

Ranjit Singh

Vs

Pritam Singh & Ors.

Civil Appeal No. 459 of 1965

(CJI P. B. Gajendragadkar, K. N. Wanchoo, V. Ramaswami - I, J. C. Shah, S. M. Sikri JJ)

08.02.1966

JUDGMENT

WANCHOO, J. -

This is an appeal by special leave from the judgment of the Punjab High Court. In the general election held in 1962 for Parliament (House of the People), the appellant was elected from the Sangrur parliamentary constituency. Pritam Singh respondent was also one of the contesting candidates but lost in the election. Thereupon he filed an election petition against the appellant challenging his election on a number of grounds. In the present appeal we are only concerned with one ground, and that was that the nomination papers of one of the candidates for the election, namely, Wazir Singh, had been rejected improperly by the returning officer. Wazir Singh had filed three nomination papers; with one of them he had attached a copy of a part of the electoral roll. He attached no such copy with the other two nomination papers. When the nomination papers were being scrutinised, an objection was taken to the validity of the nomination papers. The returning officer first took up the nomination paper with which a copy of part of the roll had been filed and rejected it on the ground that the name of the parliamentary constituency and the name of the village and the assembly constituency and the part number of the electoral roll of the candidate was not mentioned and also because the name of the parliamentary constituency (House of the People) of the proposer was not given. After rejecting the nomination paper, the returning officer took up the other two nomination papers and rejected them on the ground that a copy of the electoral roll of the constituency concerned or of the relevant part thereof of a certified copy of the relevant entries had not been filed along with these nomination papers. It may be added that the returning officer refused to look into the copy of the part of the roll which Wazir Singh had filed along with his nomination paper which the returning officer had already rejected before he took up the other nomination papers.

The main contention of respondent Pritam Singh in the election petition was that the returning officer was wrong in not looking into the copy of the part of the roll which had been filed with the first nomination paper of Wazir Singh and that merely because that nomination paper had been rejected, the returning officer was not precluded from looking into the copy of the part of the roll which had been produced with that nomination paper for the purpose of scrutiny of the other two nomination papers. The appellant on the other hand contended that the nomination papers had been rightly rejected, and this contention was based on three points raised on his behalf, namely - (i) that a copy of the electoral roll of that constituency or a relevant part thereof or a certified copy of the relevant entries of such roll should have been produced with each nomination paper separately; (ii) in any case the copy produced should have been of the parliamentary constituency and not of the assembly constituency; and (iii) that the copy produced of the part of the roll was not a complete

copy of the part and therefore was not a compliance with the requirements of Section 33(5) of the Representation of the People Act, No. 43 of 1950, (hereinafter referred to as the Act).

The Election Tribunal seems to have taken the view that the copy filed along with the first nomination paper could not be looked into when the returning officer came to scrutinise the other nomination papers, even if it might be assumed to be a copy of the parliamentary electoral roll. It further held that even if the copy could be looked into, it was not a complete copy and therefore there was no compliance with Section 33(5) of the Act and in consequence the Tribunal held that the returning officer was justified in rejecting the nomination papers notwithstanding the provisions of section 36(4) of the Act.

Pritam Singh then went in appeal to the High Court. The High Court held that the returning officer was wrong in not looking into the copy which had been produced along with the first nomination paper, and that the copy produced, though it was apparently of an assembly constituency, could also be taken to be a copy of the parliamentary roll. Lastly on the question whether the copy produced was a complete copy or not, the High Court held that the copy actually produced, though it admittedly did not contain certain pages, was sufficient for the purposes of section 33(5) of the Act. In this view, the High Court held that one of the nomination papers of Wazir Singh was improperly rejected and in consequence of that the result of the election was materially affected. It therefore set aside the election. The High Court having refused to grant a certificate, the appellant applied to this Court for special leave which was granted; and that is how the matter has come before us.

The same three points which were urged before the Tribunal on behalf of the appellant have been raised before us. In the first place it is urged that the necessary copy required under Section 33(5) of the Act must be produced with every nomination paper, and that it is not enough where more nomination papers than one are filed that a copy should have been filed with only one of them. Secondly it is urged that the copy produced was of the assembly constituency while it should have been of the parliamentary (House of the People) constituency. Lastly the argument is that in any case the copy produced was not complete and therefore there was no compliance with Section 33(5) of the Act. The returning officer therefore was justified in rejecting the nomination paper under Section 36(2)(b) of the Act and that Section 36(4) did not apply in the circumstances of the case. We shall deal with these points seriatim.

Section 32 at the relevant time provided 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 provision of the Constitution and this Act." - Section 4(d) of the Act requires that in the case of any other seat for the House of the People besides those mentioned in cls. (a), (b) and (c) of that section, a person has to be an elector for any parliamentary constituency (House of the people) to be entitled to stand for election of the House of the people. It is with this qualification alone that we are concerned in the present appeal. "Elector" is defined in Section (2)(e) of the Act as meaning "in relation to a constituency a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in section 16 of the Representation of the People Act, 1950." Therefore if a person is an elector in a parliamentary (House of the People) constituency and is not subject to any disqualification he can stand for election to the House of the People from any constituency.

Then we come to section 33(5). The object of this provision obviously is to enable the returning officer to check whether the person standing for election is qualified for the purpose. The electoral roll of the constituency for which the returning officer is making scrutiny would be with him, and it

is not necessary for a candidate to produce the copy of the roll of the constituency. But where the candidate belong to another constituency the returning officer would not have the roll of that other constituency with him and therefore the provision contained in Section 33(5) has been made by the legislature to enable the returning officer to check that the candidate is qualified for standing for election. For that purpose the candidate is given the choice either to produce a copy of the electoral roll of that other constituency, or of the relevant part thereof or of a certified copy of the relevant entries in such roll before the returning officer at the time of the scrutiny, if he has not already filed such copy with the nomination paper. Naturally where the candidate is standing for a parliamentary constituency (House of the People) he will have to file a copy of the roll of some parliamentary constituency. The argument on behalf of the appellant is that under the proviso to Section 33(6) a candidate is entitled to file up to four nomination papers and therefore when Section 33(5) says that a copy would be filed with the nomination paper it requires that one copy should be filed with each nomination paper and if that has not been done there is no compliance with Section 33(5). Section 33(5) does not require that a copy must be filed with each nomination paper for, the candidates is given the alternative to produce before the returning officer such copy at the time of the scrutiny. So the candidate need not file any copy with the nomination paper and it is enough if he has a copy in his possession which he produces before the returning officer at the time of the scrutiny. Further there is nothing in Section 33(5) which requires that if a candidate has (say) filed four nomination papers he should have four copies with him to produce before the returning officer at the time of the scrutiny. It would in our opinion be enough if he has one copy with him at the time of the scrutiny and shows it again and again as each nomination paper is taken up for scrutiny by the returning officer. We see no sense in holding that in such a situation the candidate should arm himself with four copies for the purpose of showing the copy to the returning officer at the time of scrutiny. The same copy in our opinion can be produced again and again before the returning officer as he takes up the scrutiny of each of the nomination papers filed on behalf of a candidate. If that is so we see no difficulty in holding that where a number of nomination papers have been filed and a copy has been filed with one of them, that is enough. Again we see nothing in Section 33(5) which prevents a returning officer from looking at the copy filed with one nomination paper, even after that nomination paper has been rejected or with a nomination paper which is pending before him for scrutiny, when he comes to deal with other nomination papers. As we have said before, the purpose of filing the copy is to ensure that the returning officer is able to check whether the candidate concerned is qualified or not and that purpose would be effectively served even if only one copy is filed with one nomination paper and no copies are filed with the other nomination papers. It may be that for certain purposes each nomination paper stands by itself, but so far as filing of a copy with a nomination paper under Section 33(5) is concerned, we must look at the object behind the provision, and if that object is served by filing a copy with one nomination paper, we see no sense in requiring that where a number of nomination papers are filed there should be a copy with each nomination paper. There is nothing in Section 33(5) which prevents the returning officer from looking at a copy filed with a nomination paper which has been rejected or which is still to be scrutinised for the purpose of satisfying himself when he takes up the other nomination papers that the candidate is qualified to stand. Nor has any rule been shown to us which in terms prevents the returning officer from looking into a copy which has been filed with a nomination paper (which might have already been rejected) for the purpose of scrutinising other nomination papers of the same candidate. If the purpose of Section 33(5) can be served by the production of one copy at the time of scrutiny when it has not been filed with the nomination paper, we do not see why that purpose could not be served by filing a copy with one nomination paper where more nomination paper than one have been filed by the same candidate. We therefore agree with the High Court that the returning officer was wrong in not looking at the copy filed with one nomination paper when he

was dealing with other nomination papers of Wazir Singh.

This brings us to the second point raised before us, namely, that the copy filed was not of the parliamentary (House of the People) constituency but of the assembly constituency. This contention also has no force. If we look at the Representation of the People Act, 1950 we find that Part III thereof provides for the preparation of electoral rolls for assembly constituencies. So far as parliamentary constituencies (House of the People) are concerned, Section 13D provides inter alia that the electoral roll for every parliamentary constituency shall consist of the electoral rolls of so much of the assembly constituencies as are comprised within that parliamentary constituency; and it shall not be necessary to prepare or revise separately the electoral roll for any such parliamentary constituency. It is clear therefore that the electoral roll for parliamentary constituency has no other than the electoral roll for the assembly constituencies comprised within that parliamentary constituency. It is not in dispute that the electoral roll for a parliamentary constituency is made up by stitching together the electoral rolls of the assembly constituencies comprised therein. Therefore if a candidate files a copy of the electoral roll of an assembly constituency, that copy is sufficient to show that he is an elector in the parliamentary constituency in which that assembly constituency is included. The argument that the copy filed in the present case did not comply with Section 33(5) as it was not a copy of the parliamentary constituency must therefore fail. The copy was of an assembly constituency in this case, and if the candidate was an elector in the assembly constituency he would be an elector in the parliamentary (House of the People) constituency which includes that assembly constituency. The High Court therefore was right in rejecting the contention that the copy of the roll of the parliamentary (House of the People) constituency was not filed.

This brings us to the last point raised on behalf of the appellant, namely, that the copy filed was not a complete copy and therefore there was no compliance with Section 33(5) of the Act. It is not in dispute that the copy filed was not a complete copy. The appellant produced a complete copy of that part of the roll and that showed that pages 19 to 22 and page 25 of that part of the roll were not filed by Wazir Singh. Now Section 33(5) gives three options to a candidate in the matter of filing a copy. He may file either a copy of the electoral roll which means a copy of the entire electoral roll of the parliamentary (House of the People) constituency, or a copy of the relevant parts thereof, which means the whole of the parts concerned. Under the Registration of Electors Rules, 1960 (hereinafter referred to as the Rules), it is provided by r. 5 that "the roll shall be divided into convenient parts which shall be numbered consecutively". Therefore when Section 33(5) refers to a copy of the relevant parts thereof, it means a part as defined in r. 5 above. Besides these two alternatives, a candidate has a third alternative, namely, the production of certified copies of the entries of his name and the name of the proposer from any roll. In the present case, the candidate Wazir Singh chose the second alternative, namely, he produced a copy of the relevant part thereof. The part in question produced in this case was part IV of the Simla legislative assembly electoral roll. Section 33(5) therefore required the candidate (namely, Wazir Singh) to produce the whole of this part. It is not in dispute that he did not produce the whole of this part and the question is whether his failure to do so would result in the rejection of his nomination paper.

To decide this question it is necessary to refer to the Rules. Rule 10 requires that "as soon as the roll for a constituency is ready, the registration officer shall publish it in draft by making a copy thereof available for inspection and displaying a notice in form 5." Under r. 11, the registration officer is required to give further publicity to the roll and to the notice in form 5. Thereafter r. 12 provides for claims for the inclusion of a name in the roll and objections to an entry therein. After such claims and objections have been made, the registration officer has to consider them under r. 18. Under r. 19, he gives a hearing if necessary and thereafter he orders the inclusion of names in the roll or

exclusion of names from the roll under r. 20. Then under r. 22, the registration officer has to prepare a list of amendments to carry out his decisions under rr. 18, 20 and 21 and he may correct any clerical or printing errors or other inaccuracies subsequently discovered in the roll. He then publishes the roll together with the list of amendments by making a complete copy thereof available for inspection, and displaying a notice in form 61. On such publication the roll together with the list of amendments shall be the electoral roll of the constituency.

The scheme of these Rules therefore, is that a draft is first prepared. Thereafter claims and objections are disposed of. If any claim is admitted, the name is included in the roll, if any objection is allowed the name already in the draft roll (or may be in an earlier amendment) is deleted. This inclusion or deletion is made by publishing amendments to the roll and thereafter the draft roll along with one or more amendments becomes the electoral roll of the constituency. It will be seen from this that where a name is excluded on an objection being allowed, the name is not scored out. What the rule provides is that deletion of a name from a draft or even from an earlier amendment made by inclusion by the registration officer, is included in the list of amendments published. Under r. 23, an appeal is allowed from any decision of the registration officer including a name or excluding a name, so that where the registration officer includes a name after hearing a claim that is subject to an appeal and the appellate officer may reject the claim whereupon the amendment made by the registration officer by including a name may fall through. Under sub r. (5) of r. 23 of the Rules, the registration officer is given power to cause such amendments to be made in the roll as may be necessary to give effect to the decisions of the appellate officer. This shows that when Section 33(5) requires that a copy of the relevant part of the roll may be filed or produced the copy is to be a complete copy along with all amendments, for it may be that even though a name may be included in the first amendment by the registration officer it may be excluded in the second amendment if the appellate officer has rejected the claim.

We have already said that the object of producing the copy under Section 33(5) is to enable the returning officer to check whether the candidate and the proposer are qualified or not, one for the purpose of standing and the other for the purpose of proposing. In order to check this, the returning officer must have a complete copy of the relevant part. If the copy is not a complete copy it is possible that a name which may have been included in the draft or in the first amendment may have been excluded in the second amendment made on the basis of an order of the appellate officer. Therefore to enable the returning officer to decide whether a candidate is qualified to stand or whether a proposer is qualified to propose he must have a complete copy of the relevant part of the roll. If he has not a complete copy he will not be able to decide whether the candidate or the proposer has the necessary qualification. In the present case it is not in dispute that Wazir Singh did not produce a complete copy of Part IV of the roll. Part IV consisted of 25 pages; of these Wazir Singh did not produce pages 19 to 22 and page 25. Page 25 as appears from the complete copy of the roll filed by the appellant contained a second list of amendments. It is true that Wazir Singh's name did appear in the first amendment at No. 1853; but that as we have already shown was not conclusive for the second amendment which was not produced might have deleted that name. Therefore the copy produced by Wazir Singh not being complete was not sufficient to enable the returning officer to decide whether he was qualified to stand or not for his name might have been deleted in the second list of amendments in which case he would not have been qualified. It is true that in actual fact it appears from the copy which was produced by the appellant before the Tribunal that Wazir Singh's name was not deleted in the second list of amendments; but that appears from the copy produced by the appellant before the Tribunal and not from the copy produced by Wazir Singh before the returning officer. Section 33(5) requires that it is the copy produced by the candidate which should show whether he is qualified or not and for that purpose a copy produced by the

candidate should be complete whether it is of the roll or of the relevant part thereof. To such a case Section 36(4) has no application. That provision is to the effect that the returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. But the non-production of a complete copy of the relevant part in our opinion is a defect of a substantial character for it makes it impossible for the returning officer to decide whether the candidate is qualified or not. Qualification for standing for election is a matter of substantial character. We are therefore of opinion that the High Court was not right in the view it took that the production of an incomplete copy of the relevant part was not a defect of a substantial character which would make the nomination paper liable to be rejected. The fact that the returning officer rejected the nomination paper on some other ground is of no consequence. If there was in truth a defect of a substantial character in the matter of compliance with Section 33 of the Act, the nomination paper was liable to be rejected, and if it was so rejected, rejection would be proper whatever may have been the reason given by the returning officer. In the present case we are of the opinion that the production of a copy of the electoral roll which is incomplete is a defect of a substantial character. This defect will invalidate all the nomination papers. The nomination papers of Wazir Singh were rightly rejected by the returning officer, though he gave different reasons for doing so.

The appeal therefore succeeds and is hereby allowed with costs. The election petition is dismissed. Pritam Singh, respondent, will pay the costs.

Appeal allowed.

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