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**(1958) 02 BOM CK 0017**

**Bombay High Court**

**Case No:** Appeal No. 52 of 1958

Parshottamdas Talsibhai Patel

APPELLANT

Vs

Lilubhai Kishorebhai Patel

RESPONDENT

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**Date of Decision:** Feb. 19, 1958

**Acts Referred:**

- Representation of the People Act, 1951 - Section 100, 98, 99

**Citation:** AIR 1959 Bom 369 : (1958) 60 BOMLR 800

**Hon'ble Judges:** Miabhoy, J; J.C. Shah, J

**Bench:** Division Bench

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### **Judgement**

J.C. Shah, J.

[His Lordship, after stating the facts and dealing with the evidence relating to corrupt practices alleged to have been committed by the appellant, proceeded.] Mr. Chari contended that, in any event, there has been a procedural irregularity in the trial before the Election Tribunal and that, on that account, the order passed by the Tribunal is liable to be set aside. Our attention was invited to Sections 98, 99 and 100 of the Representation of the People Act. Section 98 of the Representation of the People Act provides that

at the conclusion of the trial of an election petition the Tribunal shall make an order-

(a) dismissing the election petition; or

(b) declaring the election of all or any of the returned candidates to be void, or

(c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

Section 99(1) provides:

At the time of making an order u/s 98 the Tribunal shall also make an order-

(a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording♦♦

(i) a finding whether any corrupt practice has or has not been proved to have been committed by, or with the consent of, any candidate or his agent at the election, and the nature of that corrupt practice; and

(ii) the names of all persons, if any who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and

(b) fixing the total amount of costs payable, and specifying the persons by and to whom costs shall be paid.

That is followed by a proviso which states that

a person who is not a party to the petition shall not be named in the order under Sub-clause (ii) of Clause (a) unless♦♦

(a) he has been given notice to appear before the Tribunal and to show cause why he should not be so named; and

(b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness, who has already been examined by the Tribunal and has given evidence against him, of calling evidence in his defence and of being heard.

Section 100, in so far as it is material, provides by Sub-section (1) :

Subject to the provisions of Sub-section (2), if the Tribunal is of opinion-

(a) ...

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent;...the Tribunal shall declare the election of the returned candidate to be void.

2. In this case, the Tribunal came to the conclusion that the appellant was guilty of corrupt practices and u/s 98(b) of the Act the election of the appellant has been declared "to be void." u/s 99, the Tribunal was required, a charge of corrupt practices having made, to record a finding whether any corrupt practice has or has not been proved to have been committed by, or with the consent of, the appellant. That finding has been recorded. But the Tribunal has not chosen to name persons other than the appellant who were found at the trial guilty of corrupt practice and the nature of that practice. The Tribunal, in para. 46 of its judgment, observed.

The evidence shows that Thakorlal Chhotalal, Kantilal Chimanlal and Jashbhai Dahyabhai have committed the corrupt practice of bribery because of the entertainment with tea. However, (before) they can be named in the order on this

petition, they must be served with notice and given the opportunities mentioned in provisions (a) and (b) of Section 99(1). However, these persons are co-accused with the successful candidate in the pending criminal case before the Magistrate of Umreth. If they are found guilty in that case, it will have the same effect as being named as guilty of the corrupt practice before us. If they are acquitted in that case, they cannot be apparently rightly guilty of the corrupt practice before us. In view of the pending criminal case, it would be unnecessarily embarrassing them by serving them with notices and giving them a chance in the present trial to be heard for seeing whether they should be named as guilty of the corrupt practice.

3. Mr. Chari urged that the Tribunal had no discretion having regard to the language used in Section 99 of the Representation of the People Act, to name or not to name any person as guilty of a corrupt practice. Counsel urged that, when a decision of the Tribunal is given, the requirement of Sections 98 and 99, in so far as they are applicable, must be strictly complied with, and the Legislature having used the expression "shall" in Section 99(1), it was obligatory upon the Tribunal first to record, when a charge was made in the petition of the commission of corrupt practice, a finding whether the corrupt practice is or is not proved to have been committed by, or with the consent of, the candidate, and also to name all the persons who have been proved to have been guilty. That interpretation of Section 99 is not acceptable. Undoubtedly the Tribunal, if it is satisfied that certain persons are proved at the trial to be guilty of corrupt practices, may name them. However before the Tribunal names them, the Tribunal must follow the procedure prescribed by the proviso to Section 99. In our judgment, having regard to the scheme of Section 99, no obligation is cast upon the Tribunal to name any person, if, in the light of the circumstances, the Tribunal thinks that the course is inadvisable. If the contention advanced by Mr. Chari that in every case where a corrupt practice is alleged and the Tribunal is of the view that persons other than those who are really parties to the election petition have been guilty of corrupt practice, they shall be named in the order, is to be accepted, numerous difficulties may arise, in the trial of election cases. For instance, a person who, in the view of the Tribunal, on an inquiry about a returned candidate, has been proved to be guilty of a corrupt practice may have disappeared or died. If literal meaning be ascribed to the phraseology used in Section 99, the Tribunal must issue notice even to a person who has disappeared and to serve him and then give him a hearing and before a decision is recorded as to his guilt no final order can be passed u/s 98. We do not think that the Legislature intended that the finality of the order to be passed u/s 98 must depend upon the conclusion of the inquiry which is contemplated by the proviso to Section 99. Again, by Section 99(1)(b) it is provided that the Tribunal shall fix the total amount of costs payable and specify the persons by and to whom costs shall be paid. But, if in case the Tribunal holds that no costs be paid, there will be no reason why the total amount of costs should be fixed and specified in the order. In our judgment, notwithstanding the use of the word "shall" in Section 99(1), the Legislature intended

that if the Tribunal is of the view that any persons, who are proved to be guilty of corrupt practices, should be named, it must hold inquiry for naming such persons, but if having regard to the circumstances of the case the Tribunal deems it unnecessary to name such persons in the final order, the holding of an inquiry prescribed by the proviso is not obligatory.

4. Our attention was invited to a judgment of the Supreme Court, *Raj Krushna Bose v. Binod Kanungo* [1954] S.C.J. 286, in which the Supreme Court criticized an Election Tribunal which merely declared an election void without recording a finding whether the candidate was proved to be guilty of corrupt practices. In this case, it cannot be said that the Tribunal has shirked its work or has tried to take a short-cut. The Tribunal has dealt with the case against the appellant in detail and has come to the conclusion that the appellant is guilty of corrupt practices. A finding has been recorded to that effect as required by Section 99(1)(a)(i) of the Representation of the People Act. But the Tribunal has declined for certain reasons set out by it to name persons other than the appellant who, in the opinion of the Tribunal, were guilty of corrupt practices. There is nothing in the judgment of *Raj Krushna Bose v. Binod Kanungo*, on which reliance has been placed, which supports the contention that where the Tribunal for certain reasons does not think it necessary to name persons who in its view are guilty of corrupt practices, the order passed against the returned candidate, whose election has been declared void on the ground of corrupt practice, is liable to be set aside on the score of procedural irregularity.

5. The rest of the judgment is not material to this report.