

Lila Krishan

Vs

Mani Ram Godara and Others

Civil Appeal No. 4123 of 1984.

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

08.05.1985

JUDGMENT

RANGANATH MISRA, J. -

1. This appeal under Section 116-A(1) of the Representation of the People Act, 1951 ('Act' for short), is directed against the judgment of Punjab & Haryana High Court setting aside the election of the appellant to Fatehabad Constituency of the Haryana Legislative Assembly. By notification dated November 23, 1983, the constituency was called upon to elect a member at the by-election. November 30, 1983, was appointed as the last date for receipt of nomination papers. Scrutiny was scheduled for December 1, 1983. Poll was held on December 23, 1983 and appellant was declared as the returned candidate by securing 1339 votes in excess of votes polled by respondent 1 who had been fielded as the common opposition candidate. On February 2, 1984, the respondents filed an election petition asking the election of the appellant to be set aside on the ground provided under Section 100(1) (c) of the Act by pleading that the nomination papers of two candidates being Mani Ram Chapola and Raj Tilak had been improperly rejected by the Returning Officer.

2. The appellant pleaded that the nomination papers were defective and, therefore, liable to be rejected and the Returning Officer had acted properly in rejecting them. It was further pleaded that defective nomination papers had been intentionally filed with a view to challenging the election in case it went in favour of the appellant.

3. Both sides led oral evidence. On the side of the election petitioners, the Assistant Returning officer among others was examined as PW 4 while for the returned candidate (respondent before the High Court), the Returning Officer was examined as RW 3. The nomination papers as also the orders of rejection were produced and duly exhibited. The High Court came to hold that the nomination papers when filed were in order and while they were in the custody of the Returning Officer's establishment, interpolations had been made and on the basis thereof the nomination papers had been rejected. Though the election petitioners failed to establish their plea contained in paragraph 16 of the election petition that the Returning Officer acted mala fide at the behest of the Chief Minister of the State, the Court took the view that the Returning Officer acted mala fide and had either directly or indirectly been responsible for the alteration in the nomination papers. Accordingly the election has been set aside and the Returning Officer's conduct has been criticised and he has been directed by the High Court to share the liability of half the costs of the election petition. The Returning Officer had filed a separate appeal which being disposed of today by a separate judgment.

4. There is no dispute before us that if the nominations of the two candidates - Mani Ram Chapola

and Raj Tilak are found to have been improperly rejected the election of the appellant must be held to have been rightly set aside. That is the effect of Section 100(1) (c) of the Act. The only question relevant for the disposal of this appeal is, therefore, to examine and decide whether the High Court was right in its conclusion that the two nomination papers had been improperly rejected. The relevant nomination papers relating to Mani Ram Chapola and Raj Tilak have been produced and proved as Exhibits P-1 and P-6 respectively. The orders made by the Returning Officer rejecting the two nomination papers have also been produced and marked as Exhibits. Similarly, the notice in statutory Form 3-A as required under Rule 7 of the Conduct of Election Rules, 1961, to be published in the notice board of the Returning Officer has been produced and exhibited.

5. The Returning Officer's order of rejection in respect of both the nomination papers is almost in similar terms. We, therefore, propose to extract one of them for convenience. The order of rejection reads thus :

S. No. of the vote of proposer does not tally with S. No. mentioned in voter list.
Hence rejected.

The order is cryptic and there is force in the submission of Mr. Kacker appearing for the respondents that the order has to be interpreted; otherwise it makes no meaning. All parties have agreed before us that the true import of the order is that the serial number of the proposer disclosed in the nomination paper did not tally with the serial number given in the electoral roll. On the ground each of the nomination papers has been rejected.

6. It is the case of the election petitioners and the High Court has accepted that stand that the nomination papers were received by the Assistant Returning Officer, PW 4, and he caused the notice in Form 3-A to be prepared for being put in the notice board. The proposer of Mani Ram Chapola was one Brij Bhushan while the proposer of Raj Tilak was one Upender Kumar. Brij Bhushan's serial number in the electoral roll was 26 while Upender Kumar's was 77. In Form 3-A these numbers have been correctly indicated. But in the nomination papers the numbers have been shown as 126 and 177 respectively. The discrepancy has arisen on account of the appearance of the figure '1' before the correct number in the electoral roll. The Assistant Returning Officer PW 4 has stated :

I had received the nomination papers from the candidates who wanted to contest election to the Fatehabad constituency in the by-election between November 26, 1983 to November 30, 1983 in my capacity as Assistant Returning Officer of that constituency. I have seen Ex. P-1, the nomination paper of Shri Mani Ram Chapola and Ex. P-6, the nomination papers of Shri Raj Tilak; when I received these two nomination papers, I had compared the vote number of the candidate and the proposer with the electoral roll of that constituency.

The witness further said :

The correct position of these nomination papers which I found regarding the vote numbers of the candidate and the proposer is reflected in notice in Form 3-A, - the office copy of which is Ex. P-3 and the original taken away from the notice board and produced by the election petitioners has been marked as Ex. P-10.

7. In view of the statement of PW 4, the High Court was right in its conclusion that the respective nomination papers contained the correct serial numbers in the electoral roll of the proposer in each

of them. These nomination papers were made over by the Assistant Returning Officer between 9 and 9.30 a.m. to the Naib Tahsildar incharge of election on December 1, 1983, under instructions from the Returning Officer. December 1, 1983, was the date appointed for scrutiny and as the evidence shows, the Assistant Returning Officer was not available at the time of scrutiny as deposed to by him as also by the Returning Officer. There is no evidence that the nomination papers were handled by the Naib Tahsildar, Elections, and the Kanungo, Elections, as also other members of the staff at the time when Form 3-A was typed out. Even when the work of scrutiny began the nomination papers which were 45 in number were taken by the candidates and their agents for inspection and for some time they were handled by them. We have looked into the nomination papers with great care but by merely looking at them it is difficult to say at what point of time the figure '1' has been inserted in the prescribed column against the proposer's serial number in both of them. When admittedly the nomination papers have been handled by the staff in the establishment of the Returning Officer and by the candidates and their agents before scrutiny began, it is difficult to ascribe the insertion of figure '1' to the Returning Officer. We agree with the High Court that for the effective functioning of democracy in a large polity as ours the election process has got to be free from blemish and officers in whom trust has been reposed to conduct the electoral process in a fair and decent way cannot be permitted to hobnob or interpolate with valuable documents like nomination papers. At the same time it must be remembered that the credibility of public officers assigned the sacred trust should not be doubted on mere suspicion and without acceptable evidence. The conclusion of the High Court that the Returning Officer either by himself or through somebody caused the interpolation to be done is totally unwarranted even if we accept a fact that the figure '1' appearing before the rest of the number in the column for serial number in the electoral roll was not there when the nomination papers had been field. Strictly speaking, the insertion in the instant case is a forgery and amounts to a criminal act. To put that responsibility on the Returning Officer without cogent evidence is highly improper and the conclusion of the High Court does not commend itself to us.

8. The election petitioners had pleaded that they were present before the Returning Officer when process of scrutiny started. They alleged that the Returning Officer made an announcement that all the nomination papers were in order and after hearing the same most of them and in particular the two candidates whose nomination papers were rejected went away. From the evidence it is clear that the nomination papers were taken up for scrutiny one after the other and the Returning Officer has stated that he used to pass orders either of acceptance or rejection of each of the nomination papers after due scrutiny. That position has also been accepted by witnesses on the side of the election petitioners. The evidence on the side of the election petitioners does indicate that the nomination papers were first shown to the candidates and their agents and scrutiny followed thereafter. The Returning Officer has denied, as already pointed out, that he made an open declaration that all the nomination papers were in order. Mani Ram Chapola has admitted in his deposition that by 2 p.m. on the date of scrutiny the fact that his nomination papers had been rejected on the ground indicated had been notified to him by the Returning Officer. If the Returning Officer wanted to play any mischief he could have avoided intimating the fact of rejection or at any rate delayed the same. In the absence of cogent evidence on the side of the election petitioners and accepting the evidence of the Returning Officer that he had scrutinised the nomination papers one after the other and contemporaneously accepted or rejected the same by providing grounds of rejection, we hold that the orders of rejection of nomination papers in the two cases relevant for the appeal, contemporaneous order had been made.

9. When scrutiny was taken up Mani Ram Chapola and Raj Tilak on their own showing were not present before the Returning officer. Similarly, the proposers, Brij Bhushan and Upender Kumar

were also absent. Though there is evidence on the side of the election petitioners that the Assistant Returning Officer was present at the time of scrutiny, he as PW 4 categorically denied that fact. The Returning Officer, RW 3, has stated that the Assistant Returning Officer was not present when he took up scrutiny of the nomination papers. There is also evidence from the side of the appellant that the Assistant Returning Officer was not present. We accept as a fact that the Assistant Returning Officer was not present at the time of scrutiny. There were 45 nomination papers to be scrutinised. It is the evidence of the Returning Officer that he scrutinised all the nomination papers one by one. PW 5 who is a practising advocate and was a proposer of one of the election petitioners examined as PW 3 has stated :

After the departure of some of the people, the Returning Officer compared the entries in the nominations papers one by one with the relevant electoral rolls.

In view of such evidence there was no justification to hold otherwise.

10. The evidence of RW 4, the Returning Officer was placed before us once by Mr. Sibal for the appellant and over again by Mr. Kacker for the respondents. The Returning Officer had deposed that he passed the orders of rejection of nomination papers at the time of scrutiny and he rejected those nomination papers as the serial number of the proposers as disclosed in the nomination papers did not tally with reference to the electoral roll.

11. In the two nomination papers the Returning Officer put tick marks against the name of the candidate as also the name of the proposer and specification of the part in the electoral roll of the proposer. He has put cross marks as against the serial number. RW 3 stated in Court : "At the time of scrutiny I had the nomination papers before me. The election staff, including Election Naib Tahsildar, Kanungo, etc. were helping me in tracing out the relevant entries from other records, like electoral rolls etc. When after location they used to put before me, I used to tick-mark on the nomination papers. At the time of scrutiny when I found the entries in the nomination papers as correct, I used to tick-mark each entry. In those nomination papers in which I found the entries not to be tallying with the other records and on this basis I found those to be incorrect, I used to put cross". Coming to the specific nomination papers, the witness stated : "I have seen nomination paper Ex. P-1 of Shri Mani Ram Chapola. In this after reading the name of Brij Bhushan I tick-marked it because that was held correct. I have crossed his vote number because it was not found to tally with the electoral roll". The witness again said : "I had seen vote number 126 in the relevant voters' list, which did not contain the name of Brij Bhushan". With reference to tick marks in Ex. P-1 which is the nomination paper of Mani Ram Chapola, we find that there has really been no tick mark against the name of Brij Bhushan, the proposer. If the Returning Officer had really put a tick mark with red pencil. As a fact there are only tick marks. Mr. Kacker strongly contended that in view of the statement of the witness that he had tick-marked the name of Brij Bhushan we must not entertain a different view by a look at the document. Having seen the document with some amount of care and having looked into other nomination papers for the pattern of tick-marking by the Returning Officer, we have no doubts in our mind that the statement by the witness has been made out of confusion. We cannot lose sight of the fact that the Returning Officer had accusations to face and he was possibly puzzled and bewildered when he was facing cross-examination. The tick mark appearing above the name of Brij Bhushan related to the candidate's particulars. As we have just pointed out, if Brij Bhushan's name had been tick-marked, one more tick mark should inevitably be found in the document. Similar comments are available with reference to the nomination paper of Raj Tilak. The stand adopted by Mr. Kacker, learned counsel for the election petitioners-respondents is that if Brij Bhushan's name had been tick-marked, even if the serial number was wrong by the time the

nomination paper came before the Returning Officer, finding out the correct serial number was not a problem and the Returning Officer who was being assisted by other public officer would have easily found it out. Connected with this stand and the submission, reliance is placed on Section 36(4) of the Act which provides that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

12. We have already come to the conclusion that the Returning Officer had not ticked the names of Brij Bhushan and Upender Kumar. Mr. Kacker not being satisfied with that conclusion which we had indicated during hearing, relied upon the position that the Returning Officer personally knew both Brij Bhushan and Upender Kumar and there could be no difficulty in the Returning Officer fixing them up properly with reference to the electoral roll. This aspect requires closer examination.

13. Indisputably the insistence on disclosure of the serial number in the prescribed column against the proposer is for the purpose of identifying the proposer and ascertaining that he is competent to propose. The scope of scrutiny is obviously to verify the contents of the nomination paper with a view to ascertaining whether the form is in order and what is required to be complied with by the election law has been duly complied with. This Court has repeatedly held that election proceedings are strict in nature and what is required to be performed in a particular manner has to be done as required and substantial compliance has ordinarily no place while dealing with the Act or the Rules made thereunder. That is why an exception has been made by inserting sub-section (4) of Section 36 of the Act.

14. The Returning Officer made reference to the electoral roll and did not find the name of the proposer against the disclosed serial number in either case. The High Court has taken the view that it was the obligation of the Returning Officer to verify the electoral roll and find out the serial number, the mistake, if any, was not of substantial character so as to expose the nomination papers to rejection and the rejection on such a ground was improper. To cast the obligation on the Returning Officer to look through the entire electoral roll of a particular part with view to finding out the identity of the proposer is not the requirement of the law. To read that as an obligation is likely to lead to an unworkable position. The prescribed form of nomination (Form 2-B) does not require to specify the name of the father of the proposer. That actually does not become necessary because once the name and the serial number in the voters' list are given, the cross-verification becomes easy and the father's name is available in the electoral roll. In one part of the electoral roll on the average names of about a thousand voters appear. Out of one thousand name it is quite possible that there would be more than one voter by the same name. Identification of any particular voter out of such list even when there are more voters with the same name is possible only with further reference to the father's name. To cast the obligation of verifying the entire electoral roll of a particular part is actually requiring the Returning Officer to do almost an impossible feat. It may not be so if there be a few candidates and it be a case of a by-election but when general election takes place and every Returning Officer is supposed to handle about seven or eight Assembly Constituencies and there may be instances of even 300 candidates contesting from one seat as it happened in the 1985 elections in the Belgaum Constituency of Karnataka State, the Returning Officer would find it physically impossible to grapple with such a situation. The election schedule is a very tight one. Under the law the day following the last day fixed for receipt of nomination papers is the date of scrutiny and soon thereafter follows the date fixed for withdrawal. If nomination papers are not scrutinised with due haste and promptness the election schedule may not be operative in the strict manner and dislocations are bound to follow.

15. It is not the submission of Mr. Kacker, and rightly so, that even if the Returning Officer has not

been in a position to identify the proposer with reference to his serial number in the electoral roll, he can accept the nomination paper to be valid. If that be so, it is the obligation of the Returning Officer to comply with the requirements of the law by satisfying himself that the name of the candidate has been proposed by a voter entitled to propose. The proviso to Section 33, sub-section (4), runs 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.

The contents of the aforesaid proviso and the provisions of sub-section (4) of Section 36 when read together make it clear that the mistake with reference to the serial number was such an error in this case which could be corrected. Under Section 36(1) of the Act, on the date fixed for scrutiny of nominations election agents, one proposer of each candidate and one other person duly authorised in writing by each candidate are entitled to appear before the Returning Officer, and such persons are entitled to reasonable facilities for examining the nomination papers. The purpose of making such provision is to facilitate scrutiny. The presence of candidate, his election agent and another person acquainted with the constituency would certainly facilitate the process of scrutiny. Defects covered by the proviso to Section 33(4) could easily be resolved if people authorised under Section 36(1) of the Act are present at the time of the scrutiny. What could be resolved or overlooked in case proper steps were taken in due time has become a major issue leading to rejection of nomination papers in the instant case mainly on account of the absence of the candidates, their election agents or persons interested in them at the time of scrutiny. No one was available, for instance, when the Returning Officer took up the nomination paper of Mani Ram Chapola, to indicate to the Returning Officer that his serial number in the electoral roll was 26 and not 126. If this had been pointed out and on summary enquiry the Returning Officer was satisfied that it was a mistake, clerical in nature, and the identity of Brij Bhushan was not in dispute, there would have been end of the matter. If the correlation has not been made and the Returning Officer has no assistance to fix up the identification it cannot be said to be a defect not of substantial character. We reiterate that it could not be a statutory obligation of the Returning Officer to scrutinise the electoral roll for finding out the identity of the proposer when the serial number turns out to be wrong. But if interested and competent persons point out to the Returning Officer that if it is a mistake, it would certainly be his obligation to look into the matter to find out whether the mistake is inconsequential and has, therefore, either to be permitted to be corrected or to be overlooked.

16. As a result of scrutiny nomination papers are either accepted or rejected. Once a nomination paper is rejected, the candidate loses his opportunity to contest and is kept out from the electoral fray. Every genuine candidate is expected to be very much interested in ensuring clearance of his nomination paper at the stage of scrutiny. It is indeed surprising that before scrutiny was done and the nomination papers were accepted by the Returning Officer, the two candidates and the people

interested in them went away from the place of scrutiny and did not remain available to the Returning Officer. In the circumstances, if the nomination papers have been rejected for mistakes in the nomination papers it is the candidates themselves who have to thank their lot and no mistake can be found with the Returning Officer. We may not be understood to say that a mistake of the type if properly clarified would not be unsubstantial in character. But if the Returning Officer is not in a position to correlate and identify the proposer, the mistake would indeed be not one which can be covered by sub-section (4) of Section 36 of the Act. That view has been taken recently by this Court in Brij Mohan v. Sat Pal [(1985) 2 SCC 652], to which two of us are parties. We endorse the ratio of the decision and applying the same, we agree with Mr. Sibal that the nomination papers were validly rejected in this case. Mr. Sibal thereafter contended that Mani Ram Chapola and Raj Tilak had designedly entered wrong references to the electoral roll in respect of their proposers with a view to challenging the election of the returned candidate if necessary. The evidence on record is not impressive as apart from bare suggestions there is no material worth the name to accept it as a fact. We are also of the view that once we have reached the conclusion in the manner indicated above, it is totally unnecessary to go into such an aspect. On the analysis indicated, the view taken by the High Court cannot be sustained. We allow the appeal, vacate the judgment of the High Court and uphold the election of the appellant as the returned candidate from the constituency in question. The appellant shall be entitled to his costs before the High Court as also before this Court. Hearing fee in this Court is assessed at Rs. 3000.

</html