondent who expressed a desire to support the petition, should be given full chance to support it. From a careful reading of the Act the anxiety of the Legislature is clear that an election petition should not be defeated on account of the indifference and deliberate inaction of the petitioner. These reasons which have been pressed by way of argument on behalf of respondent Kanwarani Jagdish Kaur are weighty and cogent and cannot be brushed aside.

Mr. Lakhanpal has relied on a great deal on *Ganpat Singh* v. *Brijmohanlal Sharma,* (8), where an election petition to which all the contesting candidates were joined as respondents was dismissed under section 90(3) and it was held that up to that stage it was only the petitioner who had a right to challenge the order in appeal as he was a person who was adversely effected by the order and none of the respondents could be said to be a person adversely affected. But in that very judgment it has been laid down that there are two stages in which the trial before the Tribunal can be divided. The first stage is when the Tribunal exercises its power under section 90(3), i.e., of summarily dismissing the election petition. The second

(7) 5 E.L.R. 327.
(8) A.I.R. 1959 Raj. 114.

stage is when a regular trial takes place if the election petition is not dismissed in accordance with section 90(3). The trend of the observations is that till the second stage is reached, a respondent is not given the right to support or contest the election petition. This decision, therefore, does not support the argument of Mr. Lakhanpal and the view of the learned Judges impliedly was that if an election petition had survived the stage of section 90(3) it would be open to a respondent to support or contest the election petition.

Mr. Lakhanpal has finally urged that the Parliament could never intend that a respondent should be given the right to lead evidence and support the case of the petitioner when he is not required to furnish any security for costs and the whole burden is to fall on the petitioner in the matter of costs if the petition is dismissed. In the present case the Tribunal has made an order directing the respondent, Kanwarani Jagdish Kaur, to furnish security but even if there is no provision to that effect, the Tribunal is empowered under the proviso to section 90(1) to exercise proper discretion in the matter of evidence. It can refuse for reasons to be recorded in writing to examine any witness or witnesses if it is of the opinion that their evidence is not material for the decision of the petition or that the party tendering such witnesses is doing so on frivolous grounds or with a view to delay the proceedings. The apprehension, therefore, of Mr. Lakhanpal that a respondent may cite a very large number of witnesses to delay the proceedings or to add to the costs of the petitioner whom he is supporting is not well founded. For all the reasons given above, I must hold that it is open to the respondent, Kanwarani Jagdish Kaur, to lead evidence in the circumstances of this case in support of the allegations contained in the election petition and there is no

Giani Zail Singh
v.
Election Tribunal, II, Chandigarh and another

Grover, J.

such error in the order of the Tribunal as would justify interference.

Mr. Harbhagwan Singh, who appears for Fauza Singh, the petitioner in the election petition, has not sought to support the argument of Mr. Lakhanpal and all that he says is that the Tribunal should be directed to dispose of the petition as expeditiously as possible and that it should exercise proper discretion under the proviso to section 90(1) in the matter of production of the witnesses by Kanwarani Jagdish Kaur. I have no doubt that the Tribunal would keep these matters prominently in mind.

Before concluding the judgment it may be observed that I have dealt at length with the various points raised before me by the learned counsel for the parties owing to the nature of the questions canvassed although the writ petition itself could be disposed of on the short ground that no case has been made out for interference under Article 226 of the Constitution. In the present case there is no question of excess or absence of jurisdiction and the only other ground on which *certiorari* could be issued is of an error apparent on the face of the record. It is well settled that where two views are possible, one of which has been taken by the subordinate Tribunal and where long drawn process of reasoning is necessary to decide which view is correct, it is not a case of an error apparent on the face and the order cannot be quashed by *certiorari*,—*vide Satyanarayan Laxminarayan Hegde* v. *Mallikarjun, Bhavanppa Tirumale* (9). That rule is fully applicable to the present case and the petition cannot succeed for that reason as well.

In the result, the petition is dismissed, but I make no order as to costs.

B.R.T.

(9) A.I.R. 1960 S.C; 137;