

Dharam Singh Rathi

Vs

Hari Singh, M. L. A. and Others

Civil Appeal No. 84(Nce) of 1973

(N. L. Untawalia, Syed Fazal Ali JJ)

02.05.1975

JUDGMENT

UNTWALIA, J. –

1. This is an appeal under Section 116A of the Representation of the People Act, 1951 - hereinafter called the Act, by election petitioner whose petition challenging the election of respondent No. 1 (for brevity - the respondent) has been dismissed by the High Court. Eventually the only ground which could be pressed in the High Court to challenge the election of the respondent was that the nomination papers of two persons namely Shri Jagan Nath and Shri Prabha Ram were improperly rejected by the Returning Officer. The High Court framed only two issues for trial and decided them against the appellant. It has held that the nomination papers - both of Jagan Nath and Prabha Ram suffered from defects of substantial character and, therefore, they were rightly rejected by the Returning Officer.

2. Jagan Nath filed two nomination papers in the prescribed Form No. 2B prescribed under Rule 4 of the Conduct of Elections Rules, 1961 - hereinafter referred to as the Rules. In both the papers in the column "His postal address" the only thing written was - "Smalkha Mandi". The Returning Officer rejected both the nomination papers of Jagan Nath on the ground that the candidate had not given the name of his father and his full address. The name given as Jagan Nath and address as Smalkha Mandi were not sufficient. The Returning Officer described it as a technical error fit to be rectified but because there was nobody present on behalf of the candidate at the time of the scrutiny of the nomination papers the rectification could not be made. Hence the nominations were rejected. Following the decisions of this Court in Brijendralal Gupta v. Jwalaprasad ((1960) 3 SCR 650 : AIR 1960 SC 1049 : 22 ELR 366) and in Prahladdas Khandelwal v. Narendra Kumar Salve ((1973) 2 SCR 157 : (1973) 3 SCC 104) the High Court has held that the nomination papers suffered from a defect of non-compliance with the requirement of Section 33(1) of the Act and that the defect was of a substantial character. On consideration of the evidence adduced before it, it held :

Thus in the established circumstances of the case, it was manifest that the mention of Smalkha Mandi only, in the nomination papers, was no more than an apology of an address. It was, according to Mr. Joginder Pal Narang's testimony in this Court hopelessly incomplete. To my mind also it was equal to not giving any address at all.

3. We concur in the view of the High Court that filling up the column of postal address of the Candidate in the nomination paper is necessary. The High Court has referred to several provisions in the Act and the Rules to point out the purpose of supplying the postal address. It appears that the name of the post office concerning Smalkha Mandi, Smalkha village, Modeltown, etc. was

Smalkha. The name of the post office was not Smalkha Mandi. On the face of the address given in the nomination papers there was the defect of incorrect mention of the name of the post office. The name of the district was also not given. It has come in the evidence of the respondent that there were other places of the names of Smalkha and Smalkha Mandi in the States of Haryana and Rajasthan. Even ignoring the defects aforesaid the High Court has noticed on consideration of the evidence and specially of Jagan Nath himself that the postal address given in either of his nomination forms was so very incomplete that no letter addressed to him to that address could possibly be delivered to him. There were several persons of the name of Jagan Nath in Smalkha Mandi, Smalkha village. Jagan Nath was serving at the shop of a sweetmeat seller, Railway Road, Smalkha Mandi and was resident of Bharbbujanwali Gali. The interesting part of this case is that Jagan Nath did not file an election petition. It was filed by the brother of an unsuccessful candidate. Eventually Jagan Nath was impleaded as a respondent in the election petition. He filed a written statement and examined himself as RW 5. His definite case was that until and unless some more details were given in his postal address no letter on that skeleton description as given in the nomination papers could be delivered to him by the postal authorities. Taking the totality of the circumstances the High Court has rightly held that no postal address in effect was given on either of the nomination papers of Jagan Nath.

4. A nomination paper has to be delivered to the Returning Officer by the candidate or his proposer in accordance with Section 33(1) of the Act. The nomination paper must be completed in the prescribed form. The requirement of sub-section (4) is that the Returning Officer shall satisfy himself on the presentation of a nomination paper that the names and electoral roll numbers of the candidate and his proposer as entered rolls. In certain types of defects detected at the time of the presentation of the nomination paper the proviso to sub-section (4) empowers the Returning Officer to overlook such mistakes or to get them rectified as the case may be. Generally speaking the kinds of defects mentioned in the proviso would not be of a substantial character so as to justify the rejection of a nomination paper. There may, however, even amongst those types of defects be some such that necessitates their rectification and if not rectified that may make the nomination paper liable to be rejected. But the defect of non-supply of postal address is not covered by the proviso to sub-section (4) of Section 33 of the Act. It is a defect which falls for consideration at the time of the scrutiny of the nomination papers. If the defect is a substantial one then the nomination paper has got to be rejected. Sub-section (4) of Section 36 enjoins the Returning Officer not to reject any nomination paper on the ground of any defect which is not of a substantial character. But if it is of a substantial character then sub-section (2) provides that the Returning Officer shall reject the nomination paper when "there has been a failure to comply with any of the provisions of Section 33 or Section 34". Reading Rule 4 of the Rules and Form 2B it would be noticed that non-supply of postal address of the candidate or supplying such cryptic address which virtually amounts to non-supply of address is a failure to comply with the provisions of Section 33(1). Hence we agree with the findings of the High Court that Jagan Nath's nomination papers were not improperly rejected by the Returning Officer.

5. The nomination paper of Prabha Ram suffered from more serious types of defects. The Returning Officer rejected the nomination of Prabha Ram on the grounds (1) that the name of the constituency of the proposer was not given in the nomination paper; (2) that the numbers of electoral roll given in the nomination paper did not tally with the candidate's number in the true copy of the electoral roll; (3) that at the name of the proposer one more name was given and the entries in the electoral roll did not tally with the numbers mentioned by the proposer and the candidate in the nomination paper. Following the dictum of this Court in the case of *N. T. Veluswami Thever v. G. Raja Nainar* (AIR 1959 SC 422 : (1959) Supp 1 SCR 623 : 17 ELR 181) the High Court has taken into consideration

another defect, in that the thumb impression required by law. Even ignoring grounds Nos. 2 and 3 forming the basis of the order of the Returning Officer rejecting the nomination paper of Prabha Ram as being possibly covered by the proviso to Section 33(4), the first defect pointed out by the Returning Officer was of a substantial character. It made it obligatory for him to reject the nomination paper. Over and above that defect the High Court has rightly noticed another fatal defect. Section 2(i) of the Act says :

"Sign" in relation to a person who is unable to write his name means authenticate in such manner as may be prescribed.

The prescribed manner of authentication is to be found in Rule 2(2) of the Rules. A thumb mark has to be placed by the proposer on the nomination paper in the presence of the Returning Officer and such officer on being satisfied as to his identity has to attest the mark as being the mark of that person. There was, therefore, a clear violation of this rule also. We see no reason to differ from the view of the High Court that the nomination paper of Prabha Ram was not improperly rejected by the Returning Officer.

6. For the reasons stated above the appeal fails and is dismissed with costs payable to respondent No. 1 alone.

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