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AELTEMESH REIN

v.

CHANDULAL CHANDRAKAR & OTHERS

March 10, 1981

B

[Y. V. CHANDRACHUD C.J., AND A.P., SEN, J.]

Representation of the People Act, 1951—Sections 86 and 117 whether ultra-vires of Article 329(b) of the Constitution.

C

The appellant was a candidate for Election to the Lok Sabha in the General Elections. Respondent 1 was declared the successful candidate. The appellant filed Election Petition under Section 81 of the Representation of the People Act, 1951. The appellant expressly stated in his Election Petition that security amount of Rs. 2,000/- was being deposited along with the petition as required by section 117 of the Act but, in fact, no such deposit was made. The High Court dismissed the petition for non-compliance with the provisions of section 117. On Appeal to this Court, the appellant argued that sections 86 and 117 of the Representation of the People Act, 1951 are *ultra vires* Article 329(b) of the Constitution and, therefore, the High Court was in error in dismissing the election petition for non-compliance of section 117.

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Dismissing the appeal, the Court

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HELD: (1) The Constitution by Article 329(b), has conferred authority on the appropriate legislature to pass a law providing for the authority to which the election petition may be presented and the manner of providing it. The provision of law which prescribes that an election petition shall be accompanied by the payment of security amount pertains to the area covered by the manner of the making of the election petition and is, therefore, within the authority of the Parliament. [143 G-H]

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(2) The question as to what is the consequence of non-compliance with section 117 of the Act has been settled by the decision of this Court in *Charan Lal Sahu v. Nand Kishore Bhatt and Others* [1974] 1 S.C.R. 294. [144 A]

(3) The High Court was right in dismissing the election petition summarily in view of section 86(1) of the Act. [144 C]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 931 of 1980.

From the Judgment and Order dated 25.3.1980 of the Madhya Pradesh High Court in Election Petition No. 3/80.

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Aeltemesh Rein Appellant in person.

G.N. Rao and C.L. Sahu for the Respondents.

The Judgment of the Court was delivered by

CHANDRACHUD, C. J. The appellant, Aeltemesh Rein, was a candidate for election to the Lok Sabha from the Durg Parliamentary Constituency in the General Elections held in January 1980. Respondent 1 having been declared as a successful candidate in the aforesaid election, the petitioner filed an election petition in the High Court of Madhya Pradesh under s. 81 of the Representation of the People Act, 1951 ('The Act'). The appellant stated expressly in his election petition that the security amount of Rs. 2,000/- was being deposited along with the petition as required by s. 117 of the Act but, in fact, no such deposit was made. The High Court dismissed the petition for non-compliance with the provisions of s. 117 and hence this appeal.

It is urged by the appellant who appeared in person before us that sections 86 and 117 of the Representation of the People Act, 1951 are *ultra vires* Article 329(b) of the Constitution and, therefore, the High Court was in error in dismissing the election petition for the reason that the provisions of s.117 were not complied with. We see no substance in this contention. Article 329(b) of the Constitution provides, in so far as material, that no election to either House of Parliament shall be called in question except by an election petition "presented to such authority and in such manner as may be provided for by or under any law made by the appropriate legislature". It is in pursuance of this provision that the Parliament provided by s. 117 of the Act that at the time of presenting an election petition, the petitioner shall deposit in the High Court, in accordance with the rules of the High Court, a sum of Rs. 2,000/- as security for the costs of the respondent. We are unable to accept the petitioner's argument that the words "in such manner" which occur in Article 329(b) are limited in their operation to procedural and not substantive requirements. The Constitution, by the aforesaid clause, has conferred authority on the appropriate legislature to pass a law providing for the authority to which the election petition may be presented and the manner of providing it. The provision of law which prescribes that an election petition shall be accompanied by the payment of security amount pertains to the area covered by the manner of the making of the election petition and is, therefore, within the authority of the Parliament.

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A The only question which survives is as to what is the consequence [of non-compliance with s. 117 of the Act. That question has been settled by the decision of this court in *Charan Lal Sahu v. Nand Kishore Bhatt and Ors.*⁽¹⁾ wherein it was held that the High Court has no option but to reject an election petition which is not accompanied by the payment of security amount as provided in s. 117 of the Act. Section 86(1) of the Act provides that the High Court shall dismiss an election petition which does not comply with the provisions of Sections 81, 82 or 117. In that view of the matter, the High Court was right in dismissing the election petition summarily.

C The appellant contended that he could not pay the deposit because he was burgled on way to the Court. This plea is as irrelevant as it seems untrue.

Accordingly, we uphold the Judgment of the High Court and dismiss this appeal. There will be no order as to costs.

D N.K.A. *Appeal dismissed.*

(1) [1974] 1 S.C.R. 294.