

**SUPREME COURT OF INDIA**

Dilip Kumar Gon.

Vs.

Durga Prasad Singh

C.A.No.602 of 1973

(A. Alagiriswami and R. S. Sarkaria, JJ.)

04.11.1974

**JUDGEMENT**

**SARKARIA, J.:-**

1. Durga Prasad Singh, respondent herein; Khatir Ali and Abdul Hamid, filed their nomination papers before the Returning Officer for contesting the election to the Bihar Legislative Assembly from 147- Jamtara Assembly Constituency (General). The date for scrutiny of the nomination papers was February 9, 1972. The Returning Officer rejected the nomination papers of Khatir Ali and Abdul Hamid ignoring the objections that were raised on their behalf. Durga Prasad Singh was declared duly elected.

2. The appellant, an elector of the Constituency, filed an Election Petition challenging the election of Durga Prasad Singh inter alia on the ground that the nomination papers of Abdul Hamid and Khatir Ali had been improperly rejected. A learned single Judge of the High Court, who tried the petition, decided that issue against the petitioner, and in consequence, dismissed the petition. Hence this appeal.

3. Before us, Mr. R. K. Garg, learned counsel for the appellant has confined his arguments to the rejection of the nomination paper of Abdul Hamid, only. It is submitted that the defect on the basis of which the Returning Officer, rejected Abdul Hamid's nomination papers, was not a 'defect' in the eye of law. At any rate, proceeds the argument, it was not a defect of a substantial character which could justify rejection of the nomination papers.

4. There is merit in this contention.

5. What happened was that in the column of the printed nomination form, meant for making a declaration of the candidates of the Scheduled Caste/Tribe contesting for a Reserved Seat, Abdul Hamid had not (a) filled his specific caste in the blank meant for that purpose and further (b) he had in that column, left the words "Scheduled Caste' unscored. The Returning Officer rejected the nomination papers on the ground that the failure of the candidate to delete the words 'Scheduled Caste' means that "he belongs to Scheduled Caste which is not true" and consequently, "the nomination papers are not filled up properly".

6. The learned Judge of the High Court upheld this rejection, holding that "the candidate's filling of these entries were on the face of it, not proper and did not comply with the requirements of law on this subject" and further that this defect was not "trivial or technical" but of a substantial character.

7. In our opinion, in the circumstances of the case, the rejection of the nomination papers of Abdul Hamid was manifestly erroneous. The High Court's view that in scoring out only the word 'Jan-Jati' (tribe) and leaving the word 'Jati' (caste) untouched in the aforesaid column of the nomination form, Abdul Hamid had failed "to comply with the requirement of the law on the subject" was entirely misconceived. It overlooked the fact that the Jamtara Constituency was a 'General' Constituency, and the seat for which the candidates wanted to contest the election was not a Reserved seat. Section 33 (2) of the Representation of the People Act, 1951, or any other statutory provision does not enjoin upon a candidate who is contesting the election for a General Seat, and not for a Reserved Seat, to specify in his declaration his caste or tribe. Further, the Returning Officer appearing as R. W. 2, had clearly admitted that at the time of the scrutiny of the nomination papers, he was aware that Abdul Hamid was not a member of the Scheduled Caste and that he had deposited Rs. 250/- as security. The omission to strike off the column in the printed nomination form relating to Scheduled Caste/Tribe did not amount to a defect in the eye of law, much less was it a defect of a substantial character, warranting rejection of the nomination papers. In *Amolak Chand v. Raghuvver Singh* (1968) 3 SCR 246 = (AIR 1968 SC 1203) the nomination papers of two candidates contesting for a General Constituency were rejected on a similar ground. Holding that the rejection was improper, Ramaswami J. speaking for the Court stated the law on the point thus :

"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 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".

8. In the light of what has been said above, we would, reverse the finding of the High Court and hold that the nomination papers of Abdul Hamid were improperly rejected by the Returning Officer.

9. In the result, we would on this short ground, allow this appeal and the Election Petition and declare the election of Durga Prasad Singh, respondent herein to be void. The appellant shall have costs throughout.

Appeal allowed.