

SUPREME COURT OF INDIA

Dev Kanta Barooah

Vs.

Kusharam Nath

C.A.No.411 of 1958

(S. R. Das, C.J.I., P. B. Gajendragadkar and K. Subba Rao, JJ.)

25.09.1959

JUDGEMENT

GAJENDRAGADKAR, J.:

1. On September 15, 1959, after this appeal was argued before us, we announced our decision that the appeal had failed and was dismissed with costs, and we stated that our judgment will follow. Accordingly the present judgment is now being delivered in the said appeal.

2. Was the nomination paper of Kusharam Nath, respondent 1, improperly rejected by the returning officer ? - that is the short question which falls to be considered in this appeal by special leave.

3. The said question arises in this way. The Nowgong constituency of the Assam Legislative Assembly which is a double-member constituency was called upon to elect two members to the Assam Legislative Assembly, one from the Scheduled Castes and the other from the general body of the electorate. Dev Kanta Barooah, the appellant, filed his nomination paper for election to the general seat and respondent 1 filed five nomination papers for the said seat. Baliram Das, respondent 4, and Mahendra Nath Hazarika, respondent 5, filed their nomination papers for the reserved seat whereas two other candidates had filed their nomination papers for the reserved seat whereas two other candidates had filed their nomination papers for the general seat. On February 1, 1957, the nomination papers of all the candidates were scrutinised by the returning officer; an objection was raised on behalf of the appellant against the nomination papers filed by respondent 1. This objection was upheld by the returning officer who rejected all the nomination papers of respondent 1 under S. 36(2)(b) of the Representation of the People Act, 1951 (Act 43 of 1951) (hereinafter called the Act). The rejection of the said nomination papers was based on the finding that they did not comply with the provisions of S. 33(4) of the Act.

4. Subsequently on March 2, 1957, election took place for the said constituency and the counting of votes followed on March 3, 1957 and March 5, 1957. In the result the appellant was declared duly elected to the general seat and respondent 5 to fill the reserved seat.

5. Respondent 1 then challenged the election of the appellant by his Election Petition No. 9 of 1957 on the ground that his own nomination papers had been improperly rejected by the returning officer. The appellant and respondent 5 resisted this petition. On December 12, 1957, the Election Tribunal allowed the petition and set aside the election of the appellant on the ground that the nomination papers of respondent 1 had been improperly rejected. Against this decision the appellant filed an

appeal before the Assam High Court (First Appeal No. 56 of 1957)* under S. 116A of the Act. The learned judges of the High Court agreed with the view taken by the tribunal and dismissed the appeal preferred by the appellant on April 17, 1958. The appellant then applied for and obtained special leave from this Court to appeal against the said decision of the High Court. That is how this appeal has come before us and the only point which it raises for our decision is whether the High Court was in error in confirming the finding of the tribunal that the nomination papers of respondent 1 had been improperly rejected by the returning officer.

* See AIR 1959 Assam 68

6. It would be relevant at this stage to refer very briefly to the relevant provisions of the Act. The petition filed by respondent 1 asked for a declaration that the election of the appellant is void under S. 100, sub-sec. (1)(c) of the Act. If it is shown that the nomination papers of respondent 1 had been improperly rejected the election of the appellant would have to be declared to be void. This position is not in dispute. The defect in the nomination papers which had been successfully urged by the appellant before the returning officer is alleged to be covered by S. 36, sub-sec. 2(b) of the Act. This clause deals with cases where there has been a failure to comply with any of the provisions of S. 33 or S. 34 of the Act. Section 36(3) provides that, if a candidate has filed more nomination papers than one any defect in any one of them would not defeat the candidature of the candidate if there is another nomination paper which had been properly filed and in respect of which no irregularity had been committed. This provision shows that before respondent 1's nomination is rejected it must be proved that all the nomination papers filed by him are defective under S. 36(2)(b). This position also is not in dispute. Section 36(4) lays down that the returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. In other words, even if a nomination paper is found to be defective it can be rejected only if the defect in question is of a substantial character.

7. Let us now turn to S. 33, sub-sec. (4) which it is alleged has not been complied with by the nomination papers filed on behalf of respondent 1. Section 33(4) says that on the presentation of a nomination paper the returning officer shall satisfy himself that the names and the electoral roll numbers of the candidate and his proposer as entered in the nomination papers are the same as those entered in the electoral rolls. The proviso to this sub-section authorises the returning officer to permit any clerical or technical error to be corrected. We are not concerned with this proviso in the present appeal. Electoral roll number to which this sub-section refers is defined by R. 2(b) of the Rules as meaning (1) the serial number of the entry in the electoral roll in respect of that person, (2) the serial number of the part of the electoral roll in which such entry occurs, and (3) the name of the constituency to which the electoral roll relates. The appellant's case is that the requirement that the electoral roll numbers of the candidate and his proposer should be specified in the nomination paper has not been complied with by any of the nomination papers filed on behalf of respondent 1.

8. As we have already mentioned, on behalf of respondent 1 five nomination papers have been filed. It is unfortunate that the appellant has been able to point out one defect or another in most of these nomination papers; we will however, take the fifth nomination paper which is printed at p. 16 of the Record; it reads thus :-

Form 2-B

Nomination Paper

Election to the Legislative Assembly Assam (State)

(To be filled by the proposer)

I hereby nominate Kusharam Nath as a candidate for election from the Nowgong Assembly Constituency.

1. Full name of proposer ... Lahi Ram Nath.
2. Electoral Roll Number of proposer ... Assam Legislative Assembly Constituency, Part No. 10 of the Electoral Roll of village Phulaniati, Mouza Hatichung, Police Station Sadar, Nowgong, Roll No. 59/1956.
3. Name of the candidate's father ... Krishna Ram Nath.
4. Full postal address of candidate ... Village Phulaniati, Post Office Chakalaghat, District Nowgong, Assam.
5. Electoral Roll Number of candidate ... Assam Legislative Assembly Constituency, Part No. 10 of the Electoral roll of village Phulaniati, Mouza Hatichung, Police Station Sadar, Nowgong, Roll No. 275/1956.

Date : 28-1-57 Sd. Lahi Ram Nath.

Signature of proposer.

It is clear that this nomination paper specifies the serial number of the entry in the electoral roll as well as the serial number of the part of the electoral roll in which such entry occurs. Both these entries are to be found against cols. 2 and 5. It is, however, urged that the name of the constituency to which the electoral roll relates has not been mentioned either in col. 2 or col. 5. No doubt in both the entries reference is made to Nowgong but the constituency is Nowgong Assembly Constituency, and since the words "Assembly Constituency" do not follow the word 'Nowgong' it cannot be said that the name of the constituency has been properly stated. That is the gist of the argument urged on behalf of the appellant. This argument has been rejected both by the Election Tribunal as well as by the High Court; and we see no reason to take a different view. It is significant that in both the columns the words "Assam Legislative Assembly Constituency" are entered, and then is mentioned Nowgong. Reading each of the two entries as a whole it would not be unreasonable to conclude that the two entries refer to Nowgong Assembly Constituency. The nomination paper begins with the statement that respondent 1 is nominated as a candidate for election from the Nowgong Assembly Constituency, and then in stating the electoral roll number of the proposer and the candidate respectively in cols. 2 and 5 the words "Assam Legislative Assembly Constituency" as well as 'Nowgong' are used. Technically it would have been more accurate to have described the constituency as Nowgong Assembly Constituency, but, having regard to the manner in which both the columns have been filled, we do not think that the High Court was in error in coming to the conclusion that in substance the name of the constituency has been mentioned in the two columns. It is not disputed that the serial number of the entry and the serial number of the part of the electoral

roll mentioned in the nomination paper referred to this constituency; and so it is not at all unreasonable to construe the relevant entries in the manner adopted by the Election Tribunal and the High Court. Therefore, having regard to the manner in which the nomination paper has been filled and taking into account the whole of the relevant entry against cols. 2 and 5, we are satisfied that the High Court was right in not upholding the technical objection raised by the appellant. We are not impressed by the argument that the details mentioned in the two columns before Nowgong indicate that Nowgong there means the place of residence of the proposer and the candidate respectively and not the name of the constituency.

9. Incidentally we may refer to annexure 'C' mentioned in the judgment of the High Court. This annexure is a notification under S. 30(d) of the Act specifying the dates for the purpose of holding the election. In this notification the serial numbers and the names of the Assembly Constituencies were indicated in the table annexed to it. The relevant Assembly Constituency was shown as "No. 69-Nowgong". Nobody suggested that this description was inaccurate. The learned judges of the High Court thought that in the circumstances of the case the word 'Nowgong' used in cols. 2 and 5 of the nomination papers signified in the context "Nowgong Assembly Constituency"; and we are satisfied that this view is right.

10. Once it is held that on a reasonable construction of the nomination papers the requirements of S. 33 (4) have been complied with, it becomes unnecessary to consider whether the alleged defect was of a substantial character under S. 36(4) of the Act. That is why we do not propose to deal with or discuss the decisions to which our attention was drawn by Mr. Viswanatha Sastri for the appellant. These decisions are : P. N. Balasubrahmanyam v. Election Tribunal of North Arcot, ILR (1954) Mad 677 : (AIR 1954 Mad 730), R. v. Tugwell, (1868) 3 QB 704, Gothard v. Clarke, (1880) 5 CPD 253, Baldwin v. Ellis, (1929) 1 KB 273 and Brij Sundar Sharma v. Election Tribunal, Jaipur, 12 ELR 216 : (S (S) AIR 1957 Raj 189). In all these decisions a defect or irregularity had been proved in the nomination paper, and so it was necessary to consider the effect of the said defect or irregularity. Since we have held that the nomination paper in the present case is not defective we do not propose to express any opinion on the alternative argument which was urged before us on behalf of the appellant. Mr. Viswanatha Sastri has also fairly invited our attention to the decision of this Court in Karail Singh v. Election Tribunal, Hissar, 10 ELR 189 (SC), which is against his contention. In that case the name of the part of the electoral roll in which the name of the candidate appeared was not filled up against col. 8 of the nomination paper but there was no difficulty in identifying the candidate and the entry of his name in the roll was pointed out to the returning officer, but nevertheless he rejected the nomination paper on the ground that it had not been duly filled up. This Court held, affirming the decision of the majority of the Election Tribunal, that the defect was only technical and not of a substantial character and that the nomination paper was improperly rejected.

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

Appeal dismissed.

</html