

Rajbali Singh and Others

Vs

Shyamlal and Others

Civil Appeal No. 889 of 1971

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

29.03.1972

JUDGMENT

HEGDE, J. -

1. This is an appeal by certificate. It relates to the elections to Municipal Council, Sidhi. The elections were held in 1969. In that election six persons i.e., four appellants and Respondent 5 and 6 in this appeal were elected. Thereafter the first respondent herein an elector and apparently a busybody filed a petition under Article 226 of the Constitution in the High Court of Madhya Pradesh challenging the validity of the election of all the returned candidates on several grounds. The High Court accepted that petition and set aside the election of all the returned candidates. The only ground on which the election of the returned candidates was set aside is that the returned candidates in their nomination papers had merely mentioned the number of the wards for which they were candidates but had failed to mention the names of those wards. It is not the case of the election petitioner nor is it the finding of the High Court that there was any difficulty in identifying the ward in which the concerned returned candidate wanted to seek election. The Returning Officer did not find any such difficulty. He accepted their nomination papers. Admittedly every ward had a specific number in addition to having a name.

2. The High Court was of the opinion that the successful candidate's failure to mention the name of the ward in their nomination papers was fatal and therefore the Returning Officer was not competent to accept their nominations. It thought that it was mandatory for all the candidates to mention in their nomination papers the names of the wards in which they wanted to seek election. Further it opined that a mere mentioning of the number of the ward may lead to clerical errors and therefore the rule-making authority had prescribed that the name of the ward also should be mentioned in the nomination paper. It is nobody's case that in the nomination papers with which we are concerned there were any errors as regards the ward numbers.

3. Let us now examine whether the High Court was justified in taking such a technical view of the matter. The election to the municipal councils is regulated by Rule 13 of the rules framed under the Madhya Pradesh Municipalities Act, 1961. Rule 13(1) reads :

"13(1)(i). On or before the date fixed for filing nomination paper of candidates each candidates shall, either in person or by his proposer or seconder, between the hours of 11 o'clock in the forenoon and 3 o'clock in the afternoon, deliver to the supervising officer a nomination paper completed in Form IV and subscribed by the candidate himself as assenting to the nomination and by two duly qualified voters of the ward as proposer and seconder.

* * *

The relevant column in Form IV reads : "Name and number of the ward". Going back to Rule 13 it is necessary to notice sub-rule (vi) of that rule which says :

"The supervising officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character."

The question for decision is whether the non-mentioning of the names of the wards in the nomination papers is a defect of a substantial character ? For deciding that question we must first find out the reason behind the rule requiring the candidates to mention the names and the number of the wards in which they want to contest. It is obvious that the particulars in question are required to identify the constituency in which a candidate is desirous of seeking election. That purpose will be served if either the number of the ward or its names unless there are more than one ward having the same name. Once the number of the ward is mentioned in the nomination paper the identification of the constituency is complete. The name of the ward is merely an additional piece of evidence to identify the constituency. If the number of the ward is mentioned there will be no difficulty for the Returning Officer to find out in which constituency the candidate wants to seek election. We have no hesitation in holding that the nomination papers of the returned candidates were rightly accepted by the Returning Officer as they substantially complied with rules. If a nomination is accepted by the Returning Officer the presumption is that the nomination is a valid nomination. It is for the party who challenges its validity to establish his plea by showing that there was no substantial compliance with law.

4. Form III in the Rules prescribes the form of notice calling for election of councillors. That form reads :

"Election of Councillor(s) for Ward(s) No. of the..... Municipality, Tehsil..... District.....

#x x x x."##

This form shows that even when the authorities call upon the electors to elect councillors they do so with reference to ward numbers and not with reference to the names of the wards evidently because in the case of names of the wards more than one ward may have the same or similar names but in the case of number no such difficulty can arise. If there is a possibility of an error creeping into numbers there is similar possibility in the case of names. The candidates have to guard against such errors.

5. The question whether the failure to mention the name of constituency, in which the candidate wants to seek election in his nomination paper per se vitiates his nomination came up for consideration before this court in Rangilal Choudhury v. Dahu Sao and Others. ([1962] 2 SCR 401 : AIR 1962 SC 1248 : (1963) 1 SCJ 351). That case related to a bye-election for the Dhanbad assembly constituency in the Bihar State. In his nomination paper the candidate had mentioned the constituency in which he was seeking election as 'Bihar'. That nomination paper was rejected by the Returning Officer on the ground that the candidate had not mentioned the name of the constituency in which he desires to seek election. This court differing from the opinion taken by the Returning Officer held that the nomination paper was valid in law. The ground on which this Court came to that conclusion was that the election in question was a bye-election; it pertained to only one

constituency i.e, Dhanbad. That being so there was no difficulty for the Returning Officer to identify the constituency in which the candidate wanted to seek election. The ratio of that decision is that so long as there is no difficulty in identifying the constituency in which the candidate wants to seek election any omission in filling the column relating to the constituency will be considered as unsubstantial. A somewhat similar view was taken by this court in Ram Awadesh Singh v. Smt. Sumitra Devi and Others. ([1972] 2 SCC 131).

6. Mr. Panjwani appearing for respondent No. 1 invited our attention to certain decisions where the courts had taken the view that the particulars mentioned in the nomination papers before them did not sufficiently comply with the rules. That was because, that from the particulars given in the nomination papers it was not possible to definitely identify the constituency in which the concerned candidates desired to contest. Those decisions were rendered on the peculiar facts of those cases. The real test as mentioned earlier is whether from the particulars given in a nomination paper the constituency from which the candidate wants to seek election can be reasonably identified. Once it is held that test is satisfied then the requirement of the rule is met. Any failure to give further particulars cannot be considered as substantial.

7. In the result this appeal is allowed and the order of the High Court is set aside and the writ petition is dismissed. The first respondent will pay the costs of the appellants herein both in this Court as well as the High Court. The other respondents will bear their own costs.

</html