

Vivekanand Giri

Vs

Nawal Kishore Sahi

Civil Appeal No. 10811 of 1983

(Syed M. Fazal Ali, A. Varadarajan, Ranganath Misra JJ)

16.02.1984

JUDGMENT

VARADARAJAN, J. -

1. This appeal under Section 116-A of the Representation of People Act, 1951, hereinafter referred to as the 'Act arises out of the judgment of a learned Single, Judge of the Patna High Court in Election Petition No. 27 of 1980, setting aside the appellant's election to the Bihar Legislative Assembly from No. 64, Rui Saidpur constituency on the ground that the election is void on account of improper rejection of the nomination papers of one Ram Kumar Jha. The election petition was filed by the first respondent, Nawal Kishore Sahi, the defeated candidate. The election was held on May 31, 1980 and the results were announced on June 1, 1980 after the counting. The appellant who contested as the Congress (I) candidate secured 38, 463 votes while the respondent who contested as the Janata Party candidate secured 26,991 votes. The other candidates secured much less and the appellant who secured a majority of 11,472 votes over the respondent was declared elected by the Returning officer. After having heard the learned counsel for the parties from the Judgment and order October 11, 1983 of the Patna High Court in E. P. 27 of 1980 we dismissed the appeal without costs on February 8, 1984 for reasons to follow. Now we proceed to give the reasons.

2. The respondent pressed only one ground during the trial before the learned Single Judge and that was the alleged improper rejection of the nomination papers of Ram Kumar Jha who filed four nomination papers numbered as 39 to 42. The proposer in the nomination paper No. 39 was one Nand Lal Sah while the proposer in the nomination paper No. 40 was one Ganesh Prasad Gaur. The proposer in the nomination papers Nos. 41 and 42 was Ram Kumar Jha's own brother Birendra Kumar Jha who has given evidence on the side of the appellant as RW 9. All the four nomination papers of Ram Kumar Jha were presented to the Returning Officer RW 7 on May, 2 1980 and he scrutinised all the nomination papers of Ram Kumar Jha. Ram Kumar Jha had mentioned the serial number and part number as 415 and 13 respectively in the nomination paper No. 39, as 391 and 17 in the nomination paper No. 40, as 324 and 14 in the nomination paper No. 41 and as 326 and 14 in the nomination paper No. 42. The Returning Officer rejected the nomination paper No. 39 on the ground that the serial number and part number of the candidate were wrong with reference to the electoral roll Ex. 4, nomination paper No. 40 on the ground that the serial number and part number of the candidate were wrong and the age of the candidate was not mentioned, nomination paper No. 41 on the ground that the serial number of the candidate was wrong and nomination paper No. 42 on the ground that there was difference in the age of the candidate. Ram Kumar Jha had declared in his nomination paper No. 42 dated May 2, 1980 in regard to which the argument was confined before us that he has completed 33 years of age while it is common ground that in the electoral roll Ex. 4 prepared in the year 1980 his age is mentioned as 37 years. The Returning Officer has deposed as

RW 7 about the rejection of those four nomination papers Exs. 2 to 2-C (sic) on the above grounds by his orders Exs. B to B-3.

3. Section 100 (1) (c) of the Act provides that if the High Court is of the opinion that any nomination paper has been improperly rejected it shall declare the election of the returned candidate to the void. On a consideration of the evidence available on the record and the arguments of the learned counsel for the parties in the light of the authorities placed before him the learned Single Judge found that no nomination paper could be rejected unless the defect is of a substantial character as pointed out even in para 13 (i) of the Hand book for Returning Officers issued by the Election Commission of India and that the difference in the age of the candidate as given in the electoral roll and the nomination paper is not a material error and no opportunity was given to the candidate, Ram Kumar Jha when the nomination papers were filed on May 2, 1980 to remove any defect though section 33 (4) of the Act lays down that on the presentation of the nomination papers the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidates and their proposers as entered in the nomination papers are the same as those entered in the electoral roll. The learned Judge held that the rejection of the nomination papers, Exs. 2, 2-a and 2-c by the Returning Officer was improper. In that view he allowed the election petition without costs only to the extent of setting aside the appellant's election as being void which as the only relief prayed for in the election petition.

4. Before us, Dr. L. M. Singhvi, Senior Counsel who appeared for the appellant proceeded to draw our attention to the evidence of certain witnesses including that of Ram Kumar Jha's brother Birendra Kumar Jha, RW 9 for proving that Ram Kumar Jha had filed the nomination papers pursuant to some collusion with the object of enabling an election petition being filed against any successful candidate. But, for want of specific allegation about any collusion or fraud and also an issue regarding any collusion we declined to hear any argument on the question of collusion. Consequently, the only point which was canvassed before us by Dr. Singhvi appearing for the appellant and Mr L. R. Singh appearing for the respondent was as to whether the nomination papers of Ram Kumar Jha were improperly rejected by the Returning Officer and the appellant's election is therefore void under Section 100 (1) (c) of the Act.

5. Section 33 (6) of the Act lays down that nothing in that section shall prevent any candidate from being nominated by more than one nomination paper. But the proviso thereto says that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the Returning Officer for election in the same constituency. Section 19 of the Act lays down that subject to the earlier provisions contained in Part 3 of the Act every person who is not less than 21 years of age on the qualifying date and is ordinarily resident in a constituency shall be entitled to be person to be entitled to be registered in the electoral roll for the constituency should ordinarily be resident in that constituency and should not be less than 21 years of age on the qualifying date Article 173 of the Constitution prescribing the qualification for membership of a State Legislature lays down that a person shall not unless he is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule, and is, in the case of a seat in the Legislative Assembly, not less than 25 years of age and, in the case of a seat in the Legislative Council, not less than 30 years of age, and possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament. Therefore, a person to be entitled to be chosen to fill a seat in the Legislative Assembly of a State should be not less than 25 years of age. In the present case Ram Kumar Jha is noted in the electoral roll. Ex. 4 prepared in 1980 as being 37 years old while he has declared in the nomination paper No. 42 marked as Ex. 2-C that he had completed 33 years of age.

As stated earlier the nomination paper had been rejected by the Returning Officer RW 7 on the ground that there is difference in the age of the candidate between what has been mentioned in the electoral roll and the nomination paper and it is not based on any other ground. It is nobody's case that the Returning Officer found any difficulty regarding the identity of the candidate. Ram Kumar Jha on account of this difference in the age mentioned in an electoral roll and the nomination paper. The point for consideration therefore is whether the rejection of this nomination paper by the Returning Officer on the ground of difference in the age in the electoral roll and the nomination paper is improper. Section 33 (4) of the Act lays down that on the presentation of a nomination paper, the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as entered in the electoral rolls. The proviso to that sub-section reads thus :

Provided that no misnomer or inaccurate description or clerical technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood. And the returning officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked.

6. We are of the opinion that the difference in the age of the candidate, Ram Kumar Jha as entered in the electoral roll and the nomination paper would fall under the category of 'inaccurate description' mentioned in the above proviso and that it was obligatory on the part of the Returning Officer to have it corrected or to over look it having regard to the language of the proviso.

7. Section 36 (4) of the Act lays down that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. As stated earlier, a person to be entitled to be registered in the electoral roll for a constituency should be 21 years of age on the qualifying date and a person to be chosen to fill a seat in the Legislature of a State should not be less than 25 years of age. Ram Kumar Jha had declared in the nomination paper No. 42 that he had completed 33 years of age. Therefore, the substantial requirement as regards the question of age of the candidate, Ram Kumar Jha was that at the time of scrutiny of nomination paper he should have completed 25 years of age and should have been registered in the electoral roll for that constituency and not whether there was a difference of 4 years in the age of the candidate as mentioned in the electoral roll and the nomination paper. The difference in the age mentioned in the electoral roll and the nomination paper we are clearly of the opinion that the rejection of the nomination paper on the ground of difference in the age was improper, for having regard to provisions of Section 36 (4) of the Act the defect is not of a substantial character and we hold that the appellant's election is consequently void under Section 100 (1) (c) of the Act on the ground of improper rejection of the nomination paper. It is for this reason that we dismissed the appeal without any order as to costs as mentioned above.

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