

Ganu Ram

Vs

Rikhi Ram Kaundal and Others

Civil Appeal No. 515 (NCE) of 1983

(P. N. Bhagwati, V. B. Eradi JJ)

17.07.1984

JUDGMENT

ERADI, J. -

1. This being an election appeal filed under Section 116-A of the Representation of the People Act, 1951 (hereinafter called 'the Act') calling for urgent determination, as soon as the hearing of arguments in the appeal was completed we announced our decision by passing the following order :

We are of the view that for reasons which we shall state later, the nomination paper of the appellant was validly accepted by the Returning Officer and we accordingly allow the appeal and set aside the order of the High Court invalidating the election of the appellant. There will be no order as to costs of the appeal.

We now proceed to set out our reasons for reaching the aforesaid conclusion.

2. General Elections to the Himachal Pradesh Vidhan Sabha were held in May 1982. Ganu Ram, the appellant herein, Rikhi Ram Kaundal (first respondent) and three others had contested the 23-Gehrwin Assembly Constituency seat which is a seat reserved for Scheduled Caste candidates only. The nomination filed by all these five candidates had been accepted as valid by the Returning Officer and the polling took place on May 19, 1982. The result of the election was announced on May 22, 1982 and the appellant was declared elected from the said reserved constituency by reason of his having secured 7477 votes as against his nearest rival Rikhi Ram Kaundal (first respondent) who had polled only 6901 votes.

3. On July 3, 1983 Rikhi Ram Kaundal filed an election petition in the High Court under Sections 81, 100 and 101 of the Act challenging the validity of the election of the appellant on three grounds. The first ground urged was that the nomination paper filed by the appellant was not in order inasmuch as it did not contain any declaration by the appellant specifying the particular caste of which he is a member and the area in relation to which the said caste has been declared to be a Scheduled Caste in the State. On this basis it was contended that the nomination paper of the appellant had been improperly accepted by the Returning Officer. The second ground of objection raised was that since the appellant had not made any declaration in the nomination paper regarding the particular Scheduled Caste to which he belonged, he should be deemed to be disqualified for being chosen to fill the seat in question - 23-Gehrwin reserved constituency-in-view of the mandatory provisos contained in sub-section (2) of Section 33 of the Act. The third ground of objection put forward was that the appellant did not, as a matter of fact, belong to any of the castes which had been declared as Scheduled Castes in relation to the State of Himachal Pradesh and hence

he was not qualified to stand as a candidate from the aforesaid reserved constituency.

4. The High Court upheld the first two objections raised by the election-petitioner which related to the question of validity of the nomination paper and set aside the election of the appellant holding that the nomination paper of the appellant could not be regarded as valid in view of the fact that it did not contain a declaration by the appellant specifying the particular caste of which he is a member and the area in relation to which the said caste is a Scheduled Caste in the state. The third contention by the respondent-election petitioner was however, rejected by the High Court since the Court found on a consideration of the evidence adduced in the case that the appellant did, in fact, belong to the 'Lohar' caste which has been declared as a Scheduled Caste in the State of Himachal Pradesh. Aggrieved by the judgment of the High Court setting aside his election and unseating him, the appellant has come up to this Court with this appeal.

5. Section 33 of the Act deals with the topic of presentation of nomination paper and requirements for a valid nomination. Sub-section (2) of the said section which alone is relevant for our present purpose reads :

(2) In a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste or, as the case may be, a Scheduled Tribe of the state. It is not disputed that in the nomination paper filed by the appellant and his proposer, no written declaration has been made specifying the caste to which the appellant belongs and the area in relation to which that caste is a Scheduled Caste of the state. But it is common ground that along with the nomination paper the appellant had filed as an annexure thereto a certificate issued by the Sub-Divisional Magistrate, Ghumarwin certifying that the appellant belonged to a Scheduled Caste namely, 'Lohar'. The said certificate was appended to the nomination paper obviously with the sole purpose and intention of making it known to the Returning Officer and all other concerned that the appellant is filing his nomination as a candidate belonging to a Scheduled Caste namely 'Lohar' and it was in proof of that assertion and for eliminating doubt or controversy in the matter that the Sub-Divisional Magistrate's certificate was produced. The High Court has taken the view that since Section 33 of the Act requires that the nomination paper must be in the prescribed form and Form 2-B is a self-contained one, the filing of any enclosure or certificate along with the form is not contemplated. We are unable to agree with this view. When the nomination paper has been made in the prescribed form there is no legal prohibition against the other requisite particulars being furnished in a separate paper appended to the form instead of writing them out in the form itself. This is very often done in the matter of filing returns of income-tax, wealth-tax etc. In such cases the annexure appended to the form should be treated as part of the nomination paper. We are therefore of opinion that the certificate which was produced by the appellant as an annexure to the nomination paper has to be treated as forming part of the nomination paper and the declaration contained therein that the appellant belongs to the Scheduled caste of 'Lohar' must be understood and treated as a declaration by the appellant in the nomination form within the meaning of sub-section (2) of Section 33. We have to remember that we are dealing with nomination papers pertaining to candidates belonging to Scheduled castes and Scheduled Tribes, who, for well-known historical reasons, are unfortunately,

extremely backward socially, economically and educationally in comparison with other sections of our people. In such a context we consider that the Court has to place a liberal and benevolent interpretation on the provisions contained in the Section 33(2) of the Act rather than adopt a narrow, rigid, technical and purely literal construction. In *S. Sivaswami v. Malaikannan*, which was also a case arising under the act, one of us speaking on behalf of a three-Judge bench of this Court had occasion to make the following observations which are apposite to the present context also : (SCC p. 300, para 7)

In this context it is necessary to remember that nearly 90 per cent of the electorate in this county consists of illiterate and uneducated rural folk totally unacquainted with the intricacies of the rules and technicalities of procedure pertaining to elections. Even if the best of endeavor is made to explain to them such complicated rules and procedures they may not be capable of grasping and fully understanding all the implications and actually carrying them into effect while exercising their franchise. If the right conferred on the people to choose their representatives to the State Legislatures and the parliament through the process of free and fair elections is to be meaningful the will of the illiterate and unsophisticated voter expressed through marking on the ballot paper which though not strictly inside the column of the particular candidate is clearly indicative of the identity of the candidate for whom the vote is cast has to be respected and given its full effect.

6. It is manifest that the legislative purpose underlying sub-section (2) of Section 33 of the Act is that when a nomination paper is filed in respect of a reserved seat in any constituency there must be a clear specification by the candidate of the particular caste or tribe to which he belongs and the area in relation to which that caste or tribe is a Scheduled Caste or Scheduled Tribe of the State. This requirement is fully satisfied in the present case because by producing the certificate of the Sub-Divisional Magistrate as an annexure to his nomination paper the appellant had clearly made it known that he was filing the nomination as a candidate belonging to the 'Lohar' caste, which is admittedly a Scheduled caste in the entirety of the area of the state of Himachal Pradesh. It is also significant that no objection whatever was raised against the nomination file by the appellant at the time of scrutiny. The Returning Officer had published a notice of nominations under Section 35 of the act and in the said notice it was expressly stated that the appellant had filed his nomination as a candidate belonging to the scheduled caste namely 'Lohar'. Having regard to all the facts and circumstances of the case and the legal position as explained above, we consider that the High Court was in error in holding that the nomination paper filed by the appellant was not valid and its acceptance by the Returning Officer was improper.

7. A faint attempt was made before us by the learned counsel appearing on behalf of the first respondent to make out that the finding entered by the High Court that the appellant does, in fact, belong to the Scheduled castes 'Lohar' is erroneous and unsupported by the evidence but we see no merit at all in the said contention. The said finding recorded by the High Court is hereby confirmed.

8. The conclusion that emerges from the foregoing discussion is that the High Court was not justified in setting aside the election of the appellant on the ground that the nomination paper filed by the appellant was invalid. It follows that this appeal has to be allowed and the order of the High Court invalidating the election of the appellant has to be set aside.

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