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# **FACULTY OF JURIDICAL SCIENCES**

**COURSE: BALLB/BBALLB**

**SEMESTER SUBJECT:**

**ELECTION LAWS**

**SUBJECT CODE: BALLB**

**1004/BBALLB 1004**

**NAME OF FACULTY: PANKHURI SRIVASTAVA**

# Lecture-33



## LECTURE 33: TRIAL OF PETITIONS: OTHER PROVISIONS

### **94. Secrecy of voting not to be infringed.**

No witness or other person shall be required to state for whom he has voted at an election: 1 [Provided that this section shall not apply to such witness or other person where he has voted by open ballot.]. 95. Answering of criminating questions and certificate of indemnity.—(1) No witness shall be excused from answering any question as to any matter relevant to a matter in issue in the trial of an election petition upon the ground that the answer to such question may criminate or may tend to criminate him, or that it may expose or may tend to expose him to any penalty or forfeiture: Provided that— (a) a witness, who answers truly all questions which he is required to answer shall be entitled to receive a certificate of indemnity from 2 [the High Court]; and (b) an answer given by a witness to a question put by or before 1 [the High Court] shall not, except in the case of any criminal proceeding for perjury in respect of the evidence, be admissible in evidence against him in any civil or criminal proceeding. (2) When a certificate of indemnity has been granted to any witness, it may be pleaded by him in any court and shall be a full and complete defence to or upon any charge under Chapter IXA of the Indian Penal Code, 1860 (45 of 1860), or Part VII of this Act arising out of the matter to which such certificate relates, but it shall not be deemed to relieve him from any disqualification in connection with an election imposed by this Act or any other law.

### **98. Decision of the High Court.**

At the conclusion of the trial of an election petition 2 [the High Court] 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.

### **100. Grounds for declaring election to be void.**

(1) Subject to the provisions of sub-section (2) if [the High Court] 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 9[or the Government of Union Territories Act, 1963 (20 of 1963)]; or (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; or (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) by the improper acceptance or any nomination, or (ii) by any corrupt practice committed in the interests of the returned candidate [by an agent other than his election agent], or (iii) by the improper reception, refusal or rejection of any vote

or the reception of any vote which is void, or (iv) by any non—compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, [the High Court] shall declare the election of the returned candidate to be void.] [(2)] If in the opinion of [the High Court], a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but [the High Court] is satisfied— (a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and [without the consent], of the candidate or his election agent; (c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and (d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then [the High Court] may decide that the election of the returned candidate is not void

**102. Procedure in case of an equality of votes.**

If during the trial of an election petition it appears that there is an equality of votes between any candidates at the election and that the addition of a vote would entitle any of those candidates

(a) any decision made by the returning officer under the provisions of this Act shall, in so far as it determines the question between those candidates, be effective also for the purposes of the petition;

(b) in so far as that question is not determined by such a decision [the High Court] shall decide between them by lot and proceed as if the one on whom the lot then falls had received an additional vote.