CHAPTER XXIII

ELECTION PETITIONS AND ELECTION TRIBUNALS

Amendments in the law.

The law relating to election petitions and election tribunals which was in force at the time of the first general elections proved rather cumbersome and dilatory in practice. Many important changes were accordingly made therein shortly before the second general elections with a view to simplify the procedure. The more important changes were (*a*) simplification of the provision prescribing the period within which election petitions are to be presented, (*b*) the parties that should be joined as respondents to an election petition, (*c*) the reliefs that may be claimed by the petitioner, (*d*) the composition of election tribunals and (*e*) the power of the Election Commission to withdraw an election petition from one election tribunal and transfer it to another.

Under the previous law, the period within which an election petition had to be presented to the Election Commission was left to be prescribed by Rules made by the Central Government. The rules which were made prescribed the period in a rather vague and round-about manner by relating it to the date of publication of the name or names of the returned candidates in the official Gazette. This gave rise to serious difficulties in as much as prospective petitioners often found it difficult to ascertain readily the exact date of such publication. Moreover, there were differences of opinion in particular cases regarding the time for filing an election petition and the controversy was at times carried up to the High Courts leading to unnecessary litigation and delay. The amended law has set at rest all such controversies. According to it, an election petition has to be presented within 45 days from, but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidates at the election and the dates of their election are different, the last of such dates. The law has also defined the "date of election" of a returned candidate as the date on which he is declared by the Returning Officer to have been elected whatever may be the date of the publication of the names of the returned candidates in the Gazette. There is, therefore, no scope now for any doubt in respect of the date from which the period of limitation has to be computed and the last date by which an election petition must be presented.

After the first general elections there was also considerable controversy regarding the persons who were to be joined as respondents to an election petition. The law then in force required that all duly nominated candidates at an election shall be joined as respondents. Here, again, opinion was divided as to

which candidates should be taken to have been duly nominated and as such to be considered as necessary parties. The amended law requires that a petitioner shall join as respondents to his petition,

(*i*) all the returned candidates where he claims that the election of any returned candidate is void;

(*ii*) all the contesting candidates where he claims in addition that he himself or any other candidate has been duly elected; and

(*iii*) any other candidate against whom allegations of any corrupt practice have been made in the petition.

The original provisions relating to the contents of an election petition have also been simplified. It is no longer necessary for every election petition to be accompanied by a separate list containing full particulars of the corrupt practices alleged in the petition. This list was required by the old law to be signed and verified in the same manner as the original petition itself. It is now optional for a petitioner to attach to the election petition any such list or not. If he does so, the list is required to be signed and verified by him in the same manner as the petition itself.

Under the old law an election petition was required to be published in the official Gazette by the Tribunal after its appointment. This resulted in considerable initial delay and additional expenditure in that the Tribunal had to remain idle during the interval between its appointment and the publication of the petition in the gazette and the service of copies of the petition on the parties. To avoid such unnecessary delay and expenditure, the amended law requires the Election Commission to cause the petition to be published in the official Gazette and to serve copies thereof on the respondents before it appoints the tribunal. The tribunal is appointed only after such publication and service have been made. The Commission also fixes the date of the first appearance of the parties to the petition before the tribunal.

The power of the Election Commission to dismiss an election petition *in limine* has also been drastically revised. The law now requires the Election Commission to dismiss an election petition after giving due opportunity to the petitioner of being heard, only in such cases where the petition fails to comply with the provisions relating to (*a*) the period within which the petition is to be presented; (*b*) the joinder of necessary parties to the petition; or (*c*) the making of the security deposit in connection with the election petition.

The power that had been originally given to the Election Commission to condone delay in the presentation of an election

petition has been taken away. The Commission is not competent to question the contents of a petition which can be gone into only by a duly constituted tribunal after due notice to the parties to the petition.

Another important change in the law relates to the composition of the election tribunals. At the time of the first general elections, the law required that every election tribunal should consist of three members. The Chairman and one member were to be sitting or retired Judges of the High Court or District Judges, while the third member was required to be an advocate. Every High Court was required to supply the Election Commission with a list of such serving or retired District Judges and advocates of the High Courts as were fit in its opinion to be appointed to an election tribunal. Experience proved these three-member election tribunals to be unwieldy and often dilatory in their work. This was one of the main causes that led to the inordinate delay in the disposal of many of the petitions.

The decision of an election tribunal had been made final under the old law in order to expedite the final decision of an election dispute. This objective was not achieved in practice, however, inasmuch as the Supreme Court and the High Courts held that nothing in the Constitution or the Act could take away the powers vested in the Supreme Court under article 136 of the Constitution, or in the High Court by articles 226 and 227 of the Constitution. Writ petitions under these articles of the Constitution were therefore entertained by the Supreme Court and the High Courts against the final or even interlocutory orders passed by the tribunals and the disposal of many election petitions was seriously delayed as a consequence.

Three-man tribunals thus proved a costly luxury. The law was accordingly amended so as to provide that an election tribunal shall consist of a single member only and its decision would be subject to an appeal before the High Court of the State. The member of an election tribunal must be a retired Judge of a High Court or a serving District Judge whose name has been included by the High Court in the list supplied by it to the Election Commission of District Judges fit to be appointed to election tribunals.

The law no doubt permits the Commission to appoint a serving District Judge of one State to an election tribunal in another State with the consent of the Government of the former State. This provision has not proved workable in practice and the Commission experienced considerable difficulty in constituting election tribunals in some States for the trial of "important" election petitions. In order to inspire greater public confidence in such a

petition, the Commission decided to constitute the election tribunal with a retired Judge of a High Court from some other State. An election petition was considered to be an important one for this purpose if any of the parties to it happened to be a Central or a State Minister or a prominent leader of one of the political parties. The number of available retired High Court Judges who were willing to be appointed to election tribunals was unfortunately too few and at times the Commission had to appoint the same Judge to try these important election petitions in two or more States. In some States again, the High Courts found it difficult to recommend a sufficient number of serving District Judges.

These difficulties naturally resulted in the trial of some election petitions being delayed considerably. The Commission feels that the only way of resolving these difficulties would be to amend the law so as to restore the original provision which made available to the Commission the services of competent retired District Judges for appointment as members of election tribunals.

Yet another modification that has been made in the law is the vesting in the Election Commission of the power to withdraw an election petition from one tribunal and to transfer it to another. The purpose for which this provision was made does not appear to have been well understood and many transfer applications were filed before the Election Commission on the ground that a particular interlocutory order passed by an election tribunal was not correct or proper. The Commission consistently took the view, however, that this power of the Commission was meant to be purely administrative in character and that it was not intended that the Commission should act as an appellate or revisional court in respect of an election tribunal. The Commission accordingly decided that it has no authority in law to pronounce on the propriety or the merits of any judicial order passed by an election tribunal in the course of the trial of an election petition. Many applications for transfer on the alleged impropriety of orders judicially passed by tribunals had therefore to be rejected by the Commission. 23 applications for transfer were received and out of these 21 were rejected.

The grounds on which the validity of an election can be questioned have been revised in certain material respects. It was not permissible under the old law to take the ground that on the date of his election, the elected candidate was not qualified or was disqualified in law to be chosen to fill the seat. This lacuna was pointed out by the Supreme Court in the case Election Commission *versus* Saka Venkata Rao (2 ELR 499) and has now been removed.

The amended law also provides that the improper rejection of a nomination paper shall in every case be a sufficient ground for declaring the election of a returned candidate void. It is no longer necessary as under the old law to prove that such rejection materially affected the result of the election.

The provisions relating to corrupt practices have also been drastically revised. Provisions in the old law relating to minor corrupt practices and illegal practices which were penalised by the orginal Act have been removed altogether from the Statute Book. This has no doubt simplified the law but has had undesirable consequences as well. For instance, personation at an election is no longer a corrupt practice although it continues to be an offence under Chapter IX-A of the Indian Penal Code. The result is that even if personation has been proved to have been practised on a fairly large scale in favour of a returned candidate, his election can no longer be challenged on that ground. This anomaly should be removed.

The original Act effectively penalised as a major corrupt practice the obtaining or procuring by a candidate or his agent of any assistance from a Government servant for the furtherance of the prospects of the election of that candidate. This wholesome provision has been watered down to a very large extent by the recent amendments. The ban now applies only in respect of certain restricted categories of Government servants. The assistance of non-gazetted Government servants who are not revenue officers can now be availed of with impunity by a candidate in furtherance of his prospects at an election. The Government Servants' Conduct Rules no doubt provide that no such Government servant shall participate in any election in favour of any candidate. This by itself cannot be wholly effective or salutary unless a penalty is imposed against the candidate as well for having dragged such Government servants into active electioneering. It is in the Commission's opinion very undesirable for the law to permit Government servants of any category to participate in an election in favour of a candidate. Moreover, it is clearly discriminatory to ban one class of Government servants from such participation and not to extend the ban to another class. In the interests of keeping the entire body of public servants impartial and immune from political influences, the Commission would recommended therefore that the provisions of the original Act in this regard should be restored and that a candidate should be penalised for obtaining assistance of any Government servant without any distinction regarding his status or category. Pseudo-Government servants like village officers who are not village accountants may, however, continue to be excluded from the ban.

The final order of an election tribunal took effect under the original Act from the date on which it was published in the official Gazette. Some instances occurred in which such publication happened to get delayed and interested persons took advantage of the delay to obtain temporary stay orders from the superior courts. In some other instances, unusual haste appeared to have been exhibited in expediting the publication of the tribunals' orders before any stay order could be obtained from the superior courts. This was an unsatisfactory state of affairs and has now been brought to an end by an amendment according to which the order of the tribunal takes effect as soon as it is pronounced. The publication of the order in the official Gazette has now become a mere ministerial act which does not affect the coming into effect of the order in any way. The appellate court has, however, been given the power to stay the operation of the tribunal's order if any appeal is filed.

In view of the desirability of the early disposal of election petitions, the law now provides that they should be tried as expeditiously as possible and that every endeavour shall be made to conclude the trial of every election petition within six months from the date of publication of the copy of the petition in the official Gazette. In fact, 158 petitions only out the total of 472 arising out of the second general elections could be disposed of within the period of six months.

Withdrawal and non-prosecution of petitions.

An election petition cannot be withdrawn except in accordance with the provisions laid down by the law. If the petitioner has applied for withdrawing an election petition, any other person interested therein is entitled to apply to be substituted as the petitioner in place of the original petitioner. A similar provision also applies when the sole petitioner in an election petition dies. In order to evade these restrictions against collusive withdrawals, petitioners in a few cases appear to have resorted to the subterfuge of non-prosecution of the petitions with the result that the petitions had to be dismissed for want of evidence. This effectively denied all opportunity to any other interested person to intervene and get himself substituted as a petitioner. As many as 18 election petitions were dismissed by election tribunals for default by the petitioners in prosecuting the petitions. The Commission feels that this undesirable practice should be discouraged by means of a suitable amendment of the law. It may be provided that if the election tribunal has reason to believe that a petitioner has collusively refused to prosecute the election petition diligently, it shall not dismiss the petition for non-prosecution for default but may, in its discretion, allow any other interested person to be joined as a petitioner.

Number of election petitions.

As many as 472 election petitions were filed in connection with the second general elections, 1957, as compared to 338 for

the first general elections. In other words, one election petition was filed for every seven elections as compared to one for every ten in the first general elections. This large increase in the incidence of election petitions was unexpected and proved rather disappointing.

The first of these petitions was filed on the 18th March, 1957, and the last on the 10th September, 1957. The number of election petitions filed in respect of elections to the House of the People was 59, while 413 election petitions were filed in respect of elections to the Legislative Assemblies of the States.

Disposals by Commission.

The Election Commission allowed the withdrawal of 2 petitions and dismissed 16 petitions under section 85 of the Act. In every case of dismissal the petitioner was given an opportunity to show cause why the petition should not be dismissed.

The remaining 454 petitions were published in the official Gazettes and copies thereof were served by post on the respondents. A further notice was later sent to every party intimating (*a*) the constitution of an election tribunal for the trial of the petition, (*b*) the place of trial, and (*c*) the date on or before which parties were to appear before the tribunal. By this notice, the respondents were also directed to file their written statements on the date of their appearance in order that the trial might be expedited.

Constitution of Election tribunals.

The Commission obtained from the High Court of each State a list of serving District Judges in the State who were considered fit to be appointed as members of election tribunals. The first election tribunal was constituted on the 25th April, 1957. As many as 141 tribunals were appointed. Serving District Judges were normally appointed for the trial of petitions arising within their respective districts or neighbouring districts if the District Judges of the latter districts were not on the approved lists.

53 of the election petitions out of the total of 472 petitions related to Ministers of the Central or State Governments, Speakers of the Legislative Assemblies or important leaders of the political parties. The Commission constituted tribunals on a different basis in respect of these 53 election petitions. As far as practicable, retired High Court Judges usually drawn from a different State, were appointed to the tribunals constituted for the trial of these petitions.

Result of election petitions.

The result of the 454 election petitions referred to the tribunals was as follows as on the 15th August, 1958:—

(1) Number of petitions dismissed by the tribunals	285
(2) Number of petitions withdrawn before the tribunals	20

(3)	Number of petitions allowed by the tribunals	50
(4)	Abated on death of petitioners ..	3
(5)	Pending	96

14 elections were set aside on the ground of improper rejection of nomination papers by Returning Officers. 15 were declared void because either the elected candidate or one of the contesting candidates was not qualified or was disqualified for election at the time of nomination. 3 elections were set aside on the ground of non-compliance of the provisions of the Constitution, the Act, or the Rules while 18 elections were set aside on the ground of corrupt practices committed by candidates.

Writ petitions to Supreme Court and High Courts.

Although the amended law provides for a regular appeal against the final order of a tribunal, parties in many instances went up to the High Courts and the Supreme Court by means of writ petitions. Up to the 15th August, 1958, the proceedings of the tribunals were stayed by orders of the Supreme Court and by orders of the various High Courts in 60 cases.

Copies of petitions.

Many of the petitioners did not enclose with their election petitions copies thereof for service on the respondents. The result was that these copies had to be made for the purpose in the office of the Commission. This proved a very heavy task and materially delayed the service of copies of petitions on the respondents. The Commission eventually issued a Press note requiring every petitioner to enclose with his petition one spare copy of the petition for service on each of the respondents and three additional copies for the Commission's use. Whenever this was done, the preliminary steps were expedited and the election petitions could be made ready for trial earlier. A new rule should be added making the supply of these copies a statutory requirement.

Transfer of Judges.

Due to the transfer of District Judges from their districts after they had been appointed members of election tribunals delay was occasioned in the expeditious disposal of as many as 65 petitions which had to be transferred to other Judges for disposal.

Progress of disposal of election petitions.

Up to the 15th August, 1958, 82 tribunals out of 141 disposed of all the election petitions allotted to them for trial.

Apportionment of expenditure.

The whole of the expenditure incurred on election tribunals is initially met by the Government of India and the share, if any, payable by the State Governments is recovered at the end of each financial year. The expenditure is apportioned between the Central and the State Governments at the end of each year in accordance with the principles detailed in Chapter XXVIII.

Economy in expenditure.

The Commission impressed upon all election tribunals the need for exercising the utmost economy in the working of the tribunals. The tribunals were directed that the following principles should be followed by them to save all avoidable expenditure:—

(1) Persons already in the service of the Government should be normally employed on a part-time basis on the staff of the tribunal and no whole-time appointment should be made unless the quantum of work made such appointment unavoidable.

(2) Whenever the work of the tribunal is completely held up by a stay order issued by a superior Court, every whole-time employee of the tribunal should be put on a part-time basis if he is a permanent employee of the Government. In case he is not a Government employee, his services should be dispensed with and if it is necessary to employ any staff for dealing with the current business of the tribunal, he should be replaced for the duration of the stay order by an employee of the Government on a part-time basis.

Amendments suggested.

Practical difficulties have been experienced on several occasions in regard to the timely communication of the orders of an election tribunal or a superior Court. In order that these difficulties may not occur in future, the Commission recommends that the scope of section 103 of the Representation of the People Act, 1951, may be extended and that it may be specifically provided that whenever a tribunal or a High Court pronounces an order declaring an election to be void, intimation thereof shall be sent immediately by the tribunal or the Court to the Election Commission, the Speaker or Chairman of the House concerned, and to the Chief Electoral Officer of the State. The copy of the full judgement may follow as soon as practicable thereafter.

The Commission further recommends that it should also be provided that an appeal from the order of an election tribunal shall lie only to the Supreme Court (instead of the High Court) in every case where the member of the election tribunal is a retired High Court Judge. Many retired High Court Judges declined to serve on election tribunals for the sole reason that appeals from their orders would be heard by the High Courts. Such refusal sometimes made it difficult for the Election Commission to constitute election tribunals with retired High Court Judges as members for the trial of important election petitions.

Doubts have been expressed as to whether an election tribunal can be constituted in law before the actual service of

notices upon all the respondents. For the avoidance of doubt the word "then" occurring in sub-section (*i*) of section 86 of the Representation of the People Act, 1951, should be deleted and the reference of an election petition to a tribunal should be made independent of the service of notices upon the respondents. It is a common experience that registered letters containing such notices are delayed or even lost in transit and acknowledgement receipts are often not received back in the Commission. An election petition should not therefore be required to be retained in the Commission indefinitely merely because the record does not contain evidence that all notices have been served.

A great deal of controversy arose in a number of election petitions over the expression "contesting candidates", especially in view of the new provision regarding retirement of candidates (section 55A). The Act does not clearly define the expression. To avoid unnecessary litigation in the future, the expression should be conclusively and authoritatively defined in the Act itself.