

Amolak Chand

Vs

Raghuveer Singh.

Civil Appeal No. 1352 of 1967

(Ramaswami JJ)

22.02.1968

JUDGMENT

RAMASWAMI, J.

This appeal is brought under s. 116-A of the Representation of People Act, 1951, hereinafter referred to as the 'Act', from the judgment of the High Court of Madhya Pradesh dated August 25, 1967 in Election Petition No. 2 of 1967 whereby the High Court held that the election of the appellant from Barwaha Vidhan Sabha Constituency held on February 20, 1967 was void.

The appellant was a candidate at the election of the Legislative Assembly of the State of Madhya Pradesh from Barwaha Constituency held on February 20, 1967. The respondent was a candidate for election from the same Constituency. Besides the appellant and the respondent, there were two other candidates, namely, Nathu son of Rupa and Sita Ram son of Sadhu Ram. There were two nomination papers filed for Nathu son of Rupa, one nomination paper (R-3) was filed on January 19, 1967 at 2.12 p.m. and the second nomination paper (R-1) was filed on January 20, 1967 at 12.47 p.m. The nomination paper of Sita Ram son of Sadhu Ram (R-1) was also filed on January 20, 1967 at 2.32 p.m. In all three nomination papers, the name of the candidate was proposed by one Sharawan son of Gheesa, an elector from that constituency. On January 21, 1967 the Returning Officer rejected the nomination papers of the two candidates, Nathu son of Rupa and Sita Ram son of Sadhu Ram on the ground that the same elector could not propose two different candidates for the same Constituency. At the polling which took place on February 20, 1967 the appellant was declared elected to the Assembly from the aforesaid Constituency on February 22, 1967 by the Returning Officer. On March 29, 1967, the respondent filed an Election Petition under s. 80 of the Act in the High Court against the appellant. The respondent sought a declaration that the election of the appellant was void under s. 100(c) of the Act on the ground that nomination papers of Nathu son of Rupa and Sita son of Sadhu Ram were improperly rejected. By its judgment dated August 25, 1967, the High Court accepted the contention of the respondent and declared the election of the appellant from Barwaha Constituency to be void.

On behalf of the appellant Mr. Gupte put forward the argument that under the scheme and policy of the Act elector can propose only one candidate for a single seat Constituency and not more than one candidate and if more than one nomination is made for a single seat Constituency, all the nominations should be taken to be null and void. We are unable to accept this argument as correct. Section 33(2) of the Act, as it was originally enacted in 1951, contained an express ban against the same elector proposing more than one candidate for a single seat Constituency - Section 33(2) states

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"Any person whose name is registered in the electoral roll of the constituency and who is not subject to any disqualification mentioned in section 16 of the Representation of the People Act, 1950 may subscribe as proposer or seconder as many nomination papers as there are vacancies to be filled but no more."

Section 36(7)(b) reads as follows :

"(7) For the purposes of this section

(b) where a person has subscribed, whether as proposer or seconder, a larger number of nomination papers than there are vacancies to be filled, those of the papers so subscribed which have been first received, up to the number of vacancies to be filled, shall be deemed to be valid."

But by the Amending Act 27 of 1956, Ss. 33 and 36 have been recast and do not contain any ban as that contemplated by s. 33(2) of the unamended Act. Section 33(1) & (2) after the amendment reads thus :

"33. Presentation of nomination paper and requirements for a valid nomination. - (1) On or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by his proposer between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer.

Provided that no nomination paper shall be delivered to the returning officer on a day which is a public holiday.

(2) In a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste or, as the case may be, a Scheduled Tribe of the State."

It is true s. 33(6) as it stands at present enables a proposer to file more than one nomination paper in respect of the same candidate, but this sub-section has no bearing on the question presented for determination in the present appeal. It is manifest that there is no express ban or prohibition under s. 33 or s. 36 of the present Act against an elector proposing more than one candidate for a single seat Constituency. Mr. Gupte has not been able to point out anything in the context or language of other sections of the Act for leading to the necessary implication that an elector cannot propose more than one candidate for a single seat Constituency. On the other hand, the amendment to s. 33 of the Act by the Amending Act 27 of 1956 indicates that it was the intention of Parliament that there should be no ban on the number of nomination papers or the number of candidates to be proposed by an elector for a single seat Constituency. On behalf of the appellant reference was made to page 133 of Schofield's 'Parliamentary Elections', Second Edition in which it is said that "no person is permitted to sign more than one nomination paper at the same election and if he does then his signature is operative only in the paper which is first delivered". But this statement is based on r. 8(2) of the Parliamentary Elections Rules of the British Parliament. There is no such statutory provision made

under the Act for parliamentary elections in India and the analogy is not applicable. We are accordingly of the opinion that Counsel for the appellant has been unable to make good his submission on this aspect of the case.

It was contended, in the next place, that Nathu and Sita Ram had mentioned in the nomination papers that they were Balais belonging to the Scheduled Caste and this was contrary to the direction that the column indicating caste or tribe should be struck off except in the case of reserved seat. It was therefore argued that the nomination papers of Nathu and Sita Ram were rightly rejected by the returning officer. In our opinion, there is no substance in this argument. The printed form 2-A is meant both for General and Reserved Constituencies but while it is obligatory for candidates in the reserved constituency to make a declaration in the proper column that he is a member of a particular caste or tribe, there is no such rule with regard to a General Constituency. Section 33(2) of the Act imposes an obligation on the candidate in the reserved constituency to make a declaration in the proper column, but there is no such direction in the statute with regard to the General Constituency. In our opinion, the mention of the caste of the candidate in the nomination form was a clear superfluity because it was not necessary for the candidate to fill in the column when he was contesting in a General Constituency; but there is nothing either in the section or in the rules forbidding the candidate from mentioning his caste. In our opinion, there is no violation of the provisions of s. 33 of the Act or the breach of general directions contained in Rule 4 and the nomination papers cannot be held to be invalid on this account.

For these reasons we hold that the judgment of the Madhya Pradesh High Court dated August 25, 1967 is correct and this appeal must be dismissed with costs.

# Appeal dismissed.##

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