

Ram Swarup

Vs

Hari Ram

Civil Appeal (NCE) No. 1061 of 1982

(Pathak, J)

12.05.1983

JUDGMENT

PATHAK, J

1. The appellant was elected to the Nagal constituency of U. P. Legislative Assembly and was declared elected on June 1, 1980. The respondent Hari Ram filed an election petition against the election of the appellant and the High Court, by its judgment and order dated March 3, 1982 declared the election void. The High Court found that the appellant had continued to hold the office of District Extension Educator (Family Planning), an office of profit under the State Government, up to the date fixed for scrutiny of the nomination papers and, therefore, he was disqualified from being elected as a member of the Legislative Assembly. Holding that the acceptance of his nomination paper amounted to non-compliance with the provision of the Constitution it set aside the election under Section 100 (1) (d) (iv) of the Representation of the People Act, 1951.

2. In this appeal, the appellant contends that the High Court erred in holding that he was disqualified. In our opinion, the appellant is right. Article 191 (1) (a) of the Constitution declares that a person shall be disqualified for being chosen as, and for being, a member of Legislative Assembly if he holds any office of profit under the Government of a State other than an office declared by the legislature of the State by law not to disqualify its holder. It is not disputed that the post of District Extension Educator (Family Planning) is an office of profit under the Government of Uttar Pradesh, the holding of which would disqualify the incumbent from election to the Legislative Assembly. Section 36 (2) (a) of the Representation of the People Act, 1951 indicates that the candidate should not be holding an office of profit on the date fixed for scrutiny of nominations. The question is whether the appellant was holding an office of profit and was disqualified from election by reason of Section 36 (2) (a).

3. On April 20, 1980 the appellant wrote to the Additional Director and State Family Welfare, Officer, Uttar Pradesh, Lucknow stating that he was unable to continue in government service and requesting that his resignation be accepted with effect from April 30, 1980 and that he should be relieved with effect from that date. The letter of resignation was forwarded to the Additional Director-cum-state Family Welfare Officer with the recommendation of the Medical Officer, Saharanpur for acceptance of the resignation. On May 2, 1980 the Additional Director-cum-State Family Welfare Officer wrote back to the Chief Medical Officer, Saharanpur stating that the resignation of the appellant was accepted with effect from April 30, 1980 with the stipulation that the appellant must pay one month's salary in lieu of notice.

4. It appears that on May 3, 1980 the sum of Rs 500 representing a month's salary was deposited by

the appellant and on the same date he handed over charge of his office. The appellant had already filed his nomination paper on May 2, 1980 and on May 3, 1980, the date fixed for the scrutiny of the nominations, the appellant produced a receipt in proof of his having deposited a month's salary. We may assume that notwithstanding that the letter of the Additional Director-cum-State Family Welfare Officer stated that on the appellant paying one month's salary in lieu of notice his resignation would be regarded as accepted with effect from April 30, 1980, in point of law the resignation should be deemed effective only from the time when he made payment of one month's salary. The payment was made, it is apparent, on May 3, 1980 but well before the time when the Returning Officer commenced the examination of the nomination papers. Section 36 (2) (a) of the Representation of the People Act, 1951 provides that the Returning Officer may reject any nomination on the ground :

(a) that on the date fixed for the scrutiny of nominations of candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely :

Articles 84, 102, 173 and 191.

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To our mind, according to the scheme for the conduct of elections the candidate should not be not qualified or disqualified when the scrutiny of nominations is taken up by the Returning Officer for the purpose of finalising the list of nominated candidates. This, in our opinion, is the proper construction to put on the words "the date fixed for the scrutiny of nominations". A broad and liberal interpretation must be given to Section 36 (2) (a) in order to give full effect to the Parliamentary intent. Accordingly, we hold that as the resignation of the appellant must be treated as having taken effect before the scrutiny of the nominations was commenced, the appellant cannot be regarded as holding an office of profit at the relevant time.

5. The appeal is allowed, the judgment and order of the High Court are set aside and the election of the appellant is restored. The appellant will be entitled to his costs.

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