N. T. Veluswami Thevar

Vs

G. Raja Nainar and Others

Civil Appeals Nos. 231 and 232 of 1958

(T. L. Venkatarama Ayyar, P. B. Gajendragadkar, A. K. SarkarJJ)

24.11.1958

JUDGMENT

VENKATARAMA AIYAR, J. -

These appeals raise a question of considerable importance as to the scope of an enquiry in an election petition wherein election is called in question under section 100(1)(c) of the Representation of the People Act, 1951 (43 of 1951), on the ground that a nomination paper had been improperly rejected.

The facts are that during the general elections which were held in 1957 six persons including the appellant, Veluswami Thevar, the second respondent Chellapandian, and the fourth respondent, Arunachalam, were nominated for election to the Legislative Assembly of the State of Madras from Alangulam Constituency in the District of Tirunelveli. At the time of the scrutiny which was on February 1, 1957, Chellapandian raised an objection to the nomination of Arunachalam on the ground that he was the Head Master of the National Training School, Tiruchendur, which was a Government-aided school, and that he was therefore disqualified under section 7, clauses (d) and (e) of the Representation of the People Act, 1951 (hereinafter referred to as the Act), as holding an office of profit under the Government. In upholding this objection, the returning officer observed :

> "Sri S. Arunachalam is not present at the time of scrutiny of nominations nor any authorised agent of his could take notice of the objection and file a reply. In view of the objection which has not been cleared by Sri S. Arunachalam by satisfying me that he is not holding an office of profit in a concern in which the State Government has financial interest, the objection is upheld and Sri S. Arunachalam is disqualified under Sections 7(d) and (e) of Act 43 of 1951. Accordingly his nomination is rejected."

The five nomination papers were accepted; two of the candidates subsequently withdrew from the election; the other three went to the polls, and on March 10, 1957, the appellant who secured the largest number of votes was declared elected.

On April 18, 1957, Raja Nainar, the first respondent, who was not a candidate but a voter filed E.P. No. 109 of 1957 praying that the election of the appellant be declared void on the ground that the rejection of the nomination paper of Arunachalam was improper, because he had ceased to be a Head Master at the time of his nomination, and that further the institution was a private one. The appellant filed a written statement in which he pleaded that Arunachalam was not qualified to be chosen not merely on the ground put forward by Chellapandian before the returning officer but also

on the grounds that he was interested as a partner in contracts for the execution of works for the Government, and that further he had entered into an agreement with the District Board, Chittoor, to serve as a teacher in that Board, and that his nomination paper was therefore rightly rejected. Raja Nainar then came out with the application, I.A. No. 5 of 1957, out of which the present proceedings arise, to strike out the additional grounds of disqualification raised in the statement of the appellant on the ground that the Tribunal had no jurisdiction to enquire into any ground of disqualification which was not taken before the returning officer, and that accordingly the new grounds put forward by the appellant should be struck out.

By its order dated August 17, 1957, the Tribunal held that the question to be decided by it was whether there was a valid nomination paper, and that to decide that, it could go into grounds other than those which were put forward before the returning officer, and, in that view, dismissed the application. The correctness of this order was challenged by Raja Nainar in two Writ Petitions Nos. 675 and 676 of 1957, preferred under Article 226. Therein, he repeated his contention that it was not competent to the Tribunal to enquire into any but the grounds which had been put forward before the returning officer, and prayed that a writ of certiorari be issued to quash the order in I.A. No. 5 of 1957 and a writ of prohibition, to restrain the Tribunal from enquiring into the new grounds raised by the appellant.

These applications were heard by a Bench of the Madras High Court consisting of Rajagopalan and Rajagopala Ayyangar, JJ., who upheld the contention of the Petitioner, and stated their conclusion in these terms :

> "We are clearly of opinion that the enquiry before the Tribunal must be restricted to the objections which the returning officer had to consider and decide, but not necessarily to the material placed before the returning officer at the stage of the summary enquiry. The Tribunal has jurisdiction to adjudicate upon the truth and validity of those objections on relevant material, even if that material be other than that placed before the returning officer. The Tribunal has no jurisdiction to investigate the truth or validity of the objections which were not put forward before the returning officer, and which he had therefore no occasion to consider. Once again we have to point out that we are discussing only the position of a candidate whose nomination was rejected, and not, for instance, that of a returned candidate."

A further objection was also taken before the learned judges that as the decision of the Election Tribunal was open to appeal under section 116A of the Act, the court should, in exercise of its discretion under Article 226, decline to entertain writ petitions against interlocutory orders. But the learned judges held that as the Tribunal had no jurisdiction to entertain grounds other than those which were put forward before the returning officer, writs could issue under Article 226. In the result, they quashed the order of the Election Tribunal in I.A. No. 5 of 1957, and issued a writ of mandamus directing it to dispose of the application afresh in accordance with law as laid down in the judgment. It is against this judgment that the present appeals have been preferred on leave granted by this Court under Article 136, and the point that arises for decision is whether in an election petition questioning the propriety of the rejection of a nomination paper under section 100(1)(c) of the Act, it is open to the parties to raise grounds of disqualification other than those put forward before the returning officer.

It will be convenient at this stage to refer to the provisions of the Act bearing on this question. Section 32 of the Act provides that,

"Any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat under the provisions of the Constitution and this Act."

Under section 33(1), the candidate is to deliver to the returning officer a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer. Section 33(4) enacts that,

"On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls :

Provided that the returning officer shall permit any clerical or technical error in the nomination paper in regard to the said names or numbers to be corrected in order to bring them into conformity with the corresponding entries in the electoral rolls; and where necessary, direct that any clerical or printing error in the said entries shall be overlooked."

Section 35 provides inter alia that the returning officer shall cause to be affixed in some conspicuous place in his office a notice of the nomination containing descriptions similar to those contained in the nomination paper both of the candidate and of the proposer. Section 36, omitting what is not material, is as follows :

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) that the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely :-

Articles 84, 102, 173 and 191,

Part II of this Act,

or

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

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

#.....##

(5) The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control :

Provided that in case an objection is made the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.

(6) The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection."

Then, we have section 100(1)(c), the construction of which is the main point for determination. It is as follows :

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

(c) that any nomination has been improperly rejected;.....

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

Now, the whole controversy between the parties is as to what the expression "improperly rejected" in section 100(1)(c) means. According to the appellant, when the nomination paper of a candidate who is under no such disqualification as is mentioned in section 36(2) has been rejected, that is improper rejection within section 100(1)(c). According to the respondent, when the nomination paper of a candidate is rejected by the returning officer on the ground that he is subject to a specified disqualification, the rejection is improper, if it is found that that disqualification does not exist. If the former view is correct, then the scope of an enquiry before the Tribunal must extend to all matters which are mentioned in section 36(2), and if the latter, then it must be limited to determining whether the ground on which the returning officer has rejected the nomination is well-founded. Now, to decide what the expression "improperly rejected" in section 100(1)(c) precisely imports, it is necessary to examine the relevant provisions of the Act bearing on the question and the setting of the above section therein. Under section 32 of the Act, any person may be nominated as a candidate for election if he is duly qualified under the provisions of the Constitution and the Act. Section 36(2) authorises the returning officer to reject any nomination paper on the ground that he is either not qualified, that is, under sections 3 to 7 of the Act, or is disqualified under the provisions referred to therein. If there are no grounds of rejecting a nomination paper under section 36(2), then it has to be accepted, and the name of the candidate is to be included in a list. Vide section 36(8). Then, we come to section 100(1)(c) and section 100(1)(d)(i), which provide a remedy to persons who are aggrieved by an order improperly rejecting or improperly accepting any nomination. In the context, it appears to us that the improper rejection or acceptance must have reference to section 36(2), and that the rejection of a nomination paper of candidate who is qualified to be chosen for election and who does not suffer from any of the disqualifications mentioned in section 36(2) would be improper within section 100(1)(c), and that, likewise, acceptance of a nomination paper of a candidate who is not qualified or who is disqualified will equally be improper under section

100(1)(d)(i). Section 32 confers a substantive right on a candidate to be chosen to the legislature subject only to the limitations enacted in Articles 84, 102, 173 and 191 of the Constitution and sections 3 to 7 of the Act, and sections 36 and 100 provide the machinery for the exercise and enforcement of that right. It is a sound rule of construction that procedural enactments should be construed liberally and in such manner as to render the enforcement of substantive rights effective. Readings section 100(1)(c) in the context of the whole enactment, we think that an enquiry before the Tribunal must embrace all the matters as to qualification and disqualification mentioned in section 36(2), and that it cannot be limited to the particular ground of disqualification which was taken before the returning officer.

It was contended for the respondent that the proceedings before the Tribunal are really by way of appeal against the decision of the returning officer, and that, therefore, the scope of the enquiry in the election petition must be co-extensive with that before the returning officer, and must be limited to the ground taken before him. It was argued that a decision could be said to be improper only with reference to a ground which was put forward and decided in particular manner by the returning officer, and that therefore the expression "improperly rejected" would, in its true connotation, restrict the scope of the enquiry before the Tribunal to the ground taken before the returning officer. We are unable to agree with this contention. The jurisdiction which a Tribunal exercises in hearing an election petition even when it raises a question under section 100(1)(c) is not in the nature of an appeal against the decision of the returning officer. An election petition is an original proceeding instituted by the presentation of a petition under section 81 of the Act. The respondents have a right to file written statements by way of reply to it; issues have to be framed, and subject to the provisions of the Act, the provisions of the Code of Civil Procedure regulate the trail of the petition. 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.

It should be noted in this connection that if a petition to set aside an election on the ground of improper rejection of a nomination paper is in the nature of an appeal against the decision of the returning officer, then logically speaking, the decision of the Tribunal must be based only on the materials placed before the returning officer given with respect to the ground which was urged before him, and no fresh evidence could be admitted before the Tribunal except in accordance with O. 41, R. 27. The learned judges in the court below, however, observe that though the enquiry before the Tribunal is restricted to the particular ground put forward before the returning officer, it is not restricted to the material placed before him, and that all evidence bearing on that ground could be adduced before the Tribunal. This, in our view, is quite correct. The enquiry which a returning officer has to make under section 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 section 100(1)(c) and section 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.

It was contended for the respondent that even with reference to the ground taken before the returning officer, no evidence other than what was placed before him could be brought before the Tribunal, and he relied on the following observations of the learned judges in Charanjit Lal v. Lehri Singh (A.I.R. 1958 Punj. 433, 435) :

> "Whether a nomination has been improperly rejected or not, has to be considered in relation to the state of evidence before the returning officer at the time of the scrutiny. The testimony of the returning officer shows that he rejected the nomination, because it did not appear to him that on the question of age the candidate Shri Pirthi was qualified to stand for election."

There, a nomination paper had been rejected by the returning officer on the ground that the candidate did not appear to possess the age qualification required by Article 173. The correctness of this order was challenged in an election petition. Evidence was taken as to the age of the candidate in this petition, and eventually it was held that the order of the returning officer was right. In the order of rejection, the returning officer also stated :

> "The nomination is rejected as the age is not mentioned in the nomination paper. Neither the candidate nor the proposer or any person duly authorised on his behalf is present to testify to his age."

Now, the argument before the High Court was that the failure to mention the age in the nomination paper was a formal defect which should have been condoned under section 36(4) of the Act. The learned judges held that the defect was not merely one of failure to mention the age but of want of the requisite qualification in age, and that that could not be cured under section 36(4). In this context, the observations relied on could not be read as meaning that no evidence could be adduced even in respect of a ground which was urged before the returning officer, as, in fact, evidence was taken before the Tribunal and a finding given, and if they meant what the respondent suggests they do, we do not agree with them. It is to be noted that in many of the cases which came before this Court, as for example, Durga Shankar Mehta v. Thakur Raghuraj Singh and others ([1955] 1 S.C.R. 267), the finding of the Tribunal was based on fresh evidence admitted before it, and the propriety of such admission was never questioned. And if the true position is, as we have held it is, that it is open to the parties to adduce fresh evidence on the matter in issue, it is difficult to imagine how the proceedings before the Tribunal can be regarded as in the nature of appeal against the decision of the returning officer.

In support of his contention that it is only the ground that is urged before the returning officer that can be raised before the Tribunal, Mr. Sinha, learned counsel for the respondent, relies on the provision in section 36(6) that when a nomination paper is rejected, the returning officer should record his reasons therefor. The object of this provision, it is argued, is to enable the Tribunal to decide whether the order of the returning officer is right or not, and by implication it confines the scope of the enquiry before the Tribunal to the ground put forward before the returning officer. This contention is, in our opinion, unsound. Now, when a nomination paper is accepted, section 36(6) does not require that any reason should be recorded therefore. If the contention of the respondent is right, it would follow that acceptance of a nomination paper can never be questioned. But that would be against section 100(1)(d)(i), and it must therefore be held that an acceptance can be questioned on all the grounds available under section 36(2). Section 100(1)(d)(i) deals with improper acceptance of a nomination paper, and if the word "improper" in that provision has reference to the matters mentioned in section 36(2), it must have the same connotation in section 100(1)(c) as well. The word "improper" which occurs in both section 100(1)(c) and section 100(1)(d)(i) must bear the same meaning in both the provisions, unless there is something in the context to the contrary, and none such has been shown.

There is another difficulty in the way of accepting this argument of the respondent. A candidate may

be subject to more than one disqualification, and his nomination paper may be questioned on all those grounds. Supposing that the returning officer upholds one objection and rejects the nomination paper on the basis of that objection without going into other objections, notwithstanding that under section 36(2) he has to decide all the objections, is it open to the respondents in the election petition to adduce evidence on those objections ? According to the respondent, it is not, so that if the decision of the returning officer on the objection on which he rejected the nomination paper is held to be bad, the Tribunal has no option but to set aside the election under section 100(1)(c), even though the candidate was, in fact, disqualified and his nomination paper was rightly rejected. Mr. Sinha for the respondent concedes that the result would be anomalous, but he says that the Law of Election is full of anomalies, and this is one of them, and that is no reason for not interpreting the law on its own terms. It is no doubt true that if on its true construction, a statute leads to anomalous results, the Courts have no option but to give effect to it and leave it to the legislature to amend and alter the law. But when on a construction of a statute, two views are possible, one which results in an anomaly and the other not, it is our duty to adopt the latter and not the former, seeking consolation in the thought that the law bristles with anomalies. Anomalies will disappear, and the law will be found to be simple and logical, if it is understood that when a question is raised in an election petition as to the propriety of the rejection of a nomination paper, the point to be decided is about the propriety of the nomination and not the decision of the returning officer on the materials placed before him, and that decision must depend on whether the candidate is duly qualified and is not subject to any disqualifications as provided in section 36(2).

It remains to deal with one more contention advanced on behalf of the respondent, and that is based on the following observations in Hari Vishnu Kamath v. Syed Ahmad Ishaque and others ([1955] 1 S.C.R. 1104, 1132) :

> "Under this provision [R. 47(4)], the Tribunal is constituted a court of appeal against the decision of the returning officer, and as such its jurisdiction must be co-extensive with that of the returning officer and cannot extend further."

The argument is that if the jurisdiction of the Tribunal is co-extensive with that of the returning officer, then the enquiry before it must be confined to the grounds which were urged before the returning officer. Now, the observations quoted above were made statedly with reference to R. 47, and assuming that they apply to an enquiry under section 100(1)(c), the question still remains, what is the jurisdiction of the returning officer in hearing objections to nomination papers ?

His jurisdiction is defined in section 36(2), and the Tribunal must therefore have jurisdiction to decide all the questions which can be raised under that section. The fact that a particular ground which could have been raised was not, in fact, raised before the returning officer does not put an end to his jurisdiction to decide it, and what he could have decided if it had been raised, could be decided by the Tribunal, when raised.

Mr. Ganapathy Iyer, learned counsel for the appellant, invited our attention to the decisions of the Election Tribunals on the question whether grounds other than those raised before the returning officer could be put forward in an enquiry in an election petition. They held, with one solitary exception, that it is permissible, and indeed, it is stated in Mengh Raj v. Bhimandas ([1952] 2 E.L.R. 301, 310) as settled law that the rejection of a nomination paper can be sustained on grounds not raised before the returning officer. If the legislature which must be taken to have knowledge of the law as interpreted in those decisions wanted to make a departure from it, it would have said so in clear terms, and in the absence of such an expression, it would be right to interpret section 100(1)(c)

as not intended to alter the law as laid down in those decisions.

It is now necessary to refer to the decisions which have been cited before us. In Durga Shankar Mehta's case ([1955] 1 S.C.R. 267), the election was to a double-member constituency. The appellant who obtained the largest number of votes was declared elected to the general seat and one Vasantarao, to the reserved seat. The validity of the election was challenged on the ground that Vasantarao was below the age of 25 years, and was, therefore, disqualified to stand. The Election Tribunal upheld that objection, and set aside the entire election. The decision was taken in appeal to this Court, and the point for determination was whether the election of the appellant was liable to be set aside on account of the disqualification of Vasantarao. It was held that the matter fell within section 100(2)(c) as it then stood and not under section 100(1)(c), and that the election of the appellant could not be declared void.

This is not a direct pronouncement on the point now in controversy, and that is conceded. In Vashist Narain Sharma v. Dev Chandra and others ([1955] 1 S.C.R. 509), a question was raised as to what would be "improper acceptance" within the meaning of section 100; but in the view taken by this Court, no opinion was expressed thereon.

The question now under consideration came up directly for decision before the High Court of Rajasthan in Tej Singh v. Election Tribunal, Jaipur ([1954] 9 E.L.R. 193), and it was held that the respondent to an election petition was entitled to raise a plea that the nomination of the petitioner rejected on one ground by the returning officer was defective on one or more of the other grounds mentioned in section 36(2) of the Act, and that such a plea, if taken, must be enquired into by the Election Tribunal. In Dhanraj Deshlehara v. Vishwanath Y. Tamaskar ([1958] 15 E.L.R. 260), it was observed by a Bench of the Madhya Pradesh High Court that in determining whether a nomination was improperly rejected, the Election Tribunal was not bound to confine its enquiry to the ground on which the returning officer rejected it, and that even if the ground on which the returning officer rejected the nomination could not be sustained, the rejection could not be held to be improper if the Tribunal found other fatal defects in the nomination. An unreported judgment of the Andhra Pradesh High Court in Badrivishal Pitti v. J. V. Narsing Rao (Special Appeal No. 1 of 1957) has been cited before us, and that also takes the view that in an enquiry before the Election Tribunal, it is open to the parties to support an order of rejection of a nomination paper on grounds other than those which were put forward before the returning officer. We are in agreement with these decisions.

As the question has also been raised as to the propriety of interfering in writ petitions under Article 226 with interlocutory orders passed in the course of an enquiry before the Election Tribunal, we shall express our opinion thereon. The jurisdiction of the High Court to issue writs against orders of the Tribunal is undoubted; but then, it is well settled that where there is another remedy provided, the court may properly exercise its discretion in declining to interfere under Article 226. It should be remembered that under the election law as it stood prior to the amendment in 1956, election petitions were dismissed on preliminary grounds and the correctness of the decision was challenged in applications under Article 226 and in further appeals to this Court, with the result that by the time the matter was finally decided, the life of the legislatures for which the election was held would have itself very nearly come to an end, thus rendering the proceedings infructuous. A signal example of a case of this kind is to be found in the decision reported in Bhikaji Keshao Joshi and another v. Brijlal Nandlal Biyani and others ([1955] 2 S.C.R. 428). It is to remedy this defect that the legislature has now amended the law by providing a right of appeal against a decision of the Tribunal to the High Court under section 116-A, and its intention is obviously that proceedings

before the Tribunal should go on with expedition and without interruption, and that any error in its decision should be set right in an appeal under that section. In this view, it would be a proper exercise of discretion under Article 226 to decline to interfere with interlocutory orders.

In the result, we allow the appeals, set aside the orders of the court below, and dismiss the writ petitions filed by the respondent, with costs here and in the court below.

Appeals allowed.

</html