

Ram Awadesh Singh

Vs

Smt. Sumitra Devi and Others

Civil Appeals Nos. 1384 And 1584 of 1970

(K.S. Hegde, A.N. Grover JJ)

03.12.1971

JUDGMENT

HEGDE, J. -

1. These are cross-appeals under Section 116-A of the Representation of the People Act, 1951, (to be hereinafter referred to as the Act) arising from an election petition filed by the first respondent (who for the sake of convenience will hereinafter be referred to as the respondent), before the High Court of Patna.
2. During the last mid term election for the Bihar Legislative Assembly held in the beginning of 1969, the appellant, the respondent and 11 others contested from the Arrah Assembly Constituency. The last date for filing the nomination was January 8, 1969, and the date of scrutiny was January 9, 1969. The poll took place on February 9, 1969, and the votes were counted on the next day. The appellant was declared elected as having obtained the highest number of votes, i.e., 13,556. His nearest rival was the respondent who secured 12,278 votes. The appellant was the nominee of the Socialist Party and the respondent was the nominee of the Congress Party.
3. After the publication of the results in the official Gazette, the respondent filed the election petition challenging the validity of the appellant's election on various grounds. The principal ground taken by her was that the result of the election had been materially affected by the improper acceptance of the appellant's nomination papers. She also charged the appellant with the commission of various corrupt practices to which reference will be made at a later stage. The learned trial Judge accepted the contention of the respondent that the result of the election had been materially affected by the improper acceptance of the appellant's nomination. He accordingly set aside the election of the appellant; but he rejected the contention of the respondent that the appellant was guilty of any corrupt practice. Aggrieved by the decision of the High Court, the appellant has filed Civil Appeal No. 1384 of 1970 and the respondent has filed Civil Appeal No. 1584 of 1970.
4. The principal questions that arise for decision are -
 - (1) Whether the defects found in the nomination paper of the appellant are of "substantial character" within the meaning of that expression in Section 36(4) of the Act, and
 - (2) Whether it is established that the acceptance of the nomination of the appellant had materially affected the result of the election.
5. After dealing with these questions, we shall proceed to consider the appeal of the respondent

challenging the conclusion of the Trial Court regarding the corrupt practices alleged to have been committed by the appellant.

6. Before proceeding to consider the relevant provisions in the Act, it is necessary to set out a few more facts. The appellant has been contesting from the Arrah Constituency from about the year 1962. He represented that Constituency before the dissolution of the Bihar Legislative Assembly. He was registered as an elector in the Sandesh Assembly Constituency of the Bihar State. His name continued to be on the electoral roll of that Constituency even at the time he filed his nomination from the Arrah Constituency on January 6, 1969, i.e., two days before the last date for filing the nomination. It appears that in 1968, his name was also entered in the electoral roll of Arrah Constituency. But later on, evidently because his name stood entered in the Sandesh Constituency, the same was deleted from the Arrah Constituency. But this deletion was done without notice to the appellant. The deletion was shown in a separate supplemental list. In the main electoral roll, his name continued to be shown in the Arrah Constituency. According to the appellant when he came to file his nomination paper, he was not aware of the fact that his name was entered in the electoral roll of the Arrah Constituency. Therefore he had brought with him a certified copy of the electoral roll of the Sandesh Constituency. But in the morning of January 6, 1969, he came to know that his name was also in the Arrah Constituency. At that time he did not notice the deletion of his name which was in a separate list. Therefore in his nomination paper, he entered his electoral roll No. as shown in the electoral roll of Arrah Constituency. But at the same time he showed to the Returning Officer the certified copy of the Sandesh Constituency wherein his name had been entered. The Returning Officer supports this version of the appellant. After checking the name of the appellant as well as his electoral number as found in the electoral roll of Arrah Constituency, and also the names and electoral roll number of his proposers, the Returning Officer received the nomination paper filed by him. At the time of the scrutiny, no one objected to the nomination of the appellant. The Returning Officer accepted his nomination as a valid nomination. The objection to the acceptance of the nomination of the appellant was put forward for the first time in the election petition. We have now to consider whether the appellant was validly nominated.

7. Section 5 of the Act prescribes the qualifications for membership of Legislative Assembly. It says that :

"A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless -

##(a) X X X(b) X X X##

(c) in the case of any other seat, he is an elector for any Assembly constituency in that State;

X X X."##

8. It is not denied that the appellant possesses all the qualifications prescribed either under the Constitution or under the Act and further that he has none of the disqualifications mentioned either under the Constitution or under the Act. All that is said against his nomination is that his nomination paper was not properly filled in. The law requires that the nomination of a candidate should be in the prescribed form and among others it should contain the name of the person nominated, his proposer's name as well as the electoral roll numbers of the candidate and his proposer. Sub-clause (4) of Section 33 provides 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 no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the Returning Officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked."

9. Sub-section (5) of Section 33 provides that where a candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall unless it has been filed along with the nomination paper be produced before the Returning Officer at the time of the scrutiny.

10. Section 36 of the Act prescribes the mode of scrutiny of the nomination. Sub-section (2) of that section says :

"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 enquiry if any, as he thinks necessary, reject any nomination on any of the following grounds -

(a) that on the date fixed for the scrutiny of nomination 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 -

#X X X##

(b) that there has been a failure to comply with any of 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."

11. Sub-section (4) of that section commands the Returning Officer not to reject any nomination paper on the ground of any defect which is not of a substantial character. Sub-section (6) of that section prescribes that:

"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."

12. The only other relevant provision which we need consider is sub-section (1) of Section 100 which prescribes the grounds for declaring election to be void. That section reads :

"Subject to the provisions of sub-section (2) if the High Court is of opinion -

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

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

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected -

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act of any rules or orders made under this Act,

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

13. The first question that we have got to decide is whether the defects found in the nomination paper of the appellant are of substantial character. As mentioned earlier, the appellant was fully qualified to be nominated for the election. The only thing said against his nomination is that his nomination paper was not properly filled in. We have earlier seen that a duty is imposed on the Returning Officer by sub-section (4) of Section 33 to look into the nomination paper when it is presented and to satisfy himself that the names and the electoral roll numbers of the candidate and that of the proposer as entered in the nomination paper are the same as those entered in the electoral roll. In this case it is proved that the Returning Officer did look into the nomination paper but unfortunately he also did not notice that the name of the appellant had been removed from the electoral roll of Arrah Constituency. If he had noticed that fact, he would have asked the appellant either to correct the mistake or to file a fresh nomination paper. We have earlier noticed that the appellant filed his nomination paper on January 6, 1969, and the last date for filing the nomination paper was the 8th of that month. That being so, there would have been no difficulty for him either to correct the nomination papers filed or to file a fresh nomination paper. We have earlier noticed that the appellant had with him a certified copy of the electoral roll of the Sandesh Constituency and he had shown the same to the Returning Officer. Mistakes complained of occurred because both the

appellant as well as the Returning Officer merely looked into the main voters' list but overlooked the deletion noted in a separate list. But the implication of Section 33(4) is that a wrong entry in a nomination paper as regards the name of the candidate or the proposer or their electoral roll numbers is not a matter of substantial importance. That is why the Legislature requires the Returning Officer to look into them and if there are any mistakes to get them corrected. What is of importance in an election is that the candidate should possess all the prescribed qualifications and that he should not have incurred any of the disqualifications mentioned either in the Constitution or in the Act. The other information required to be given in the nomination paper is only to satisfy the Returning Officer that the candidate possesses the prescribed qualification and that he is not otherwise disqualified. In other words those information relate to the proof of the required qualifications.

14. It may also be noted that the Legislature itself has made distinction between the acceptance of a nomination and the rejection of a nomination. The Returning Officer is required to give reasons for rejecting a nomination whereas he is not required to give reasons for accepting a nomination. Further sub-section (2) of Section 36 says that "he may reject the nomination paper". It is further seen that the proviso to sub-clause (4) of Section 33 says that no accurate description in regard to the name of the candidate or his proposer or in regard to any place mentioned in the nomination paper shall affect the full operation of the nomination.

15. From a combined reading of Sections 33 and 36, it is clear that a mis-description as to electoral roll number of the candidate or of the proposer in the nomination paper is not to be considered as a material defect in the nomination paper.

16. In *Karnail Singh v. Election Tribunal Hissar and Others*, (X ELR 189) the tribunal held that the nomination paper of one of the candidates was wrongly rejected on the ground that Column No. 8 in the nomination paper was not duly filled up. The only defect pointed out was that the name of the sub-division was not stated therein. But on the evidence it was quite clear that there was no difficulty in identifying the candidate and the candidate himself pointed out to the returning officer the entry of his name in the electoral roll. Agreeing with the tribunal this Court held that the defect in those circumstances was a technical one and the tribunal was perfectly right in holding that the defect was not of a substantial character and that the nomination paper should not have been rejected.

17. In *Rangilal Choudhury v. Dehu Sao and Others*, ((1962) 2 SCR 401 : AIR 1962 SC 1248) this Court held that the fact that the name of the constituency was wrongly mentioned as 'Bihar' instead of 'Dhanbad' in the nomination paper did not vitiate the nomination as it was clear from a reading of the entire nomination paper that the respondent was seeking election from the Dhanbad Constituency. In reaching that conclusion this Court referred to the requirements of Section 33(4), Section 36(2)(b) and (4). After referring to those provisions this Court observed :

"The result of these provisions is that the proposer and the candidate are expected to file the nomination papers complete in all respects in accordance with the prescribed form; but even if there is some defect in the nomination paper in regard to either the names or the electoral roll numbers, it is the duty of the Returning Officer to satisfy himself at the time of the presentation of the nomination paper about them and if necessary to allow them to be corrected, in order to bring them into conformity with the corresponding entries in the electoral roll. Thereafter on scrutiny the Returning Officer has the power to reject the nomination paper on the ground of failure to

comply with any of the provisions of Section 33 subject however to this that no nomination paper shall be rejected on the ground of any defect which is not of a substantial character."

18. In *Namdeo ChimANJI Tapre and Another v. Govinddas Ratanlal Bhatia and Others*, (ILR 1964 Bom 114) the High Court of Bombay held that as the identify of the candidate was not in dispute, the rejection of the nomination paper by the Returning Officer was not valid having regard to the provisions in Section 33 and Section 36 of the Act.

19. In *Dev Kanta Barooah v. Kusha Ram Nath and Others*, (XXI ELR 459) a Assembly contained a recital in the heading that the respondent was thereby nominated as a candidate for election "from the Nowgong Assembly Constituency", but against Column No. 2 of the nomination paper relating to the electoral roll number of the proposer and Column No. 5 relating to the electoral roll number of the candidate, the entry was "Assam Legislative Assembly Constituency, Part No. 10 of the Electoral Roll of village Phulaniati, Mouza Hatichung, Police Station Sadar, Nowgong, Poll No....." The Returning Officer rejected the nomination paper on the ground that the name of the constituency to which the electoral roll related was not mentioned in Columns 2 and 5 as required by Section 33(4) of the Act. This Court agreeing with the tribunal and the High Court held that the rejection of the nomination was improper.

20. Our attention has not been invited to any decision either of this Court or of any High Court or even of a tribunal where the Returning Officer had accepted the nomination paper of a qualified candidate, the same was found to be improper because of some defect in the nomination paper. The case of rejection of a nomination paper by the Returning Officer stands on a footing different from that of an acceptance of a nomination paper. In the latter case the main, though not the only question, to be considered is whether the candidate is qualified to be a candidate. The very fact that the law requires the Returning Officer to look into the nomination paper, when filed and get any mistake regarding the name or electoral number of the candidate or his proposer corrected shows that the mistakes regarding them is not a material defect.

21. Learned counsel for the respondent has sought to place reliance on some decisions of this Court in support of his contention that the appellant's nomination paper was improperly accepted. We shall now refer to the decisions relied on by him.

22. In *Narbada Prasad v. Chhagan Lal and Others*, ((1969) 1 SCR 499) a candidate's nomination paper was rejected by the Returning Officer on the ground that he did not produce the proof required under Section 33(5) of the Act. That rejection was upheld by this Court. We fail to see how that decision lends any support to the respondent's case. Without the required proof, the Returning Officer could not satisfy himself that the candidate was qualified to seek election.

23. Reliance was next placed on the decision of this Court in *Ram Dayal v. Brijraj Singh and Others*. ((1970) 1 SCR 530). Therein the proposer of the candidate was an illiterate person. He had not got authenticated or attested the mark put by him in the nomination paper by one of the designated officers as required by the relevant provisions of the Act and the rules framed thereunder. Hence the nomination paper was rejected by the Returning Officer. That rejection was upheld both by the High Court as well as by this Court. No nomination can be held to be valid unless the candidate is duly proposed. If the mark put by the proposer is not authenticated in the manner required by law, it cannot be said that the candidate has been properly nominated.

24. In *Brijendralal Gupta and Another v. Jawala Prasad and Others*, ((1960) 3 SCR 650 : AIR 1960 SC 1049) this Court observed that the word 'defect' in Section 36(4) included an omission to satisfy the details prescribed in the nomination. It further observed that the distinction laid down in English cases between "omission" and "inaccurate description" depended on the specific provisions of the English statute which did not obtain under the Indian law. This decision, again has no bearing on the point in issue.

25. For the reasons mentioned above we are of the opinion that the defect in the appellant's nomination paper was not a substantial defect. Hence the High Court was not justified in allowing the election petition on the ground that his nomination was improperly accepted.

26. In view of the conclusion reached above, it is not necessary for us to go into the question as to the true interpretation of Section 100(1)(d). We shall merely notice the arguments advanced on either side on that question. According to the appellant the Legislature has made a clear distinction between improper rejection and improper acceptance of a nomination. In the case of improper rejection, the High Court shall declare the election of the returned candidate to be void but in the case of improper acceptance before the election of the returned candidate can be declared void, the election petitioner will have to establish that the result of the election in so far as it concerns the returned candidate has been materially affected. At this stage we may notice that prior to the amendment of the Act in 1956, improper rejection and improper acceptance were placed in the same category, Clause (c) of Section 100(1) as it stood then read :

"If the Tribunal is of opinion.....

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(c) that the result of the election has been materially affected by the improper acceptance or rejection of any nomination;

the Tribunal shall declare the election to be wholly void."

27. This Court in *Vashist Narain Sharma v. Dev Chandra and Others*, ((1955) 1 SCR 509) observed in the course of its judgment that where the person whose nomination has been improperly accepted is the returned candidate himself, it may be readily conceded that his nomination has materially affected the result of the election. This observation was not the ratio of that decision. That apart, after this observation was made, the Parliament has amended the relevant provision and has made a distinction between improper rejection and improper acceptance of a nomination. It was urged on behalf of the appellant that in view of the amendment the observation made by this Court in *Vashist Narain Sharma's* case (*supra*), can no more govern the point in issue. According to the learned counsel, clause (d) of Section 100(1) as it now stands definitely requires that in the case of improper acceptance of any nomination, the election petitioner must establish that the result of the election in so far as it concerns the returned candidate has been materially affected. He urged that the word 'any' in Section 100(1) (d)(1) means every nomination. On the other hand it was urged on behalf of the respondent that the amendment of Section 100(1) did not affect the correctness of the observation made by this Court and that observation had been quoted by this Court in two cases arising under the amended provision. In view of our earlier finding about the validity of the appellant's nomination, it is not necessary to decide the controversy relating to the interpretation of Section 100(1)(d).

28. For the reasons mentioned above, differing from the view taken by the learned trial judge, we have come to the conclusion that the nomination of the appellant was properly accepted.

29. This takes us to the appeal filed by the respondent. As mentioned earlier, the High Court has rejected the charges of corrupt practices levelled by the respondent against the appellant. Those charges were sought to be established only by oral evidence. The learned trial Judge was unable to accept the evidence adduced in support of the alleged corrupt practices. Ordinarily this Court does not reappreciate oral evidence. Our attention has not been invited to any exceptional circumstance in this case requiring us to go into the evidence afresh. It is well known that the factious feelings generated during elections continue even after the election and hence the contesting parties are able to produce before court large number of witness, some of whom may be seemingly disinterested. But that by itself is no guarantee of the truth of the evidence adduced. Mr. Tarkunde, learned Counsel for the respondent put forward three broad contentions in support of the appeal preferred by the respondent. They are : (1) that the High Court failed to take an overall view of the evidence adduced; it merely contented itself by examining evidence relating to each one of the instances. (2) The High Court erred in not relying on the evidence relating to an instance when the same is spoken to by a single witness and (3) the High Court erred in rejecting the testimony of some of the witnesses on the ground that they were chance witnesses. None of these contentions appear to have any merit. Each instance of a corrupt practice pleaded had to be established separately. If every one of those instances are not proved, all of them put together cannot be accepted as true because of the volume of evidence.

30. Now coming to the instances sought to be proved by the evidence of a single witness, the learned trial judge observed in the course of his judgment that those instances were not seriously pressed by the Counsel for the respondent. Evidently those charges were given up. In appreciating evidence of the witnesses, the courts have to take into consideration the probability of their being present at the time of the alleged incident. Courts have always viewed with suspicion the evidence of chance witnesses. There was nothing wrong in the learned judge not being able to place much reliance on the evidence of chance witnesses Hence we see no merit in the appeal filed by the respondent.

31. For the reasons mentioned above we allow Civil Appeal 1384 of 1970 and dismiss Civil Appeal No. 1584 of 1970. In the result the election petition stands dismissed with costs both in the High Court as well as in this Court - in this Court the appellant is entitled to only one hearing fee.

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