

Prahladdas Khandelwal

Vs

Narendra Kumar Salave

Civil Appeal No. 2004 of 1971

(A. N. Grover, M. H. Beg, A. K. Kukherjea JJ)

11.09.1972

JUDGMENT

GROVER, J. -

1. This is an appeal from a judgment of the Madhya Pradesh High Court in an election petition filed by the appellant Prahladdas Khandelwal on of the candidates for the Mid-term election to the Lok Sabha from the Betul Parliamentary Constituency No. 26 in the State of Madhya Pradesh challenging the election of the respondent Narendra Kumar Salave the returned candidate.
2. Some of the material dates may be noticed. The notification calling for the election was issued on January 27, 1971. The last date for filing the nomination paper was February 3, 1971; the scrutiny was to take place on February 4, 1971, and the election result was to be declared on March 11, 1971.
3. The appellant filed his nomination paper on February 2, 1971. An acknowledgment of the receipt of the nomination paper was given by the Assistant Returning Officer. The Assistant Returning Officer gave a certificate under Article 84 of the Constitution that the appellant had been administered the oath as required under that article. In this certificate there was mention of 26th Betul Parliamentary Constituency. According to the evidence of the Assistant Returning Officer Shri S. K. Sharma, R.W. 2, in the nomination paper which the appellant filed there was no mention of the Parliamentary Constituency from which he was contesting the election. This defect was pointed out to him by the Assistant Returning Officer but it appears that the appellant did not cure that defect. On February 4, 1971, which was the date fixed for scrutiny the nomination paper of the appellant was rejected by the Returning Officer Shri Komal Singh Thakur, Collector of Betul on the objection of one Goverdhandas. The ground given rejection was that the name of the Constituency for which the appellant had filled the nomination paper was not mentioned therein. The Returning Officer held that owing to this defect which was of a substantial character the nomination paper was invalid.
4. The sole ground in the election petition filed by the appellant was that his nomination paper had been erroneously and rejected by the Returning Officer. In a Paragraph 6 it was stated that a blank nomination form had been purchased by him from the Election Officer, Betul. All the details mentioned in the form were properly filed in. There was no separate space left in the form to mention the name of the Constituency. It was asserted that there was difference the nomination form in Hindi and English and even if the name of the Constituency was necessary to be mentioned the Assistant Returning Officer should have got it filled up under proviso to Section 33(4) of the Representation of People Act, 1951. In other paragraphs of the petition it was pleaded that the

certificate relating to the oath clearly contained a mention of the 26th Betul Parliamentary Constituency and, therefore, the Returning Officer was in a position to know from which Constituency the appellant was contesting the election. It was claimed that the alleged defect was not a substantial character and the nomination paper could not have been rejected by that Returning Officer.

5. The respondent resisted the election petition on the ground, inter alia, that there was no defect in the nomination form supplied to the appellant. The omission to mention the name of the Constituency was a defect of substantial character. It was denied that it was the duty of the Assistant Returning Officer to get the substantial defect in the nomination form rectified. The sole issue which arose for decision was whether the nomination paper of the appellant had been wrongly rejected. The High Court gave the following findings -

(1) the nomination paper in Hindi (Ex. P. 2) is the authoritative text of the form prescribed under the Act and rules made thereunder;

(2) neither the name nor the number of the Constituency was mentioned in the nomination paper, (Ex. P. 2);

(3) the omission to mention the name of the Constituency was a defect of a substantial character;

(4) the Returning Officer was not enjoined under the law to go beyond the nomination paper and to find out for which Constituency a particular candidate had been nominated;

(5) the statutory requirements of the Election Law have to be strictly applied. As the nomination paper of the appellant was found to be defective the defect being of a substantial character the Returning Officer was justified in rejecting it. Apart from that the appellant did not get the defect rectified even though the same had been pointed out to him by the Assistant Returning Officer.

6. The first question that has to be determined is whether the nomination form which was supplied was misleading or defective and for that reason it was not possible to fill in the name of the Parliamentary Constituency from which the appellant was contesting the election. Section 2(1)(g) of the Conduct of Election Rules, gives the meaning of the word "form" It means a form appended to the rules and in respect of any election in a State includes a translation thereof in any of the languages used official purposes of the State. Rule 4 provides that every nomination paper presented under sub-section (1) of Section 33 shall be in such one of the Forms 2-A to 2-E as may be appropriate. Form 2-A relates to the nomination paper to be filed for election to the house of the People. According to Section 5(1) of the Official Languages Act, 1963, a translation in Hindi published under the authority of the President in the Official Gazette on or after the appointed day, inter alia, of any order, rule, regulation or bye-law issued under the Constitution or under any Central Act shall be deemed to be the authoritative text of in Hindi.

7. Form 2-A as prescribed by the Conduct of Elections Rules, 1961, in English is as follows :

"FORM 2-A

#I nominate as a candidate for election for election to the House of the People from the.....

Parliamentary Constituency. Candidates, name.....His postal address.....His name is entered in S. No. in Part No.....of the electoral roll for..... (Assembly Constituency comprised within).....
Parliamentary Constituency. My name is..... and it is entered at S. No. in Part No..... of the electoral rolls for..... (Assembly Constituency comprised within)..... Parliamentary Constituency Date..... (Signature Proposer) _____ ##

I, the abovementioned....." The nomination form in Hindi used in the Mid-term Elections, 1971 begins with the word "Main" (I). Then there is a blank space which is followed by these words :

If the form were to be read in the same way as if it were in the English language an impression is likely to be created that after the word "I" proposer has to fill in his own name as was actually done in the present case in Ex. P-2. But any one familiar with the Hindi language would not read it that way and the blank in the context, it will be understood, is meant for filling in the name of the Parliamentary Constituency. If that is not done the name of the Constituency for which the candidate is being nominated cannot find any mention in the material part of the form. It could not be contemplated that the official translators who are presumed to be fully conversant with the Hindi language would have translated the English form in such a way as to leave out the name of Parliamentary Constituency altogether for which the candidate is being proposed. It may be mentioned that to an ordinary person a wrong impression may be conveyed that after the word "I" he has to give his own name but even if he gives his own name he can indicate the name of the Parliamentary Constituency thereafter which would make the form complete in every respect. It appears that the Election Commission of India addressed a letter. Ext. R.-4, to the Secretary, Official Languages Legislative Commission saying that the Hindi translation of Form 2-A appeared to be defective in some respects and it was suggested that in Paragraph 1 of the form as shown in the Ext. R-5 after the Word "Main" (1) in Hindi the name of the Parliamentary Constituency must be mentioned. Indeed it had been pointed out in a judgment of the Allahabad High Court, Kashi Prasad v. Harigen Ram & Another, (Election Petition No. 44 of 1267, decided on January 19, 1968) that the Hindi form might have caused some confusion as there also a similar defect appeared as in Ext. P-2 here and the name of the Constituency had not been mentioned. The court held that since the name of the Constituency was not mentioned the defect was of a substantial nature and Returning Officer should have rejected the nomination paper. But as stated before it was pointedly mentioned that the Hindi form might have caused some confusion and the proposer would have been well advised in consulting some competent person before filing it in. Unfortunately it appears and that is supported by the evidence of Shri Komal Singh Returning Officer that the amendment proposed by the Election Commission of India was not given effect to although certain other amendments in the Form were made in accordance with the procedure prescribed by the Act and the Rules. The appellant has not been able to show any error in the conclusion of the High Court that the Form Ex. P-2 was the prescribed form under the Act and the rules and the same had been sent for the purpose of the election in question by the Chief Electoral Officer, Madhya Pradesh, to the Returning Officer Shri Komal Singh.

8. In the election petition the sole grievance of the appellant was that there was no separate space in the nomination form where the name of the Constituency could be mentioned. It was not suggested that the proposer, whose name was Ajudhia Prasad or the appellant, had been misled in any way by the languages of the Hindi Form. The appellant who gave evidence as P.W. 1 deposed that he had himself filled up the nomination form Ex. P-2 and got it signed by his proposer. There was no place

for mentioning the name of the Constituency and therefore it was not mentioned. The appellant is not only a law graduate but has also worked as Civil Judge for some years and resumed practice in January, 1968. Shri S. K. Sharma the Assistant Returning Officer to whom the nomination paper was handed over gave evidence as P.W. 2. He stated that he had told the appellant that the name of the Constituency should be mentioned but the latter replied that there was no such space for writing the name of the Constituency in the nomination paper. Shri Sharma further stated, "I again told him that after the Word 'Main' (I) in the nomination paper the name of the Constituency should be mentioned and you would realise the same if you would minutely read the form". Thereupon the petitioner said "I know my own job". The learned Trial Judge has believed this evidence and nothing has been shown why it should not have been so believed. We concur with the High Court that the form on which the nomination of the appellant was made (Ext. P-2) was the one which had been statutorily prescribed and that there was a complete omission to mention the name of the Parliamentary Constituency for which the appellant was being mentioned as a candidate. Furthermore the Assistant Returning Officer had drawn the attention of the appellant to this omission and yet the defect was not cured. This was done notwithstanding the fact, as will be presently seen, that where the defect is of a substantial character and is not of the nature contemplated by the Act and the rules it is not the duty of the Returning Officer to get this defect rectified or omission completed.

9. The next question is whether the omission to mention the name of the 26th Betul Parliamentary Constituency in Ex. P-2 was a defect of a substantial character by reason of which the nomination paper must be rejected by the Returning Officer. Section 33 deals with the presentation of the nomination paper and requirements for a valid nomination. It has to be presented after being completed in the prescribed form and signed by the candidate and by an elector of the Constituency as proposer. Sub-section (4) of that section is to the following effect :

"On the presentation of a nomination paper, the Returning Officer shall satisfy 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 roll."

Section 36 deals with scrutiny of nominations, Sub-section (2) thereof provides that the Returning Officer shall examine the nomination papers and decide all objections which may be made to any nomination and may, either on such objection or on his own motion after a summary inquiry, reject the nomination paper on the ground given in clauses (a), (b) and (c). Clause (b) is "that there has been a failure to comply with any of the provisions of Section 33 or Section 34". Sub-section (4) furnishes the key to the point under consideration. According to it the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. The proviso to Rule 4 may also be noticed. It says that a failure to complete or defect in completing the declaration as to symbols in a nomination paper in Form 2-A or Form 2-B shall not be deemed to be a defect of a substantial character within the meaning of sub-section (4) of Section 36. It is thus clear that in the statute and the rules those defects have been indicated for which the nomination paper cannot be rejected and the Returning Officer has to permit the correction of those defects; [vide proviso to Section 33(4) of the Act and Rule 4 of the rules]. But Section 36(4) clearly contemplates that where the defect is of a substantial character the Returning Officer is not enjoined to have it rectified and he has to reject that nomination paper. The matter is not *res integra* and is settled by a series of decisions of this Court. We need refer only to two of sub decisions, viz., *Rattan Anmol Singh and Another v. Atma Ram and Others*, ([1955] 1 SCR 481 : AIR 1954 SC 510 : 1954 SCJ 731) and *Ram Dayal v. Brijram Singh and Others*. ([1970] 1 SCR 530 : (1969) 2 SCC 218). In the first case it was laid down in categorical terms that Section 36 is mandatory and enjoins the

Returning Officer to refuse any nomination when there has been any failure to comply with any of the provisions of Section 33. The only jurisdiction the Returning Officer has at the scrutiny stage is to see whether the nominations are in order and to hear and decide objection. He cannot at that stage remedy essential defects or permit them to be remedied. It is not open to him to reject a nomination paper on the ground of a technical defect which is not of a substantial character. But he cannot remedy that defect. He must leave it as it is. If it is technical and non-substantial it will not matter. In the second case the following observations at page 533 are noteworthy :

"The requirement under Section 33(1) of the Act that the nomination shall be signed by the candidate and by the proposer is mandatory. Signing, whenever signature is necessary, must be in strict accordance with the requirements of the Act and where the signature cannot be written it must be authorised in the manner prescribed by the rules. Attestation is not a mere technical or unsubstantial requirement within the meaning of Section 36(4) of the Act and cannot be dispensed with. The attestation and the satisfaction must exist at the stage of presentation and omission of such an essential feature may not be subsequently validated at the stage of scrutiny and more than the omission of a candidate to sign at all could have been".

In this case the earlier decision in Rattan Anmol Singh's case (supra), was followed.

10. There can be no manner of doubt that in the present case there has been a failure to comply with the provisions of Section 33 inasmuch as the name of the Constituency was not stated in the nomination paper which, therefore, could not be treated as having been completed in the prescribed form as required by Section 33(1) of the Representation of People Act. This defect was essential of a substantial character and did not fall within those provisions where the Returning Officer is enjoined either to get the defect rectified or ignore it. It was not the duty of the Returning Officer at the stage of the scrutiny to draw the attention of the appellant to the aforesaid substantial defect for the purpose of getting the same cured. The Returning Officer was fully justified in rejecting the nomination paper.

11. The appeal fails and it is dismissed. Parties will bear their own costs.

12. A copy each of this judgment should be sent to the Election Commission, India, as also the Secretary, Ministry of Law, for drawing their attention to the observations with regard to the nomination paper 2-A (in Hindi version) prescribed for nomination of a candidate for election to the House of the People and the desirability of accepting the suggestion made by the Election Commission in its letter, dated August 24, 1968, to the Secretary, Official Languages (Legislative) Commission, New Delhi, being Ex. R-7 in the above case or adding explanatory notes in the prescribed form in Hindi language.

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