

Shri Hari Vishnu Kamath

Vs

Shri Gopal Swarup Pathak

Election Petition No. 6 of 1969

(S.M. Sikri, J.M. Shelat, V. Bhargava, G. K. Mitter, C.A. Vaidialingam JJ)

18.12.1969

JUDGMENT

SIKRI, J. -

1. This is a petition under Article 71 of the Constitution and Section 14 of the Presidential and Vice-Presidential Elections Act (XXXI of 1952) hereinafter referred to as the Act, praying for a declaration that the election of Shri Gopal Swarup Pathak, respondent, to the office of the Vice-President of India is void.

2. The main ground on which this declaration is sought is that the nomination paper of Dr. Ram Sharan Dass Sakhuja was wrongly rejected by the Returning Officer on August 6, 1969. The respondent apart from meeting this ground has raised a number of other issues including the issue whether the nomination paper of Dr. Ram Sharan Dass Sakhuja was genuine, and if not, whether the petition is maintainable. The learned counsel for the respondent strongly pressed on us that we should first try this issue suggested by him but as we have come to the conclusion that the petition must fail on the ground that the nomination paper of Dr. Ram Sharan Dass Sakhuja was rightly rejected on August 6, 1969, it is not necessary to consider the other issues that arise out of the pleadings of the parties.

3. The two issues suggested by the Petitioner which we propose to discuss are :

(1) Whether the nomination of Dr. Ram Sharan Dass Sakhuja has been wrongly rejected on the ground that the nomination paper was not delivered in person;

(2) Whether the Returning Officer had power to reject the nomination even before the date of scrutiny.

3-A. The relevant facts for determining these issues may now be set out. On 19th or 20th July, 1969, the office of the Vice-President of India fell vacant on the resignation of the then incumbent, Shri V. V. Giri. The Election Commission appointed Shri B. N. Banerjee, Secretary, Rajya Sabha, as Returning Officer for the election of the Vice-President of India. The Election Commission issued a notification under Section 4 appointing August 9, 1969, as the last date for filing nomination for election to the office of the Vice-President of India and August 11, 1969 for scrutiny of nomination papers. A number of candidates filed nomination papers and on August 11, 1969, the Returning Officer made a record of proceedings. The relevant part of the proceedings reads as follows :

"I held the scrutiny of nomination papers for the Vice-Presidential Election today, the 11th August, 1969, at 11 a.m. in my office (Room No. 29) in Parliament House, New Delhi 24; nomination papers were delivered to me within the time and in the manner laid down in Rule 4 of the Presidential and Vice-Presidential Election Rules, 1952. These nomination papers related to :

#1. Shri S. Nagappa (On nomination paper)2. Shri G. S. Pathak (Seventeen nomination papers)3. Shri Sivashanmugam (Jagannathan Pillai) (Two nomination papers)4. Smt. Manohara Nirmala Holkar (One nomination paper)5. Shri B. P. Mahaseth (One nomination paper)6. Shri Hari Vishnu Kamath (Two nomination papers)X X X X##

3. I have the candidates and the others present all facilities for examining the nomination papers of all the candidates delivered to me. The nomination paper were examined by them. No objection was raised to any nomination papers by any candidate or his representative. I scrutinised all the nomination papers and I found that they satisfied the requirements of a valid nomination paper. I accordingly accepted all the nomination papers as valid and made endorsements on all the 24 nomination papers accepting them.

4. In also brought to the notice of those present that I had received some nomination papers, and some other papers purporting to be nomination papers, by post, and that I could not treat them as valid nomination papers as they were not delivered to me in accordance with sub-rule (1) of Rule 4 of the Presidential and Vice-Presidential Election Rules, 1952, and that they also did not comply with the provisions of law in other respects. I further mentioned to those present that there were in addition three other papers which though presented to be in person, did not comply with the requirements of the law as they were not accompanied by the certified extracts from the electoral roll and suffered from other defects. I had not given any serial number to any of these papers and had rejected all of the them."

One of the nominations referred to in Para 4 of the proceedings was that of Dr. Ram Sharan Dass Sakhuja. It appears that the nomination papers of Dr. Sakhuja, alleged to be complete in every respect, were not delivered in person either by Dr. Sakhuja or let the proposer or seconder in person to the Returning Officer but were received by him by post on August 6, 1969. On that very day the Returning Officer did not treat the papers as valid as they were not delivered to him in accordance with sub-rule (1) of Rule 4 of the Presidential and Vice-presidential Election Rules, 1952.

4. In order to discuss the issues mentioned above it is necessary to set out the relevant statutory provisions. Under Section 4 of the Act the Election Commission by notification appoints for every election : (a) the last date for making nominations, (b) the date for scrutiny of nominations, (c) the last date for the withdrawal of candidatures, and (d) the date on which poll shall, if necessary, be taken. Under Section 5 any person may be nominated as a candidate for election to the office of Vice-President if he is qualified to be elected to that office under the Constitution. Sub-section (2) of Section 5 prescribes that each candidate shall be nominated by a nomination paper completed in the prescribed form and subscribed by the candidate himself as assenting to the nomination and by two electors as proposer and seconder.

5. We may assume for the purpose of this case that the conditions laid down in Section 5(2) were complied with.

6. Section 6 deals with the withdrawal for candidature and provides that any candidate may withdraw his candidature by a notice in writing in the prescribed form subscribed by him and delivered before three o'clock in the afternoon on the date fixed under clause (c) of sub-section (1) of Section 4, to the Returning Officer either by such candidate in person or by his proposer or seconder who has been authorised in this behalf in writing by such candidate.

7. The learned counsel for the petitioner rightly conceded that if a candidate wants to withdraw his candidature the notice in writing must be delivered to the Returning Officer in person by such candidate or by his proposer or seconder who has been authorised. In other words no candidate can withdraw by sending a notice in writing by post.

8. Section 18 gives the grounds for declaring the election of a returned candidate to be void. One of the grounds is :

"If the Supreme Court is of opinion that the nomination of any candidate has been wrongly rejected or the nomination of the successful candidate or of any other candidate who has not withdrawn his candidature has been wrongly accepted, the Supreme Court shall declare the election of the returned candidate to be void."

Section 21 gives powers to the Central Government to make rules and the two matters, among others, on which rules can be made are :

"(d) the form and manner in which nominations may be made and the procedure to be followed in respect of the presentation of nomination papers;

(e) the scrutiny of nominations and, in particular, the manner in which such scrutiny shall be conducted and the conditions and circumstances under which any person may be present or may enter objections thereat."

In pursuance of these powers rules were framed. Rule 4 deals with the presentation of nomination papers and is in the following terms :

"4. (1) On or before the date appointed under clause (a) of sub-section (1) of Section 4, each candidate, shall, either in person or by his proposer or seconder, between the hours of eleven in the forenoon and three in the afternoon, deliver to the Returning Officer at the place specified in this behalf in the public notice a nomination paper completed in Form 2 in the case of a Presidential election, and in Form 3 in the case of a Vice-Presidential election, together with a certified copy of the entry relating to the candidate in the electoral roll for the Parliamentary constituency in which he is registered.

(2) Any nomination paper which is not received before three O'clock in the afternoon on the last date appointed under clause (a) of sub-section (1) of Section 4 or to which the certified copy referred to in sub-rule (1) of this Rule is not attached shall be rejected."

Rule 5 prescribes the procedure on receipt of nomination papers as follows :

"5. On the presentation of a nomination paper, the Returning Officer shall -

- (a) sign thereon a certificate stating the date and time of presentation of the nomination paper and enter thereon its serial number;
- (b) inform the person or persons presenting the nomination paper of the date, time and place fixed for the scrutiny of nominations; and
- (c) cause to be affixed in some conspicuous place in his office a copy of the nomination paper as certified and numbered under clause (a) of this rule."

Rule 6 provides for the scrutiny of nominations and is in the following terms :

"6. (1) The candidates, one proposer and one seconder of each candidate, and one other person duly authorised in writing by such candidate, shall be entitled to be present at the time of scrutiny of nominations; 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 Rule 4.

(2) The Returning Officer shall then examine the nomination appears and decide all objections which may be made at any of them.

(3) The Returning Officer may, either on such objection or on his own motion, and after such summary inquiry, if any, as he thinks necessary, reject a nomination paper on any of the following grounds, namely :-

(a) that the candidate is not eligible for election as President or Vice-President, as the case may be, under the Constitution; or

(b) that the proposer or seconder is not qualified to subscribe a nomination paper under sub-section (2) of Section 5; or

(c) that the signature of the candidate, proposer or seconder is not genuine or has been obtained by fraud; or

(d) that the nomination paper has not been duly completed and the defect or irregularity is of a substantial Character; or

(e) that the proposer or seconder has subscribed, whether as proposer or seconder, another nomination paper received earlier by the Returning Officer at the same election.

(4) The Returning Officer shall hold the scrutiny on the date appointed in this behalf under cause (b) of sub-section (1) of Section 4 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot to open violence or by cause beyond his control :

Provided that, in case an objection is made, the candidate concerned shall, if he so requires, be allowed time to rebut it nit later than the next day but one following the date fixed for scrutiny, and the Returning Officer shall record his decision no the date on which the proceedings have been adjourned.

(5) The Returning Office shall endorse on each nomination paper his decision either accepting or rejecting it and if the nomination paper is reject, he shall, record in writing a brief statement of his reasons for rejecting it."

9. The question whether a candidate is entitled to send his nomination papers by post to the Returning officer may now be considered. It will be noticed that Rule 4 provides only one manner of presentation, i.e., delivery either in person by the candidate or by his proposer or seconder. Further it mentions the time within which it can be delivered, i.e., between the hours of eleven in the forenoon and three in the afternoon. It seems to us that if the nomination paper is not presented in person either by the candidate or by the proposer or the seconder it cannot be deemed to have been presented at all. There seems to be good reason for making this rule because otherwise not only the authenticity of the person sending the nomination paper will be in doubt but also the time of the delivery of the nomination paper would be in doubt.

10. Be that as it may, if the rule provides one method of presentation that method of presentation must be followed. That this is the only method of presentation of nomination papers is borne out by subsequent provisions. Sub-rule (2) of Rule 4 provides that any nomination paper which is not received before 3 O'clock in the afternoon on the last date appointed under clause (a) of sub-section (1) of Section 4 shall be rejected. This shows that even if a nomination paper is presented personally but after 3 O'clock in the afternoon it has to be rejected. The rule proceeds on the basis that the presentation must have been either in person or by the proposer or the seconder. If a nomination paper is received by post it would be difficult to say that it has been presented and received before 3 O'clock on the last date appointed under clause (a) of sub-section (1) of Section 4.

11. Rule 5 also proceeds on the basis that the presentation of a nomination paper must be in a person because it requires the Returning Officer to sign thereon a certificate stating the date and time of presentation of the nomination paper and inform the person or persons presenting the nomination paper of the date, time and place fixed for the scrutiny of nominations. It is clear that Rule 5 contemplates only one method of presentation. This is again evident from Rule 6 which directs the Returning Officer inter alia to give the candidates and other authorised persons present reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in Rule 4. In other words, the nomination papers which have not been delivered within time and in the manner laid down in Rule 4 have not to be shown for purposes of scrutiny.

12. The learned counsel for the petitioner contends that sub-rule (2) of Rule 4 gives two grounds of rejection, one that the nomination paper is not received before 3 O'clock in the afternoon of the last date appointed under clause (a) of sub-section (1) of Section 4, and the second that the certified copy referred to in sub-rule (1) of Rule 4 is not attached. He further says that Rule 6 gives five more grounds of rejection. He says that the ground on which the nomination paper of Dr. Ram Sharan Dass Sakhuja has been rejected is not covered by either sub-rule (2) of Rule 4 or Rule 6 and accordingly the nomination paper of Dr. Ram Sharan Dass Sakhuja could not have been validly rejected.

13. It seems to us that this nomination paper could be rejected on the ground that it has not been presented in person and received before 3 O'clock in the afternoon on the last date appointed under clause (a) of sub-rule (1) of Rule 4. Such a nomination paper could not be treated to have been received within the meaning of sub-rule (2) of Rule 4 and the Returning Officer was entitled to reject it.

14. There is no force in the second submission that at any rate the Returning Officer should have waited till the date of the scrutiny because as soon as he finds that a nomination paper has not been duly presented and received he must reject it outright at the time it is handed over to him.

15. The learned counsel contends that even if there has been a breach of Rule 4(1), the rule is not mandatory and the breach of it should not be deemed fatal. We are unable to agree with this submission. As we have mentioned before, the rules contemplate only one method of presentation and if that method is not followed the nomination papers cannot be held to be validly presented and must be rejected outright. To hold otherwise would lead to utter confusion and delay in the completion of the election. The Returning Officer would not know who and where to inform about the date of scrutiny, he would not be certain whether it is genuine, and would have to take evidence as to whether it is a genuine nomination paper or a forged paper.

16. In the result the petition fails and is dismissed with costs. The petitioner will pay to the respondent Rs. 500/- as total amount of costs.

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