measurements of the house for effecting partition of the property, when the plaintiff raised objection, and thereafter in 1940, filed the suit. From the aforesaid facts, it is manifest that the plaintiff's right to the property was not effectively threatened by the appellant till the Commissioner came to divide the property. It was only then there was an effectual threat to his right to the suit property and the suit was filed within six years thereafter. We, therefore, hold that the suit was within time.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

S. M. BANERJI

v.

SRI KRISHNA AGARWAL

(B. P. SINHA, C.J., P. B. GAJENDRAGADKAR K. SUBBA RAO, K. C. DAS GUPTA and J. C. SHAH, JJ.)

Election Petition—Amendment of—Petition alleging improper acceptance of nomination—Amendment introducing ground of non-compliance with provisions—Whether can be allowed—Discretion of Election Tribunal—Interference by High Court in appeal—Representation of the People Act, 1951 (43 of 1951), ss. 33(3) and 100.

The appellant held an office under the Government and was dismissed from service on January 24, 1956, for a reason other than corruption or disloyalty to the State. He filed his nomination paper for election to Parliament which did not disclose any disqualifications. No objection was taken to the nomination and it was accepted without making any enquiry. After the poll the appellant was declared duly elected. The respondent filed an election petition challenging the election of the appellant on the ground, *inter alia*, that the nomination of the appellant had been improperly accepted as he was dismissed from Government service and he had failed to obtain a certificate from the Election Commission that he had not been dismissed for corruption or disloyalty to the State. After limitation for filing the petition had expired, the respondent applied to the Election Tribunal for amendment of the petition seeking to add to this ground the statement that the nomination paper was not accompanied by the prescribed certificate. The Tribunal disallowed the amendment on the ground that the amendment sought to introduce a

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new ground after the period of limitation and then dismissed the election petition holding that the appellant was qualified to stand for the election and his nomination was not improperly accepted. On appeal, the High Court held that the amendment should have been allowed as it merely asked for a clarification and not the introduction of a new ground and consequently it set aside the order of the Tribunal and directed a retrial of the issue involved. The appellant obtained special leave and appealed.

Held, that the amendment could not be allowed as it sought to introduce a new ground in the petition after the period of limitation. The ground taken in the petition was that there was an improper acceptance of the nomination covered by s. 100(1)(d)(i) of the Representation of the People Act, 1951. But there was no improper acceptance of the nomination for the nomination paper *ex facie* did not disclose any defect or disqualification. There being no subsisting prayer seeking to raise the ground under s. 100(1)(d)(iv) for non-compliance with the provisions of s. 33(3) of the Act, the amendment was foreign to the scope of the enquiry under the ground covered by s. 100(1)(d)(i).

Durga Shankar Mehta v. *Thakur Raghuraj Singh*, [1955] 1 S.C.R. 267 and *Harish Chandra Bajpai* v. *Triloki Singh* [1957] S.C.R. 370, followed.

Veluswami v. *Raja Nainar*, A.I.R. 1959 S.C. 422, referred to.

There was no jurisdiction in the High Court to interfere with the discretion of the Election Tribunal refusing to allow the amendment after the entire petition had been disposed of. It is undesirable for an appellate Court to interfere with the order of a subordinate Tribunal made in the exercise of its discretion without exceeding the limits of its powers, unless it has acted perversely or has taken a view which is clearly wrong.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 301 of 1959.

Appeal by special leave from the judgment and order dated December 10, 1958, of the Allahabad High Court, in First Appeal No. 382 of 1958, arising out of the judgment and order dated August 6, 1958, of the Election Tribunal, Kanpur, in Election Petition No. 284 of 1957.

N. C. Chatterjee, R. K. Garg, S. C. Agarwal, D. P. Singh, V. A. Sayid Muhammad, Janardan Sharma and *M. K. Ramamurthi*, for the appellant.

A. V. Viswanatha Sastri and *K. P. Gupta*, for the respondent.

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1959. November 20. The Judgment of the Court was delivered by

SUBBA RAO J.—This appeal by special leave is directed against the judgment of the High Court of Judicature at Allahabad, setting aside that of the Election Tribunal, Kanpur, dismissing the petition filed by the respondent for setting aside the election of the appellant as a member of the Parliament from the Kanpur constituency.

In February-March 1957, elections were held to fill up a parliamentary seat from the single-member constituency No. 331, Kanpur. Sri S. M. Banerji, Sri Suraj Prasad and four others were candidates for the said election. The said persons filed their nomination papers between 19th and 29th January, 1957. The appellant was employed as Supervisor 'A' Grade at the Government Ammunition Factory, Kirkee, and was dismissed from service on January 24, 1956, for a reason other than corruption or disloyalty to the state; and he was duly qualified to stand for the election. He also filed his nomination paper within the prescribed time and *ex facie* it complied with all the provisions of the Representation of the People Act, 1951 (43 of 1951), as amended by Act XXVII of 1956, (hereinafter called the Act), and did not disclose any disqualifications. The Returning Officer held scrutiny of the nomination papers on February 1, 1957. As no objection was taken to the appellant's nomination, the Returning Officer accepted it under s. 36 of the Act without making any enquiry. The polling took place on March 6, 1957, and the result was declared on March 13, 1957. The appellant having secured the largest member of votes, was declared duly elected. On April 24, 1957, the respondent, who is one of the voters in the said constituency, presented a petition before the Election Commission, New Delhi, praying that the election of the appellant be declared void. In the petition he alleged ten grounds to sustain his petition. The Election Commission constituted an Election Tribunal in the manner prescribed by the Act and referred the petition to the said Tribunal for trial. On July 17, 1957, i.e., after the prescribed period

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of limitation of 45 days had expired, the respondent filed an application for amendment of the election petition. The amendments sought to be made in the election petition were as follows:

"(a) In paragraph No. 5 clause 'i', figure '9' between the words 'under section' and 'clause' is a typing mistake for figure '33'. In place of figure (9) figure '33' be substituted.

(b) In paragraph No. 5(d) at the end of the paragraph, the following sentence be added:

"The nomination paper of the respondent presented before the Returning Officer was not accompanied by a certificate of the Election Commission to the effect that he has not been dismissed for disloyalty or corruption. The improper acceptance of the nomination paper being that of the returned candidate, there is a presumption that the result of the election has been materially affected"."

On August 3, 1957, the respondent filed another application for amendment seeking the second amendment in an abbreviated form. The proposed amendment was as follows:

"(b) In paragraph No. 5(d) at the end of paragraph, the following sentence be added in the petition:

"and such a certificate did not accompany the nomination paper of the respondent and the acceptance of his nomination paper materially affected the result of the election."

By an order dated August 12, 1957, the Election Tribunal dismissed the petition on the ground that the amendments sought to introduce a new ground after the prescribed period of limitation, and therefore it had no power to allow the same. After dismissing the application, the Tribunal took up the main petition for disposal and, after recording the findings on the issues raised, dismissed the same with costs. Against the said judgment the respondent preferred an appeal under s. 116A of the Act to the High Court. Before the High Court the learned Counsel for the respondent withdrew the prayer for amendment of

sub-paragraph (1) of paragraph (5) of the election petition and confined his relief only to the amendment asked for in paragraph 5(d) of the election petition, i.e., he sought to bring in the amendment under the head "improper acceptance of the nomination paper". The High Court found, on the construction of the pleadings, that the allegations found in the original petition were sufficient to bring in the case under s. 100(1)(d)(i) of the Act i.e., under the head "improper acceptance", and, therefore, the amendment asked for was only a clarification but not an introduction of a new ground: in the result, the High Court set aside the order of the Tribunal and directed it to decide the issues that arose out of the averment made in the amended para. 5(d) of the election petition. The present appeal was filed by special leave against the said judgment of the High Court.

The contentions of the learned Counsel, Mr. N. C. Chatterjee, for the appellant may be briefly put thus: The ground for relief in the election petition was based on improper acceptance of the appellant's nomination within the meaning of s. 100(1)(d)(i) of the Act, and no alternative ground under sub-cl.(iv) of cl.(d) s. 100(1) was alleged. There was proper acceptance of the nomination paper and, therefore, the High Court or the Tribunal had no power to introduce by amendment a new ground, namely, that the result of the election had been materially affected by the non-compliance with the provisions of the Act, and particularly when the ground based upon s. 33 of the Act was given up by the respondent.

He relies upon for the first proposition on the decision of this Court in *Durga Shankar Mehta* v. *Thakur Raghuraj Singh* (1) and for the second on the decision of this Court in *Harish Chandra Bajpai* v. *Triloki Singh* (2).

Mr. A. V. Viswanatha Sastry, the learned Counsel for the respondent, contends that the said two decisions were wrongly decided and require reconsideration, and that, in any event, the amendment asked for clearly falls within the scope of the later decision. He

(1) [1955] 1 S.C.R. 267. (2) [1957] S.C.R. 370.

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further contends that, on a fair reading of the relevant allegations in the petition as originally presented, it would be clear that the respondent stated all the necessary facts to sustain the ground he had taken in the amendment petition, and that by the amendment he was only seeking to clarify the said ground. In any view, he argues that the appellate Court on a careful construction of the pleadings has held that the petition in substance disclosed the said ground; and the question of correctness of the said decision does not legitimately fall within the discretionary jurisdiction of this Court under Art. 136 of the Constitution.

At the outset the relevant provisions of the Act may be noticed. The said provisions read:

S. 9 (3): "If any question is raised as to whether a person who, having held any office referred to in clause (f) of section 7, has been dismissed is disqualified under that clause for being chosen as a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State, the production of a certificate issued in the prescribed manner by the Election Commission to the effect that such person has not been dismissed for corruption or disloyalty to the State shall be conclusive proof that he is not disqualified under that clause."

S. 33 (3): "Where the candidate is a person who, having held any office referred to in clause (f) of section 7, has been dismissed and a period of five years has not elapsed since the dismissal, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the State."

S. 36: "(1) On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer of each candidate, and one other person duly authorized in writing by each candidate, but no other person, may attend at such

time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.

(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination, and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds :—

(a) * * *

(b) that there has been a failure to comply with any of the provisions of section 33 or section 34; or

(c) * * *

S. 100 : "(1) Subject to the provisions of sub-section (2), if the Tribunal is of opinion—

* * *

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance of any nomination, or

* * *

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

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

The foregoing provisions, so far relevent to the present enquiry, may be summarised thus: If a candidate has been dismissed from Government service and a period of five years has not elapsed since dismissal, he will have to file along with the nomination paper a certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the State. If it has not been done, the Returning Officer, either *suo motu* or on objections raised by the opposite party, has to reject the nomination. If the nomination paper does not disclose any such defect and if the

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Returning Officer has no knowledge of that fact, he has no option but to accept the nomination. The Returning Officer may improperly accept a nomination paper though it discloses the said defect and though an objection is raised to its reception on that ground. Section 100(1)(d)(i) of the Act deals with improper acceptance of any nomination and s. 100(1)(d)(iv) permits an attack on the ground, among others, of non-compliance with the provisions of the Act.

Before we consider the contentions of the parties, it would be convenient to appreciate the true scope of the two decisions of this court in the light of the arguments advanced by the learned Counsel. The first decision is in *Durga Shankar Mehta* v. *Thakur Raghuraj Singh* (1). This decision turns upon the provisions of sub-s. (1)(c) and sub-s. (2)(c) of s. 100 of the Representation of the People Act, 1951 before it was amended by Act XXVII of 1956. Sub-s. (1)(c) and sub-s. (2)(c), in so far as they are material to the present discussion correspond to s. 100(1)(d)(i) and s. 100(1)(d)(iv) respectively of the amended Act. This case arose out of an election held in December, 1951, for the double-member Lakhnadon Legislative Assembly Constituency in Madhya Pradesh, one of the seats being reserved for Scheduled Tribes. The appellant and respondents 1, 3, 5 and 7 therein were duly nominated candidates for the general seat in the said constituency, while respondents Nos. 2, 4 and 6 were nominated for the reserved seat. No objection was taken before the Returning Officer in respect of the nomination of either the appellant or respondent No. 2. The appellant and respondent No. 2 were declared elected to the general and reserved seat respectively. The respondent No. 1 filed an election petition against the appellant and the other respondents for setting aside the election as wholly void. One of the allegations was that the respondent No. 2, was, at all material times, under 25 years of age and was consequently not qualified to be chosen to fill a seat in the Legislative Assembly of a State under Art. 173 of the Constitution. The Election Tribunal held that the

(1) (1955) 1 S.C.R. 267.

acceptance by the Returning Officer of the nomination of respondent No. 2 amounted to an improper acceptance of nomination within the meaning of s. 100(1)(c) of the Act, and on that ground declared that the entire election was void. The candidate, who was elected to the general seat preferred an appeal to this Court and contended that his nomination had been properly accepted by the Returning Officer and, therefore, if respondent No. 2 was not duly qualified to be elected, his election alone should be declared void on the ground that such disqualification shall fall under sub-s. (2)(c) of s. 100 and not under sub-s. (1)(c) thereof. This Court accepted the contention and in that context defined the import of "improper acceptance" within the meaning of s. 100(1)(c) of the Act. Mukherjea, J., as he then was, delivering the judgment of the Court observed at p. 277:

> "If the want of qualification of a candidate does not appear on the face 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 . . .".

The learned Judge proceeded to state at p. 278:

> "It would have been an improper acceptance, if the want of qulification 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

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of these things happened, the acceptance of the nomination by the Returning Officer must be deemed to be a proper acceptance."

This judgment, therefore, is a clear authority for the proposition that if the want of qualification does not appear on the face of the nomination paper and if no objection is raised on that ground before the Returning Officer, the acceptance of the nomination must be deemed to be a proper acceptance.

Mr. A. V. Viswanatha Sastry, the learned Counsel for the respondent, attacks the correctness of this decision. Broadly stated, his criticism is that the proceedings before the Returning Officer are summary proceedings and that the election petition is not an appeal from the order of the Returning Officer, but is an original petition seeking to set aside the election and that in such a petition the aggrieved party has the right to seek to set aside the election on all or any of the grounds mentioned in s. 100 of the Act and that, as one of the grounds is the improper acceptance of the nomination paper, he could establish by evidence that the acceptance of the nomination by the Returning Officer was in the derogation of the statutory provisions, such as those relating to the absence of qualification in the candidate or the filing of his nomination paper unaccompanied by a certificate within the meaning of s. 33(3) of the Act. In support of this contention reliance is placed upon another decision of this Court in *Veluswami* v. *Raja Nainar* (1). The point raised and decided in that case was whether an enquiry before the Election Tribunal was not restricted to the material placed before the Returning Officer relating to a ground, but all evidence bearing on that ground could be adduced before that Tribunal. There unlike here, at the time of scrutiny of the nominations objection was taken to the nomination of the candidate on the ground that he was the Head Master of the National Training School, Tiruchendur, which was a Government-aided school, and therefore he was disqualified under s. 7, cls. (d) and (e) of the Act. The Returning

(1) A.I.R. 1959 S.C. 422.

Officer upheld the objection. In a petition to set aside the election, the returned candidate pleaded that the candidate whose nomination was rejected was not qualified to be chosen not merely on the ground put forward before the Returning Officer but also on other grounds. This Court held that it is open to a party to put forward all grounds in support or negation of the claim subject only to such limitations as may be found in the Act, notwithstanding that some of the grounds were not taken before the Returning Officer. The reason for the decision is found at p. 426 and it reads :

> "An election petition is an original proceeding instituted by the presentation of a petition under s. 81 of the Act. . . . . All the parties have the right to adduce evidence and that is of the essence of an original proceeding as contrasted with a proceeding by way of appeal. That being the character of the proceedings, the rule applicable is that which governs the trial of all original proceedings; that is, it is open to a party to put forward all grounds in support of or negation of the claim, subject only to such limitations as may be found in the Act."

The learned Judge elaborated the point at a subsequent stage of the judgment thus :

> "The enquiry which a returning officer has to make under S. 36 is summary in character. He may make "such summary enquiry, if any, as he thinks necessary"; he can act *suo motu*. Such being the nature of the enquiry, the right which is given to a party under S. 100(1)(c) and S. 100(1)(d)(i) to challenge the propriety of an order of rejection or acceptance of a nomination paper would become illusory, if the Tribunal is to base its decision only on the materials placed before the returning officer."

When the attention of the Court was invited to the decision in *Durga Shankar Mehta* v. *Thakur Raghuraj Singh* (1), the Court distinguished that decision in the following manner :

> "This is not a direct pronouncement on the point now in controversy, and that is conceded."

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The two decisions can stand together and they deal with two different situations: in the former, no objection was raised at all to the nomination, while in the latter an objection was raised on the ground of disqualification; but in the election petition additional grounds of disqualification were alleged and sought to be proved: one is concerned with a case of improper acceptance and the other with a case of improper rejection. Though some of the observations in the later decision may well have been advanced to come to a contrary conclusion in the earlier decision, Venkatarama Ayyar, J., who was party to both the decisions, distinguished the earlier one on the ground that it was not a direct pronouncement on the question raised in the later. The earlier decision is that of five Judges but the later is of three Judges. The learned Judges, who decided the later case, did not see any conflict between their decision and that of the earlier one. Though there is some force in the argument advanced by Mr. A. V. Viswanatha Sastry, and, if it were *res integra*, some of us might be inclined not to agree with the reasoning and the conclusion of the earlier judgment, this Court is bound by its earlier decision and we do not see any justification to refer the question to a larger bench, particularly as we have come to the conclusion that the High Court was not justified in interfering with the order passed by the Tribunal in its discretion disallowing the material amendment.

The second case is a decision of four Judges and it defines the powers of the Election Tribunal in the matter of amendment of pleadings. This decision also turns upon the relevant provisions of Act 43 of 1951 before it was amended by Act 27 of 1956. Section 83(3) of the Act before the amendment corresponds to s. 90(5) of the amended Act. In other respects, so far as it is material to the question raised, no change has been introduced in the other relevant sections. In this case, the respondent in the appeal filed an election petition challenging the election of the appellants to the U.P. Legislative Assembly on the ground that they had committed corrupt practices, the material

allegations being, (i) that the appellants "could in the furtherance of their election enlist the support of certain Government servants", and (ii) that the appellant No. 1 had employed two persons in excess of the prescribed number for his election purposes. No list of particulars of corrupt practices was attached to the petition. Long after the period of limitation prescribed for the filing of election petitions, the respondent applied for amendment of his petition by adding the names of certain village Headmen (Mukhias) as having worked for the appellants and later on becoming their polling agents. The Election Tribunal allowed the amendment on the ground that the allegations sought to be introduced by the amendment were mere particulars of the charge already made. Holding that corrupt practice had been committed by the appellants, it declared their election void under s. 100(2)(b) of the Act. The appellants preferred an appeal against that order to this Court and contended that the Election Tribunal had no power either under s. 83(3) of the Act or under Order VI, rule 17 of the Code of Civil Procedure to allow the amendment. In that context, this Court elaborately considered the scope of the power of the Election Tribunal to amend the pleadings in an election dispute and summarized its views in the following two propositions, at p. 392:

> "(1) Under s. 83(3) the Tribunal has power to allow particulars in respect of illegal or corrupt practices to be amended, provided the petition itself specifies the grounds or charges, and this power extends to permitting new instances to be given.
>
> (2) The Tribunal has power under O. VI, r. 17 to order amendment of a petition, but that power cannot be exercised so as to permit new grounds or charges to be raised or to so alter its character as to make it in substance a new petition, if a fresh petition on those allegations will then be barred."

On the basis of those propositions this Court held that the petition as originally presented did not allege that the appellants had committed corrupt practices and, therefore, that the allegations sought to be introduced

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by the amendment, namely, that two village Headmen worked for the appellants and later on became their polling agents, so radically altered the character of the petition as originally framed as to make it practically a new petition, and so it was not within the power of the Tribunal to allow amendments of that kind. Even if the Tribunal had the power under O. VI, r. 17 of the Code of Civil Procedure to permit an amendment raising a new charge, the Court held that it did not under the circumstances exercise a sound and judicial discretion in permitting the amendment in question. It may be noticed that in that case the question turned upon the construction of s. 83, sub-ss. (2) and (3), of the Act. Though in that case this Court was concerned with the powers of an Election Tribunal to amend the petition beyond the period of limitation, the discussion of the Court covered a wider field, presumably, because the Court intended to settle the principles governing the power of Election Tribunals to amend pleadings with a view to prevent confusion and to stabilize the procedure. This Court rejected the argument that O. VI, r. 17 of the Civil Procedure Code, does not apply to election petitions. It was observed at p. 389:

> "We are accordingly of opinion that the application of O. VI, r. 17, Civil Procedure Code to the proceedings before the Tribunal is not excluded by s. 83(3)."

It was contended for the appellant in that case that even if s. 83(3) of the Act did not exclude the application of O. VI, r. 17, Civil Procedure Code, to the proceedings before the Tribunal, the exercise of the power under that rule must, nevertheless, be subject to the conditions prescribed by s. 81 for presentation of an election petition, that one of those conditions was that it should be presented within the time allowed therefor, and that accordingly, no amendment should be allowed which would have the effect of defeating that provision. After considering the English decisions on the statutory provisions which are *pari materia* with our enactments, the Court held that the Election Tribunal had no power to permit a new ground to be

raised beyond the time of limitation prescribed by s. 81 of the Act. Mr. A. V. Viswanatha Sastry contended that the learned Judges, having rightly conceded the power of the Election Tribunal to amend the pleadings under O. VI, r. 17, Civil Procedure Code, went wrong in limiting that power in the way they did, and that the reason advanced by them in limiting that power equally applies to the pleadings in a suit, for, it is said, under the Indian Limitation Act, every suit filed beyond the prescribed period of limitation shall be dismissed although limitation has not been set up as a defence. There is no doubt some force in this contention, but this argument was presumably advanced before the learned Judges and was negatived on the following ground stated at p. 392:

> "The Tribunal sought to get over this difficulty by relying on the principle well-established with reference to amendments under O. VI, r. 17 that the fact that a suit on the claim sought to be raised would be barred on the date of the application would be a material element in deciding whether it should be allowed or not but would not affect the jurisdiction of the court to grant it in exceptional circumstances as laid down in *Charan Das* v. *Amir Khan* (1). But this is to ignore the restriction imposed by s. 90(2) that the procedure of the court under the Code of Civil Procedure in which O. VI, r. 17 is comprised, is to apply subject to the provisions of the Act and the rules, and there being no power conferred on the Tribunal to extend the period of limitation prescribed, an order of amendment permitting a new ground to be raised beyond the time limited by s. 81 and r. 119 must contravene those provisions and is, in consequence, beyond the ambit of authority conferred by s. 90(2)."

This passage indicates that the learned Judges were aware of the argument now advanced and, for the reason mentioned by them, namely, that unlike a civil suit wherein the Court can extend the period of limitation in a proper case, the Tribunal has no such power, rejected the argument. We are bound by this decision,

(1) (1920) L.R. 47 I.A. 255.

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As this stage we must guard against one possible misapprehension. Courts and Tribunals are constituted to do justice between the parties within the confines of statutory limitations, and undue emphasis on technicalities or enlarging their scope would cramp their powers, diminish their effectiveness and defeat the very purpose for which they are constituted. We must make it clear that within the limits prescribed by the decisions of this Court the discretionary jurisdiction of the Tribunals to amend the pleadings is as extensive as that of a civil Court. The same well-settled principles laid down in the matter of amendments to the pleadings in a suit should also regulate the exercise of the power of amendment by a Tribunal. This aspect has not been ignored by this Court in the aforesaid decision, and the Court observed, at p. 394:

> "It is no doubt true that pleadings should not be too strictly construed, and that regard should be had to the substance of the matter and not the form."

The foregoing discussion yields the following results: (1) Sub-cls. (i) and (iv) of s. 100(1)(d) of the Act provide for two distinct grounds; the former for the case of improper acceptance of any nomination, and the latter for that of non-compliance with the provisions of the Constitution or of the Act, or of any rules or orders made under the Act; (2) 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 acceptance of the said nomination by the Returning Officer must be deemed to be proper acceptance; (3) even if there is a proper acceptance, it is open to the petitioner to question the validity of the election under s. 100(1)(d)(iv) on other grounds, namely, that the candidate whose nomination was accepted was not qualified at all or could not be deemed to be duly nominated as a candidate for the reason that he did not comply with the provisions of s. 33(3) of the Act; and (4) if the second ground in substance is not taken in the petition—substance is more important than form—the Tribunal has no power after the prescribed period of limitation for the filing

of the petition to allow an amendment introducing the second ground.

With this background we shall proceed to scrutinize the pleadings in the light of the rival contentions. The election petition contains seven paragraphs. The relief claimed is that the election of the appellant from the parliamentary constituency No. 331, Kanpur, be declared void. The first paragraph gives the credentials of the petitioner to enable him to file the petition. Paragraphs 2 and 3 give the sequence of events which ended in the declaration of the appellant as duly elected from the constituency to the Parliament. Paragraph 5 states that the election of the appellant is void and is liable to be set aside on the ten grounds, among others, specified therein. Paragraph 6 states that the cause of action accrued to the petitioner on or about January 29, 1957, when the nomination papers were filed for the said election, and subsequent thereto. Now coming to the grounds in sub-para-(a), (b) and (c) of para 5, it is stated that the appellant had been dismissed by Government from service on charges of disloyalty and gross misconduct on January 24, 1956, but he did not submit to the said order and filed a writ petition in the High Court at Calcutta questioning the validity of the said order, that under the circumstances, he should be deemed to be a Government servant and, therefore, he was not competent to be nominated as a candidate for election to Parliament. Sub-paragraph (d) is the most important paragraph to the present enquiry and therefore it may be extracted in full. It reads:

> "That apart from the above mentioned reasons the nomination paper of the respondent was also improperly accepted by the Returning Officer, in-as-much-as, the respondent having been dismissed from Government Service did not obtain a certificate in the prescribed manner from the Election Commission to the effect that he had not been dismissed for corruption or disloyalty to the State."

This sub-paragraph in clear and unambiguous terms raises the ground of improper acceptance of the nomination paper by the Returning Officer i.e., the ground

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covered by s. 100(1)(d)(i) of the Act. The reason for sustaining the said ground is stated to be that, having been dismissed from Government service, he did not obtain a certificate in the prescribed manner from the Election Commission. *Ex facie* this sub-paragraph does not refer to s. 33(3) or to the contents of that sub-section. A nomination paper may be accepted by the Returning Officer in spite of one or other of the following two defects: (i) the candidate who has been dismissed may have filed the nomination paper without its being accompanied by a certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed from service for corruption or disloyalty to the State: vide s. 33(3); and (ii) the candidate has been disqualified for being chosen as a member of Parliament: vide s. 9(3). In this sub-paragraph in support of the ground that the nomination of the appellant was improperly accepted, reference was made to the second defect and not to the first. That this must have been the intention of the respondent is also made clear from the circumstance that in sub-para (i) reference was made to the latter sub-section but not to the former. The argument that the opening words of sub-para (d), "That apart", indicate that this is a ground in addition to the ground based on the non-obtaining of a certificate in the prescribed manner, and, therefore, should only refer to the non-accompaniment of a certificate, has no force; for, sub-paras (a), (b) and (c), which precede sub-para (d) raise a different point altogether, namely, that notwithstanding the dismissal, as the appellant had filed a petition in the High Court questioning the validity of the order of dismissal, he was still a Government servant on the crucial date. Be it as it may, the important point to be noticed is that sub-paragraph (d) raises a ground under sub-cl. (i) and not under sub-cl. (iv) of s. 100(1)(d) of the Act, and even if the facts mentioned therein are disannexed from the ground, they refer only to the disqualification of the appellant to stand as a candidate for the election and not to the procedural defect covered by s. 33(3) of the Act. Sub-paragraphs (e), (f) and (g) relate to the objections

which are not material for the present inquiry. Sub-paragraph (h) contains a general statement that the appellant was disqualified to be chosen to fill the parliamentary seat. Sub-paragraph (i) specifically refers to s. 9(3) of the Act. We are not also concerned with the allegations in sub-para (j).

The foregoing analysis of the allegations in the petition so far as they are relevant to the question raised, discloses the following two circumstances: (i) the ground taken in the petition was that there was an improper acceptance of the nomination covered by s. 100(1)(d)(i) for the reason that the appellant, having been dismissed from Government service, did not obtain a certificate in the prescribed manner; and (ii) there was no ground which would fall under sub-cl. (iv) of s. 100(1)(d) of the Act, viz., that the appellant was not to be deemed to be duly nominated as a candidate as his nomination paper was not accompanied by a certificate issued in the prescribed manner by the Election Commission to the effect that he had not been dismissed for corruption or disloyalty to the State. In the application for amendment which was filed after the prescribed period of limitation, two amendments were asked for—one to sub-para (i) of para 5 and the other to sub-para (d) thereof. The former was for substituting the figure "33" for the figure "9" and the latter to introduce a statement in that prargraph to the effect that the nomination paper was not accompanied by the prescribed certificate. The subsequent petition, as we have already noticed, sought for the same amendment to para (5)(d) in an abbreviated form. But what is important to notice is that even the proposed amendment sought to bring in the said statement under the ground of "improper acceptance" and not under s. 100(1)(d)(i) of the Act. The appellant filed a counter-affidavit opposing both the amendments. The Tribunal noticed the judgment of this Court and applied the principles laid down therein to the facts before it. It also considered in detail the allegations in the petition and arrived at the following findings: (i) "All what has been urged throughout is that the respondent was a Government servant or a

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dismissed Government servant and no certificate having been obtained from the Election Commission about his dismissal not being for corruption or disloyalty, he was not eligible for election as a candidate to the House of the People", and (ii) "sub-section (3) of s. 33 which is a provision laying down a certain procedure was never in the mind of the petitioner while the petition was being drafted or prepared, and that is why we find no reference to the certificate not being filed with the nomination paper." He concludes his discussion thus :

> "It would thus be seen that the amendment sought by the petitioner offends against the conditions laid down by their lordships of the Supreme Court in *Harish Chandra Bajpai* v. *Triloki Singh*(1) relating to the application of Order VI, rule 17 of the Civil Procedure Code to proceedings before an Election Tribunal. It has been specifically laid down that an amendment will not be allowed if the effect of it be to permit a new ground or charge to be raised or to so alter its character as to make it in substance a new petition. That would exactly be the effect of the amendment sought by the petitioner . . .".

It will be seen, therefore, that the Tribunal has put before itself the correct principles governing its powers of amendment and found, on a construction of the allegations in the petition, that by the proposed amendment, the respondent was seeking to introduce a new ground after the period of limitation. This order was made by the Tribunal in the exercise of its discretion in strict conformity with the principles laid down by this Court.

The next question is whether the High Court was justified in setting aside that order. It was argued before the High Court that the amendment application was wrongly refused and that even as the election petition stood without the amendment it contained sufficient averment of facts to make out a ground under s. 100(1)(d)(i) of the Act, and in the alternative that it made out a ground under s. 100(1)(d)(iv) of the

(1) (1957) S.C.R. 370.

Act. Before the High Court the learned Counsel for the respondent withdrew his prayer for the amendment of sub-para (i) of para 5 of the election petition; with the result the only paragraph on which reliance was placed by the respondent was sub-para (d) of para 5. The High Court also noticed the judgment of this Court in *Harish Chandra Bajpai's Case* (1) and posed the following question for its decision:

> "The important thing is whether in substance the petition contains the particular ground of attack or not."

It proceeded to consider whether the original sub-para (d) of para 5 contained any ground and if so, what?: and whether a new ground was sought to be raised in the garb of an amendment. After reading the said sub-para, it expressed the view that the ground, in its opinion, would fall under s. 100(1)(d)(i) of the Act; and that conclusion was based on the allegations in the said sub-para that there was an improper acceptance of the nomination and that the appellant had not obtained the necessary certificate from the Election Commission. It has stated that in the circumstances of the case the respondent meant to state that, as the certificate had not been obtained, it could not have accompanied the nomination paper. The learned Judges of the High Court concluded their discussion thus:

> "We also think that the Tribunal should have permitted the amendment because the ground of attack had been clearly made out and the only mistake committed by the appellant was not to put it in proper words;"

In short, the view of the High Court was that sub-para (d) contained the ground under s. 100(1)(d)(i) of the Act and what was asked for by way of amendment was only a clarification of that ground.

The High Court, in our view, has missed the real point raised before it. We have already pointed out that, in view of the judgment of this Court in *Durga Shankar Mehta's Case* (2), there was no improper

(1) (1957) S.C.R. 370. (2) (1955) 1 S.C.R. 267.

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acceptance of the nomination paper by the Returning Officer, for, the nomination paper *ex facie* did not disclose any defect or disqualification. The petition for amendment asked for inserting a statement in sub-para (d) of para 5 under the ground of improper acceptance of the nomination paper, viz., that the prescribed certificate did not accompany the nomination paper of the candidate, and that at the appellate stage the other proposed amendment based upon s. 33(3) of the Act was given up. The result was that no relief for raising the ground under s. 100(1)(d)(iv) had survived and that the ground under s. 100(1)(d)(i) was not open to the respondent. In the circumstances, the amendment would be foreign to the scope of the enquiry under the ground governed by s. 100(1)(d)(i) of the Act.

That apart, could it be said that the High Court was justified in the circumstances of this case to interfere with the discretion of the Tribunal ? An appellate Court has no doubt an unquestioned right to review or modify the order made by a subordinate Court; but it is undesirable to do so when the subordinate Court made an order in the exercise of its discretion without exceeding the limits of its power, unless it acted perversely or unless the view taken by it is clearly wrong. In this case, the Election Tribunal neither exceeded its powers nor acted perversely; and indeed its order advanced the cause of justice in that it helped to maintain the election of a candidate who was duly qualified and who secured a large majority of votes over all the rival candidates. We have carefully considered the reasons set out in the judgment of the High Court in support of its decision that the amendment should have been allowed by the Tribunal, and in our opinion the said reasons are unsatisfactory and on some points farfetched. In the circumstances, we do not see any justification, after the entire petition was disposed of, for the High Court to interfere with the said discretion. We therefore set aside the order of the High Court.

It is represented to us by the learned counsel for the appellant that in the High Court the only

point argued was that the amendment should have been allowed and no other point was pressed. The learned counsel for the respondent does not accept this position. In the circumstances, we have no other option but to remand the case to the High Court for disposal in accordance with law. The respondent will pay the costs to the appellant.

Appeal allowed.

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ALL INDIA STATION MASTERS' & ASSISTANT STATION MASTER'S ASSOCIATION & OTHERS

v.

GENERAL MANAGER, CENTRAL RAILWAYS AND OTHERS

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November 20

(B. P. SINHA, C.J., P. B. GAJENDRAGADKAR, K. SUBBA RAO, K. C. DAS GUPTA and J. C. SHAH, JJ.)

State Employment—Equality of opportunity in matters of promotion—Concept and meaning of—Constitution of India, Art. 16(1).

The Roadside Station Masters of the Central Railway challenged the constitutionality of promotion for guards to higher grade station masters' posts. The petitioners contended that the channel of promotions amounted to a denial of equal opportunity as between Roadside Station Masters and Guards in the matter of promotion and thus contravened the provisions of Art. 16(1) of the Constitution, as taking advantage of this channel of promotions, guards become station masters at a very much younger age than Roadside Station Masters and thus block the chances of higher promotion to Roadside Station Masters who reach the scale when they are much older.

The appellant contended that Roadside Station Masters and Guards really formed one and the same class of employees.

Held, that the Roadside Station Masters belong to a wholly distinct and separate class from Guards and so there can be no question of equality of opportunity in matter of promotion as between the Roadside Station Masters and Guards.

The question of denial of equal opportunity requires serious consideration only as between the members of the same class. The concept of equal opportunity in matters of employment, does not apply to variations in provisions as between members of different classes of employees under the State. Equality of opportunity in matters of employment can be predicated only