

Avadh Raj Singh

Vs.

Jugal Kishore Gupta

Civil Appeal No. 1253 (E) of 1978

(V. R. Krishna Iyer A.D. Koshal JJ)

08.11.1978

JUDGMENT

KRISHNA IYER, J. -

1. Since we are affirming the conclusion reached by the High Court, there is hardly any need for a long judgment. Even so, the brief facts may be set out to get a hang of the issue agitated before us.

2. In May, 1977, there was the General Election to the constituencies in the Madhya Pradesh Assembly. We are concerned with 84 Anuppur Legislative Constituency. It happened that one Tejraj Dwivedi, an advocate by profession, was a candidate. He filed his nomination paper but omitted to comply with the requirement of Section 33(5) of the Representation of the People Act (for short, the Act). That provision reads thus :

33(5) Where the 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 scrutiny.

It is obvious that there is a mandatory obligation cast on the candidate to produce before the Returning Officer a certified copy of the relevant entry in the electoral roll showing his name if the candidate is an elector from a different constituency. In this particular case he was an elector from a different constituency, namely, Sohagpur. The failure to produce the certified copy or copy of the electoral roll evidencing his being an elector of that constituency is fatal because the defect is of a substantial nature. Section 36(4) provides :

The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

3. Two short questions that call for decision are : whether, as a fact, the candidate Tejraj Dwivedi, did produce a certified copy as required by Section 33(5) and was told that he may take it back (this is the contention put forward by the appellant); (2) whether, if he did not produce such a certified copy, the defect was of a substantial character resulting in invalidation of the nomination.

4. On the first question, a finding of fact has been recorded by the High Court disbelieving the witness, Dwivedi and we are wholeheartedly in agreement with that finding. On the second question the High Court has rightly pointed out that a string of decisions of this Court, namely, Sri Babu Ram v. Shrimati Prasanni (1959 SCR 1403 : AIR 1959 SC 93), Narbad Prasad v. Chhagan Lal ((1969) 1

SCR 499 : AIR 1969 SC 395) and P. H. Jugatsingh v. P. H. Narsibai ((1974) 2 SCC 115 : (1974) 3 SCR 453 : AIR 1974 SC 951), has held that a non-compliance with Section 33(5) of the Act has the consequence of invalidating the nomination paper.

5. It is true that the nomination paper was rejected on a different ground by the Returning Officer, a ground which has been found by the High Court to be untenable. We are not concerned with the rightness or wrongness of the merits of the findings of the Returning Officer. The short and sole question is whether the nomination paper was as a fact and in law invalid. The decisions of this Court considering the provisions concerned lead to the irresistible conclusion that the defect was of a substantial nature and, therefore, the nomination was invalid. This conclusion settles the fate of the appeal.

6. Shri. Asthana, for the appellant, urged that had the non-production of a certified extract from the electoral roll been pointed out as the defect, he would have produced it and all remediable defects, as distinguished from disqualifications, were 'not of a substantial character'. May be so, but we need not investigate this aspect because the appellant never appeared at the scrutiny and had to thank himself for the final outcome - and unremedied non-compliance with the statutory requirement. Had he appeared what would have happened is hypothetical and the effect of non-objection and non-production would also be so. We need not and do not go beyond the facts and law presented before us. The appeal is, therefore, dismissed with costs.

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