CIVIL MISCELLANEOUS

Before Bhandari, C. J. and Chopra, J.

THE HON'BLE SARDAR PARTAP SINGH KAIRON, CHIEF MINISTER, PUNJAB,—*Petitioner*

versus

SARDAR GURMEJ SINGH,—*Respondent.*

Civil Misc. No. 1120 of 1957.

1958

March, 10th

Code of Civil Procedure (V of 1908)—Order 14, Rule 2—Whether mandatory—Case capable of being decided on a preliminary issue of law—Court, whether has the option not to decide that issue—Discretion of the Court—Extent of.

Constitution of India—Article 227—Power of Superintendance—Nature and scope of—Principles for the exercise of the power stated.

Held, as follows:—

(1) When a case can be decided on a preliminary point of law the court has no discretion to say that it shall not be so decided.

(2) When the court is of opinion, that an objection raises a serious question of law, which if decided in favour of the party objecting, would dispense with any further trial or at any rate with the trial of some substantial issue in the action, it has no option but to decide that issue first. It has discretion to determine whether the case or any part thereof can or cannot be disposed of on issues of law only. It may hold for example, that the objection in point of law is not clear or explicit, or that the allegation wears a doubtful aspect, or that it raises a mixed question of law and fact, or that the matter is one which by reason of the obscurity either of facts or law ought to be decided at the conclusion of the trial, or that the facts are in dispute, or that a vital and undetermined question of fact is presented. In such a case the Court may decline to determine the points of law as points of law. If, however, clear cut issues of law are presented and there are no matters on which further light would be thrown at the trial and the decision on the points of law will substantially dispose of the whole or part of the action, it has no discretion in the matter. It has discretion indeed to determine whether the case or any part thereof can or cannot be disposed of on issues of law only, but if it finds in the exercise of its own honest judgment and discretion that it can; it must decide those issues first. It cannot decline to decide those issues on extraneous grounds, for example, that piecemeal decision of suits is not desirable, or that the Representation of People's Act, 1951, requires that election petitions should be disposed of expeditiously. The Court has discretion to determine whether the occasion for the exercise of its power has arisen, but if it holds that the occasion has arisen, it has no discretion to decline to exercise that power. Where power is conferred on a Court or tribunal and its exercise is made mandatory on the existence of certain conditions, and those conditions exist in fact, it has no discretion as to whether, in good faith or otherwise, the

power shall be exercised. The provisions of Order 14, Rule 2, C.P.C. are mandatory and the only discretion left to the court is to form and express an opinion as to whether the case can be disposed of on the issues of law. The opinion must, however, be expressed on reasonable material.

(3) If an inferior court or tribunal which is vested with the exercise of discretion exercises it otherwise than in consonance with established principles, it is within the power of the High Court to interfere either under section 115 of the Civil Procedure Code or under Article 227 of the Constitution. The power of superintending control conferred by Article 227 is indefinite in character but unlimited in extent and is designed to prevent and correct errors and abuses, to authorise the superior court to examine any question which it deems of sufficient importance for examination and decision; to control summarily the course of litigation in inferior Courts to prevent an injustice being done through a mistake of law or a wilful disregard of it; to remedy manifest wrongs or tyrannical or arbitrary acts; to meet emergencies and to promote the harmonious working of the Courts. It is in the nature of a summary appeal and is meant to emancipate the Court from the restraints imposed on it by the rules of procedure, the only restraint on the exercise of such power being its own sound discretion. This power is not limited by forms of procedure and the court will look at the substance of the right sought to be vindicated and the need for speedy relief, rather than to the form in which such relief is sought. In the exercise of its supervisory power, the court is concerned in the prevention of abuses or illegal acts regardless of the amount involved, and in the prevention of extended and needless litigation. It is directed primarily to the inferior tribunals and its relation to litigants is only incidental. It should be resorted to most sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority, or where real injustice would be done if the court could not interfere under section 115 of Code of Civil Procedure or where a tribunal does not act in accordance with the manner prescribed by law or exceeds its authority or acts arbitrarily or capriciously or transgresses bounds of its authority. It should not be exercised lightly or when other and ordinary remedies are

adequate and complete. It should be invoked promptly and employed sparingly and only in extreme cases when the ends of justice imperatively demand it and when grave hardship will follow a refusal to exercise it. It will be used to prevent irreparable mischief, great extraordinary or exceptional hardship and great burdens in the form of expenses.

(4) The High Court will be justified in prohibiting inferior Courts in all cases where, (1) they are threatening to proceed or are proceeding, in a matter of which they have no jurisdiction and there is no remedy through an application to an intermediate court; and (2) where although possessing jurisdiction, they are exercising or about to exercise it erroneously and great injustice and irreparable injury would result to the applicant if they should do so, and there exists no other adequate remedy by way of appeal or otherwise.

Case law discussed.

Petition under Article 227 of the Constitution of India and under section 151, Civil Procedure Code, praying that the election petition filed by the respondent against the petitioner be dismissed without its trial on facts and merits and the order of the Election Tribunal, dated 9th August, 1957, declining to decide the preliminary questions of law be quashed.

C. K. DAPHTARY and H. S. DOABIA, for Petitioner.

ANAND SARUP, for Respondent.

JUDGMENT

BHANDARI, C.J.—This petition under Article 227 of the Constitution raises the question whether an Election Tribunal is justified in declining to determine certain preliminary questions of law under the provisions of Order 14 rule 2 of the Code of Civil Procedure which if decided in favour of the party objecting would dispense with any further trial or at any rate with the trial of some substantial issue in the case. Bhandari, C. J.

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S. Partap Singh Kairon, Chief Minister of the Punjab, was elected a member of the Punjab Legislative Assembly from the Sarhali Constituency of the Amritsar District defeating his rival candidate. S. Gurmej Singh by a majority of over 20,000 votes.

On the 11th April, 1957, S. Gurmej Singh presented an election petition in which he challenged the election of S. Partap Singh on a number of grounds, among others, being (1) that the nomination paper filed by one Santa Singh was improperly rejected by the Returning Officer, and (2) that S. Partap Singh had obtained the assistance of *lambardars* for the furtherance of the prospects of his election.

S. Partap Singh controverted those allegations and prayed that the election petition be rejected as the nomination paper of Santa Singh was not improperly rejected and as the office of *lambardar* is not covered by the provisions of section 123(7) of the Representation of the People Act, 1951. In view of the pleadings of the parties the Election Tribunal framed a number of issues, including issues Nos. 3 and 8 which were in the following terms :—

> "3. Is it competent for the petitioner to raise any objection at this stage that the nomination paper filed by Santa Singh should not have been rejected by the Returning Officer ? Was the same improperly rejected ? 8. Is a *lambardar* a person in the service of Government under section 123(7) of the Representation of the People Act, 1951 ?"

S. Partap Singh stated that these two points should be disposed of as preliminary points in

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accordance with the provisions of rule 2 of Order 14 of the Code of Civil Procedure as they would substantially dispose of the whole action. The Election Tribunal declined to accede to this request.

S. Partap Singh has now presented a petition under Article 227 of the Constitution of India and section 151 of the Code of Civil Procedure in which he prays that the election petition filed by S. Gurmej Singh may be dismissed without its trial on facts and merits and that the order of the Election Tribunal declining to decide the preliminary questions of law be quashed. This petition has come up for hearing before us and has been argued with conspicuous ability by Mr. C. K. Daphtary on behalf of the petitioner and Mr. Anand Sarup on behalf of the respondent.

Three questions arise for decision in the present case, namely (1) Are the provisions of rule 2 of Order 14 of the Code of Civil Procedure mandatory? (2) Can the case or any part thereof be disposed of on issues Nos. 3 and 8? and (3) If the answers to the first two questions are in the affirmative, have any grounds been made out which would justify interference by this Court under Article 227 of the Constitution?

Rule 2 of Order 14 of the Code of Civil Procedure is in the following terms:—

> "2. Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined."

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Mr. Anand Sarup, who appears for S. Gurmej Singh, admits that where a point of law which if decided in one way is going to be decisive of litigation, the Court is at liberty to take advantage of the facilities afforded by this rule, but he contends that the rule places no obligation on the Court to do so and leaves it to the presiding officer to decide for himself whether circumstances exist in each particular case calling for the exercise of that power *Union of India* v. *Govind Ram* (1) and *Lachmi Narain Singh* v. *Rup Narain* (2). He submits that it is the duty of the Court to reconcile two somewhat conflicting and mutually contradictory principles. The first is that in appealable cases the Court should as far as possible decide on all the issues joined, for their Lordships of the Privy Council have pointed out repeatedly that lower Courts should pronounce their opinions on all important points as fragmentary decisions of a case are most inconvenient and tend to delay the administration of justice *Gobind Ram and another* v. *Chuni Lal and others* (3), *Baga Mall* v. *Shib Parshad, etc* (4), *Mohamid Solaiman* v. *Birendra Chandra Singh* (5), *Jagannath Rao Dani* v. *Rambharosa and another* (6), *Kutoor Vengayil Rayarappan Nayaran* v. *Kutoor Vengayil Valia Madhavi Amma and others* (7), *Mohammad Yousuf* v. *Wilayat Hussain, etc.* (8). The second is that where issues of law going to the root of the whole case and capable of being decided without evidence arise, the Court should try these issues first. It is contended, in short, that in order to maintain harmony between the general principle that it is undesirable to try cases piecemeal and the specific and wholesome

(1) 1956 Hyd. 62.
(2) 85 I.C. 29.
(3) 119 I.C. 330.
(4) 120 I.C. 686.
(5) I L.R. So Cal, 243.
(6) A.I.R. 1933 P.C. 33.
(7) A.I.R. 1950 F.C. 140.
(8) 113 I.C. 785.

provisions of Order 14 rule 2 that certain points of law which are decisive of the matters in controversy between the parties should be dealt with as a preliminary point, it is open to the Court to exercise its own judgment and discretion *Janki Das and another* v. *Kalu Ram and another* (1), A party to the litigation is not at liberty to claim as of right that the Court should decide questions of law in the first instance *Mahant Shanta Gir* v. *Basudeva Nand Gir* (2).

I regret, with all respect to the very learned Judges on whose opinion the above argument is based, that I am unable to concur in the view that even if a case or a part thereof can be decided on a preliminary point of law the Court has a discretion to say that it shall not be so decided. Rule 2 provides that if the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only it shall decide those issues first. Where the word "shall" is used in a statute the presumption is that its use is imperative and not merely directory, particularly when it is addressed to a Court or a public servant and when a right or benefit depends on its imperative use. Indeed, it has been held that in such circumstances even the expression "may" may acquire the meaning of the expression "shall". There is nothing in the context or manifest purpose of the rule to indicate that the Legislature did not intend to use the word "shall" appearing in rule 2 as a word of command. It seems to me, therefore, that when the Court is of opinion that an objection raises a serious question of law which, if decided in favour of the party objecting, would dispense with any further trial or at any rate with the trial of some substantial issue in the action, it has no option but to decide

(1) 162 I.C. 486.
(2) A.I.R. 1934 All. 986

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that issue first *Udmi Ram-Ram Sarup* v. *Ghasi Ram-Sakhan Lal* (1), *Sher Singh-Kahan Singh and another* v. *Ajmer Singh and others* (2), *P. C. Gangulee* v. *Sri Kadhuri Devi* (3). It has discretion to determine whether the case or any part thereof can or cannot be disposed of on issues of law only *T. Ganapathia Pillai* v. *N. Somasundaram Pillai and others* (4). It may hold, for example, that the objection in point of law is not clear and explicit, or that the allegation wears a doubtful aspect, or that it raises a mixed question of law and fact, or that the matter is one which by reason of the obscurity either of the facts or of law ought to be decided at the conclusion of the trial, or that the facts are in dispute, or that a vital and undetermined question of fact is presented. In such a case the Court may decline to determine the points of law as points of law. If, however, clear-cut issues of law are presented and there are no matters on which further light would be thrown at the trial and the decision on the points of law will substantially dispose of the whole or a part of the action, it has no discretion in the matter. It has discretion indeed to determine whether the case or any part thereof can or cannot be disposed of on issues of law only, but if it finds in the exercise of its own honest judgment and discretion that it can, it must decide those issues first. It cannot decline to decide those issues on extraneous grounds, for example that piecemeal decision of suits is not desirable or that the Representation of the People Act, 1951, requires that election petitions should be disposed of expeditiously. The Court has discretion to determine whether the occasion for the exercise of the power has arisen, but if it holds that the occasion has arisen, it has no

(1) A.I.R. 1933 All. 753.
(2) A.I.R. 1954 Pepsu 9.
(3) A.I.R. 1952 Patna 281.
(4) A.I.R. 1950 Mad. 213.

discretion to decline to exercise that power (Maxwell on Interpretation of Statutes, Tenth Edition, page 249). This conclusion flows from the commonsense principle that where power is conferred on a Court or tribunal and its exercise is made mandatory on the existence of certain conditions, and those conditions exist in fact, it has no discretion as to whether, in good faith or otherwise, the power shall be exercised. I am of the opinion that the provisions of rule 2 are mandatory and that the only discretion left to the Court is to form and express an opinion as to whether the case can be disposed of on the issues of law *P. C. Gangulee* v. *Sm. Kudhuri Devi* (1), *Janki Das and another* v. *Kalu Ram and another* (2), *Udhmi Ram-Ram Sarup* v. *Ghasi Ram-Sakhan Lal* (3), *Sher Singh Kalian Singh and another* v. *Ajmer Singh and others* (4). The opinion must, however, be expressed on reasonable material. *Janki Das and another* v. *Kalu Ram and another* (2). The Tribunal has not said in the present case that these two issues are not issues of law or that their decision will not put an end to the case.

The question now arises whether the case or any part, thereof, can be disposed of on issues Nos. 3 and 8. Issues No. 3 runs as follows :—

> "3. Is it competent for the petitioner to riase any objection at this stage that the nomination paper filed by Santa Singh should not have been rejected by the Returning Officer ? Was the same improperly rejected ?"

(1) A.I.R. 1952 Pat. 281.
(2) 162 I.C. 486.
(3) A.I.R. 1933 All. 753.
(4) A.I.R. 1954 Pepsu 9.

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The relevant portions of section 100 of the Representation of the People Act, 1951, are as follows :—

"100(1). Subject to the provisions of sub-section (2), if the Tribunal is of 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 the Government of Part C States Act, 1951, (49 of 1951); or

(b) * * * * *

(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) * * * * *

(i) * * * * *

(ii) * * * * *

(iii) * * * * *

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

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

It is common ground that the provisions of clause (a) of subsection (1) of section 100 are not

applicable to this case and that the validity of the election can be challenged only on the basis of clause (c) or clause (d) (iv) of the said subsection. Mr. Daphtary contends that the facts and circumstances of the present case make it quite clear that the nomination has not been improperly rejected. It appears that S. Santa Singh filed his nomination paper on the 29th January, 1957, in which he stated that he had completed 34 years of age. The nomination paper came up for scrutiny before the Returning Officer on the 1st February, 1957. An objection was promptly raised on behalf of S. Partap Singh that S. Santa Singh candidate was shown to be 24 years of age in the electoral roll, that he had not attained the age of 25 years even on the date of the scrutiny and that as the minimum age for a candidate is 25 he was not entitled to be nominated. The Returning Officer found that the age of Santa Singh was stated in the electoral roll to be 24, that there was no entry in the supplementary electoral roll showing any correction in the age of the candidate, that neither the candidate nor any of his supporters had appeared to refute the objection and that the statement appearing in the nomination paper that he had attained the age of 34 had not been substantiated. He accordingly proceeded to make the following order :—

> "The candidate was given due notice of the date and time of scrutiny, but neither he himself nor his election agent, nor his proposer and nor any other person duly authorised by him has attended the scrutiny. The objection, therefore, stands unrebutted. It is clearly mentioned in Chapter 2, para 7, page 10 of the Hand Book for candidates, that if the age of any candidate is near the legal minimum and there is chance of

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an objection being raised by a rival candidate he should arm himself with a sufficient proof of his age, but the candidate or any person authorised to appear on his behalf has not appeared and furnished any proof of his age. Article 173 of the Constitution clearly lays down that a person shall not be qualified to be chosen to fill a seat in the Legislative Assembly if he is less than 25 years of age. The said Santa Singh candidate, therefore, has not fulfilled the provisions of section 36 of the Representation of People Act, 1951, as modified up to August, 1956, and as such, it is in my opinion a material defect "

Mr. Daphtary contends that *prima facie* the Returning Officer's action in rejecting the nomination paper was not improper as on the date on which the order was made such rejection was a proper rejection. In *Durga Shankar Mehta* v. *Thakur Raghuraj Singh and others* (1), their Lordships of the Supreme Court were called upon to decide whether the nomination of one Vasant Rao was improperly accepted by the Returning Officer. It was contended before their Lordships that the candidate was not qualified to fill the seat under the Constitution or the Act and that as the Returning Officer did not reject his nomination on this ground his act amounted to an improper acceptance of the nomination within the meaning of section 100(1)(c) of the statute. In repelling this contention their Lordships said :—

"We do not think that this contention is sound. If the want of qualification of a candidate does not appear on the face

(1) 1955 S.C.R 267.

of the nomination paper or of the electoral roll, but is a matter which could be established only by evidence, an enquiry at the stage of scrutiny of the nomination papers is required under the Act only if there is any objection to the nomination. The Returning Officer is then bound to make such enquiry as he thinks proper on the result of which he can either accept or reject the nomination. But when the candidate appears to be properly qualified on the face of the electoral roll and the nomination paper and no objection is raised to the nomination, the Returning Officer has no other alternative but to accept the nomination. This would be apparent from section 36, subsection (7) of the Act which runs as follows :—

'(7) For the purposes of this section (a) the production of any certified copy of an entry made in the electoral roll of any constituency shall be conclusive evidence of the right of any elector named in that entry to stand for election or to subscribe a nomination paper, as the case may be, unless it is proved that the candidate is disqualified under the Constitution or this Act, or that the proposer or seconder, as the case may be is disqualified under subsection (2) of section 33.'

In other words, the electoral roll is conclusive as to the qualification of the elector except where a disqualification is expressly alleged or proved. The electoral roll in the case of Vasant Rao

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did describe him as having been of proper age and on the face of it, therefore, he was fully qualified to be chosen a member of the State Legislative Assembly. As no objection was taken to his nomination before the Returning Officer at the time of scrutiny, the latter was bound to take the entry in the electoral roll as conclusive ; and if in these circumstances he did not reject the nomination of Vasant Rao, it cannot be said that this was an improper acceptance of nomination on his part which section 100(1)(c) of the Act contemplates. It would have been an improper acceptance, if the want of qualification was apparent on the electoral roll itself or on the face of the nomination paper and the Returning Officer overlooked that defect or if any objection was raised and enquiry made as to the absence of qualification in the candidate and the Returning Officer came to a wrong conclusion on the materials placed before him. When neither of these things happened, the acceptance of the nomination by the Returning Officer must be deemed to be a proper acceptance."

If Santa Singh was shown to be 24 years of age on the 1st October, 1956, when the electoral roll was finally published and if he had not attained the age of 25 on the 1st February, 1957, when the objection was taken and if on that date neither Santa Singh nor any of his supporters appeared before the Returning Officer to rebut the objection, it is possible to contend that the Returning Officer had no alternative but to accept

the objection *ex parte* and to reject the nomination. It may also be contended that in the circumstances the nomination was not improperly rejected. But it is not for us to decide at this stage whether the objection raised on behalf of S. Partap Singh should or should not be upheld. This is a matter *prima facie* for the decision of the Tribunal. All that need be decided by us is whether issue No. 3 is an issue of law the decision of which at a preliminary stage will decide a part of the case. According to the Tribunal issue No. 3 is inter-dependent on issue No. 7 which is as follows :—

> "7. Was Santa Singh qualified to be a candidate for election to the State Assembly and if so what is the effect of the rejection of his nomination paper ?"

The necessity for deciding issue No. 7 would arise only if the first part of issue No. 3 (namely whether it is competent for the petitioner to raise any objection at this stage that the nomination paper filed by Santa Singh should not have been rejected by the Returning Officer) is decided in favour of the applicant. Issue No. 3 is thus clearly a preliminary issue of law the decision of which would dispose of a part of the case.

Similarly issue No. 8 namely whether a *lambardar* is a person in the service of Government under section 123(7) of the Representation of the People Act 1951, is an issue of law, which if decided in favour of the party objecting would dispose of a part of the case. A candidate is guilty of a corrupt practice under the provisions of this subsection if he obtains assistance from any person "in the service of the Government" and if he belongs to any of the classes mentioned in clauses (a) to (f) of the said subsection. It is contended on

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behalf of S. Partap Singh that a *lambardar* is not a person in the service of Government and that it is possible to establish the correctness of this contention by referring to various statutes, statutory rules and documents of which judicial notice can be taken by the Tribunal. There is considerable force in this contention and I am of the opinion that the decision of this issue of law can decide a part of the case.

It has been held repeatedly that if an inferior Court or tribunal which is vested with the exercise of discretion exercises it otherwise than in consonance with established principles, it is within the power of the High Court to interfere either under section 115 of the Civil Procedure Code or under Article 227 of the Constitution *Pandyan Insurance Co., Ltd.* v. *K. J. Khambatta and others* (1). There is abundant material on the file to justify the conclusion that two clear and distinct issues of law arose for decision in this case and that the Tribunal is guilty of an arbitrary and capricious exercise of discretion in holding to the contrary.

This brings me to the consideration of the question whether this Court should interfere in this case even though it is satisfied that the Election Tribunal has exercised its discretion arbitrarily or capriciously and not in accordance with recognised Judicial principles.

Our Constitution has vested the high Courts in this country with three independent and distinct grants of power or jurisdiction: (1) Original jurisdiction, (2) appellate jurisdiction, (3) general superintending control over all inferior courts and tribunals.

(1) A.I.R. 1955 Bom. 241.

The power of superintending control conferred by Article 227 is similar to the control exercised by the court of King's Bench over the inferior courts of England under the common law. According to Blackstone the Court of King's Bench was entitled to a general superintendence over all subordinate courts for the purpose of keeping them within the bounds of their authority and of preventing usurpation. In order to achieve this object the King's Bench was at liberty to remove their proceedings to be determined by it, to prohibit their progress below and to enforce in inferior tribunals the due exercise of those judicial or ministrial powers which had been vested in them, by restraining their excesses and quickening their negligence and obviating their denial of justice (2 B.I. Com. 111). The power which was exercised by the court of King's Bench was a branch of the power of the king of England, while the power which has been conferred on the High Courts in this country by Article 227 is branch of the severeign power of the people as vested in them by the Constitution of a democratic Republic.

The nature and extent of the power of superintendence has come up for consideration in a large number of Amercian cases and has been admirably describbed in 51 Lawyers Reports Annotated page 33, where an annotator observes as follows:—

> "The power of superintending control is an extraordinary power. It is hampered by no specific rules or means for its exercise. It is so general and comprehensive that its complete and full extent and use have practically hitherto not been fully and completely known and examplified. It is unlimited, being bounded only by the exigencies which call for its exercise. As new instances

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of these occur, it will be foundable to cope with them. And, if required, the tribunals having authority to exercise it will, by virtue of it, possess the power to invent, frame, and formulate new and additional means, writs, and processes whereby it may be exerted."

The Constitutional supervisory power is indefinite in character but unlimited in extent and is designed to prevent and correct errors and abuses. to authorise the superior court to examine any qustion which it deems of sufficient importance for examination and decision (Brunner Mercantile Co. v. Rodgin (1); to control summarily the course of litigation in the inferior courts, to prevent an injustice being done through a mistake of law, or a wilful disregard of it *State ex rel. Helena* v. *Helena Water Works Co.* (2), to remedy manifest wrongs or tyrannical or arbitrary acts, to meet emergencies, and to promote the harmonious working of our courts. It is in the nature of a summary appeal *State ex rel. North American Life Insurance Co.* vs. *District Court* (3), and is means to "emancipate" the court from the restraints imposed on it by the rules of procedure, the only restraint on the exercise of such power being its own sound discretion *Item Co.* v. *Nu-Grave Bottling Co.* (4). This power is not limited by forms of procedure and the court will look at the substance of the right sought to be vindicated and the need of for speedy relief, rather than to the form in which such relief is sought *Thomas* v. *Doughty* (5). In the exercise of its supervisory power the court is concerned in the prevention of abuses or illegal

(1) (1912) 130 La. 358.
(2) (1911) 43 Mont. 169.
(3) (1934) 97 Mont. 523.
(4) (1926) La. 631, 107 S.O. 471.
(5) (1927) 163 La. 213.

acts, regardless of the amount involved, and in the prevention of extended and needless litigation *State ex rel. Regis* v. *District Court* (1), *Keiffe* v. *La Salle Realty Co.* (2). It is directed primarily to inferior tribunals, and its relation to litigants is only incidental (*State ex rel. Red River Brice Corporation* v. *District Courts* (3). It should be resorted to most sparingly and only in appropriate cases *Dalmia Jain Airway Ltd.* v. *See Kumar Mukherjee* (4), *Warsam Singh and another* v. *Amar Nath and another* (5), *Som Raj* v. *Jethmal and others* (6), in order to keep the subordinate courts within the bounds of their authority, *Warsam Singh and another* v. *Amarnath and another* (5), or where real injustice would be done if the court could not interfere under section 115, *Dalmia Jain Airways Ltd.* v. *See Kumar Mukeerjee* (4), or where a tribunal does not act in accordance with the manner prescribed by law or exceeds its authority or acts arbitrarily or capriciously or transgresses the bounds of its authority, *Som Raj v. Jethmal and others* (6). It should not be exercised lightly or when other and ordinary remedies are adequate and complete. It should be invoked promptly and employed sparingly and only in extreme cases when the ends of justice imperatively demand it and when grave hardship will follow a refusal to exercise it. It will be used to prevent irreparable mischief, great extraordinary or exceptional hardship, and great burdens in the form of expenses (*Re Louis A. M. Phelan* (7). The superior court has the right in its supervisory capacity to direct the inferior court to proceed so as finally to settle the rights of the parties as expeditiously as possible Union *Bank and Trust Co.*

(1) (1950) 102 Mont. 74.
(2) (1927) 163 La. 824, 53, 82 American Law Reports.
(3) (1912) 24 N.D. 26, 138 N.W. 988.
(4) A.I.R. 1951 Cal. 193.
(5) A.I.R. 1954 S.C. 215.
(6) A.I.R. 1957 Raj. 399.
(7) 274 N.W. 411.

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of Helena v. *State Bank of Townsend* (1). The superintending power has been exercised in cases where the ruling of the lower Court was merely erroneous (*State* v. *Grimm* (2), but not in cases when the matter was one within the discretion of the trial court, unless the discretion was exercised in defiance of recognised judicial principles.

The Court will be justified in prohibiting inferior courts in all cases where (1) they are threatening to proceed, or are proceeding, in a matter of which they have no jurisdiction, and there is no remedy through an application to an intermediate court; and (2) where they, although possesing jurisdiction, are exercising or about to exercise it erroneously, and great injustice and irreparable injury would result to the applicant if they should do so; and there exists no other adequate remedy by appeal or otherwise (*Duffin* v. *Field* (3). "It is the settled law of this jurisdiction" observed the court in *State ex rel. Spinazza* v. *District Court* (4), "that the writ of supervisory control will issue only when a ruling, order, or decision of an inferior court, within its jurisdiction, (1) is erroneous; (2) is arbitrary or tyrannical, (3) does gross injustice to the petitioner; (4) may result in irreparable injury to the petitnoner; (5) and there is no plain, speedy, and adequate remedy other than by issuance of the writ."

In Pickus v. *Perry* (5), the court said-:—

> "The existence of this power partakes of the nature of an ultimate safeguard to be availed of, not as an instrument of routine procedure, but in extraordinary

(1) 103 Mont. 260.
(2) 243 N.W. 763.
(3) (1925) 208 Ky. 543, 271 S.W. 596.
(4) (1929) 83 Mont. 511.
(5) (1913) 59 S.D. 350.

and unusual situations where customary remedial procedure is inadequate and resort must be had to some such high power for the public good or for the prevention of gross injustice and irreparable injury. The very nature of the power, its scope and lack of limitation, impose upon the court to which it is entrusted a most serious responsibility to make a prudent and a sparing use of it, and to employ it in those cases only where the exercise of a sound judicial discretion clearly indicates a necessity for its use."

Again the court said:—

"The exercise of the power of superintending control is always a matter of discretion, never a matter of absolute right, and it is the clear weight of authority that the power will not ordinarily be exercised as a substitute for appellate jurisdiction, or where other remedy exists, excepting only in these cases where the other remedy is so slow, difficult, or inadequate that to compel resort thereto amounts to a denial of justice."

The general principles governing the exercise of the power of superintending control were admirably summarised in *Re Pierce-Arrow Motor Car Co.* (1), where the court said:—

"That this jurisdiction is not to be exercised upon light occasion, but only upon some grave exigency, that the writs by which it is exercised will not be used to perform the ordinary functions of an appeal

(1) (1910) 143 Wis. 282.

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or writ of error; that the duty of the court below must be plain. its refusal to proceed within the line of such duty or on the other hand, its intent to proceed in violation of such duty, must be clear; the results must be not only prejudicial, but must involve extraordinary hardship; the remedy by appeal or writ of error must be utterly inadequate; and the application for the exercise of the power of superintending control must be speedy and prompt."

Mr. Anand Sarup has invited our attention to certain authorities in support of the proposition that this Court should refrain from interfering under section 115 of the Code of Civil Procedure or Article 227 of the Constitution when the trial Court fails to decide a preliminary question of law under rule 2 of Order 14 of the Code of Civil Procedure. The authorities cited by him do not, however, appear to be strictly relevant. The first authority is reported as Mahant Shanta Gir v. *Basudeva Nand Gir*, (1). In this case a Division Bench of the Allahabad High Court held that the refusal of the Court below to take up the question of law first is not a separate and distinct proceeding the termination of which amounts to a case having been decided under section 115 of the Code of Civil Procedure. In other words the petition for revision was dismissed on the short ground that no revision was competent. *In Ray Nicholas Luis and others* v. *All India Spinners Association and* another (2), a Division Bench of the Patna High Court held that section 115 gives discretionary powers to the High Court to interfere or not and

(1) A.I.R. 1934 All. 986.
(2) A.I.R. 1947 Pat. 185.

that the High Court will not usually interfere if any other remedy is available to the aggrieved party. This decision related to the scope and applicability of section 115 of the Code of Civil Procedure and did not deal with the question of the applicability or otherwise of rule 2 of Order 14 of the Code of Civil Procedure. Two unreported cases have also been cited. In *Bai Shri Manharbir Champrajioala* v. *Dhadhal Raning Amrabhu* (1), the Saurashtra High Court held that if a Court declines to decide an issue of jurisdiction involving the recording of evidence as a preliminary issue, the High Court will not interfere in revision particularly as it is somewhat doubtful whether a revision is competent. The facts of this case have not been indicated in the report, but it is obvious that the so-called preliminary question of law could not be decided without recording evidence. *in Jansukhrai* v. *Chatar Bhaj* (2), the Judicial Commissioner held that it cannot be said that by refusing to decide the question of jurisdiction as a preliminary issue a Court fails to exercise the jurisdiction vested in it or exercises it illegally or with material irregularity. It will be seen from the above that one case declares merely that section 115 of the Code of Civil Procedure gives discretionary powers of interference, while the other three appear to indicate that a petition under section 115 of the Code of Civil Procedure is not competent if the trial Court declines to decide a question of law as a preliminary question of law.

On the other hand our attention has been invited to a number of cases in which the High Courts have issued directives that the trial Court should determine preliminary questions of law under Order 14 rule 2 before proceeding to determine the other issues of law and fact. *In Union of*

(1) A.I.R. 1955 N.U.C. 4092.
(2) 1955 N.U.C. Ajmer 4781 V. 42.

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India v. *Govind Ram* (1), the trial Court dismissed a certain suit on a preliminary question of law without recording evidence on the other issues. The District Judge set aside the decision of the trial Court on the ground that the decision of one issue at one time was not desirable as it was likely to prolong the duration of the suit. The Hyderabad High Court set aside the order of the District Judge and restored that of the trial court. In Udhmi *Ram-Ram Sarup* v. *Ghasi Ram-Sakhan Lal* (2), an application to have an issue of jurisdiction decided first was rejected by the trial court on the ground that it was undesirable to decide the case piecemeal and that the case should be taken up as a whole. Kendall, J., held that the Court should decide whether a case can be disposed of on the issue or issues of law in the first place and if it is of opinion that the case may be disposed of on those issues only it has no option but to decide these issues first. In this view of the law the learned Judge set aside the order of the Subordinate Judge and directed him to decide the issue of jurisdiction before proceeding to hear the suit on its merits. In *P. C. Gangulee v: Sm: Kadhuri Devi* (3), the trial Court was satisfied that a preliminary issue of law had arisen in the case but declined to decide the said issue of law as a preliminary issue on the ground that the Court does not favour disposal of suits by decision of preliminary points. Narayan, J., held that once the court comes to the conclusion that there is a pure question of law to be decided as a preliminary issue in the case, an order refusing to decide the preliminary issue is not justisfied and should be interfered within revision. *In Sher Singh-Kahan Singh and another* v. *Ajmer Singh and others* (4), the trial Court de-

(1) A.I.R. 1956 Hyd. 62.
(2) A.I.R. 1933 All. 753.
(3) A.IR. 1952 Pat. 281.
(4) A.I.R. 1954 Pepsu 9.

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clined to decide two pure questions of law as preliminary issues. Teja Singh, C.J., set aside the order of the trial Court and directed that the said issues should be decided as preliminary issues under the provisions of Order 14 rule 2 of the Code of Civil Procedure. *In Sivarama Krishnan v. Kaveri Ammal and others* (1), the lower Court decided, overruling objections that an election petition to set aside an election disclosed grounds on which an election enquiry could be held under the Election Rules. The High Court held that it could interfere because if the election petition did not disclose any ground for an enquiry, the lower Court would be exercising jurisdiction not vested in it by holding such an enquiry and to hold it would simply lead to waste of time of the Court and of the parties. *In Janki Das and another* v. *Kalu Ram and another* (2), *Courtney-Turrell*, C.J,, expressed the view that although interlocutory orders are matters of discretion of the lower Court, that discretion must be exercised according to the proper principles of justice and with regard to the proper interpretation of the rules in question. It is the duty of the Hign Court to interfere when the discretion has not been exercised according to judicial principles. He held further that refusal to exercise revisional jurisdiction by the High Court when the trial Court has declined to try a preliminary issue on a point of law, might give rise to the gravest hardship for the party injured has no right of appeal and a refusal to exercise jurisdiction would mean that the Sub-Judge's unfettered discretion might put the injured party to enormous expense in going into issues which are unnecessary on the mere contention that the ultimate decision would be open to appeal.

(1) A.I.R. 1955 Mad. 705.
(2) 162 I.C. 466.

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It is true that rule 2 of Order 14 vests a large measure of discretion in trial Courts but it must be remembered that this discretion should be exercised in accordance with established principles of justice and not arbitrarily or capriciously, fraudulently or without factual basis. Discretion of trial Courts does not extend to permitting them to ignore or transgress limitations on their powers. The cases mentioned above make it quite clear that if a High Court comes to entertain the view that an inferior Court or tribunal has not allowed its discretion to run in the grooves indicated therefor either by law or by judicial precedents, it is at liberty to interfere either under section 115 of the Code of Civil Procedure or under Artcile 227 of the Constitution. By holding that issues Nos. 3 and 8 should not be tried as preliminary issues the Election Tribunal in the present case does not appear to have exercised its discretion according to established rules of law but in an arbitrary and capricious manner. It has erred to such an extent as to inflict an extraordinary and exceptional hardship on the petitioner. It seems to me, therefore, that a clear duty devolves on us to interfere at this stage. If we decline to interfere with the order of the Tribunal at this stage and if the order is allowed to remain unaltered, it is obvious that the parties will be put to the trouble and expense of leading evidence on the numerous issues which have been framed in the case, that the proceedings will continue to remain pending for several weeks, and that the intention of the Legislature that election petitions should be disposed of expeditiously will be largely defeated. I am of the opinion that the Election Tribunal had a clear duty to decide the preliminary issues of law which have arisen in this case, that its intention to embark on a lengthy enquiry in defiance of the provisions of Order 14 rule 2 is manifest, that the results which are likely

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to flow from this decision will not only be prejudicial to the petitioner but will result in gross injustice to him, that the petitioner has no right to an immediate appeal and must await the decision of the election petition before he can appeal to this Court, and that there is no plain, speedy or adequate remedy other than by exercise of the powers of superintendence conferred on this Court to set right the hardship and inconvenience that is likely to be occasioned. If the entire case can be disposed of by the decision of a preliminary point of law, there is no reason why leave to argue the point should not be sought or given, and if leave is sought and refused there is no reason why this Court should not interfere under Article 227 of the Constitution. It seems to me, therefore, that it is an eminently fit case in which the extraordinary powers conferred by Article 227 should be exercised in favour of the petitioner.

Mr. Dephtary requests in conclusion that the two issues of law which have arisen in this case should be determined by us as we have had the opportunity of hearing the arguments of the parties, but I am of the opinion that the duty of deciding these issues devolves upon the Tribunal in the first instance and the same must be performed by it.

For these reasons I would accept the petition, set aside the order of the Tribunal, and direct that issues Nos. 3 and 8 should be decided as preliminary issues. There will be no order as to costs.

Chopra, J., I agree.

Chopra, J.

K. S. K.