

Mathura Prasad

Vs

Ajeem Khan

Civil Appeal No. 673 of 1986

(Kuldip Singh, N. M. Kasliwal JJ)

17.04.1990

JUDGMENT

KASLIWAL, J. -

1. This appeal under Section 116-A of the Representation of the People Act, 1954 (in short "the Act") is directed against the judgment of the High Court of Madhya Pradesh dated February 17, 1986. Election to the Legislative Assembly of the State of Madhya Pradesh was held in the month of February 1985. One of the constituencies was No. 14 Lahar (District Bhind). The nomination papers were filed before February 6, 1985 and the scrutiny was done on February 7, 1985. Several persons filed their nomination papers. The nomination paper of Ramprakash was rejected by the Returning Officer in the scrutiny. The order passed by the Returning Officer rejecting the nomination paper reads as under :

"Candidate is not identified as per electoral roll. His representative has accepted this mistake also. Hence rejected. Advised for correction but did not correct. The candidate did not correct after advising to correct mistake. Even did not appear at the time of scrutiny to correct mistake. Hence rejected. See Section 33 (4) RPA."

Result of the election was declared on March 5, 1985 and Shri Mathura Prasad appellant declared elected.

2. Ajeem Khan one of the voters of the constituency filed an election petition under Section 88 of the Act challenging the election of Mathura Prasad on several grounds but it is not necessary to state all the grounds as the controversy in the present appeal centres round the wrongful rejection of the nomination papers of Ramprakash. The ground in this regard taken in the election petition was that the nomination paper of Ramprakash was wrongly rejected as the defect in his nomination paper was not of a substantial character. It was alleged that in the nomination paper filed by Ramprakash the column meant for stating the candidate's serial number in the electoral roll was left blank. It was thus alleged that the said defect was not of a substantial character and the nomination paper should not have been rejected in view of the provisions contained in Section 36(4) of the Act.

3. On the other hand the case of Mathura Prasad, the elected candidate was that neither Ramprakash nor any other person on his behalf was present before the Returning Officer when the nomination paper of Ramprakash was taken up for scrutiny. At the time of scrutiny, the Returning Officer had pointed out that vote number was not mentioned in the nomination paper and Jaiprakash (RW 3) who was the proposer of Ramprakash had told the Returning Officer that he would inform Ramprakash regarding the above defect. The Returning Officer then put that nomination paper aside

and took other nomination papers for scrutiny. Jaiprakash remained present in the hall awaiting the arrival of Ramprakash. The Returning Officer after scrutinising all the other nomination papers again called out the name of Ramprakash. As Ramprakash had not arrive till then, Jaiprakash left the hall after informing the Returning Officer that he would fetch Ramprakash. Jaiprakash left the place and went in search of Ramprakash but his efforts to find Ramprakash went in vain and he did not return before the Returning Officer. In view of the above circumstances, the Returning Officer passed the order rejecting the nomination paper of Ramprakash under Section 33(4) of the Act.

4. On the pleadings of the parties learned Single Judge of the High Court who tried the election petition framed Issue No. 1 in this regard which reads as under :

(i) Whether rejection of the nomination paper of Ramprakash by the Returning Officer was illegal, as alleged ?

Both the parties led evidence in support of their case. The petitioners in support of his case regarding the above issue examined himself, Mitthookhan, Gourishanker and Pahalwan. By the evidence of the aforementioned witness a story was put forward that shortly before the nomination paper of Ramprakash was taken up for scrutiny, Ramprakash had gone out for passing urine. He had left behind Mithookhan as his representative and when the nomination paper of Ramprakash was taken up for scrutiny and the defect was pointed out, Mithookhan after informing the Returning Officer went out for calling Ramprakash. He along with Ramprakash returned back after five minutes only but the nomination paper had already been rejected by the Returning officer.

5. On the contrary Mathura Prasad examined himself and Jaiprakash who was not only the proposer of Ramprakash but was also his cousin. Jaiprakash fully supported the case of Mathura Prasad.

6. Learned Single Judge after analysing the evidence of both the parties arrived to the conclusion that the entire story as advanced by the election petitioner and his witnesses was obviously a fabrication. He further held that such story being fabricated it deserved to be rejected outright. He further observed as under :

"The versions of the respondent (RW 1) are corroborated not only by the returning officer Shri Hoshiyarsingh, examined by the petitioner himself as PW 1, but also by the petitioner's cousin Jaiprakash (RW 3) who was also his proposer and the evidence is also consistent with the grounds of rejection stated by the Returning Officer in his order. The Returning Officer Shri Hoshiyarsingh (PW 1) is an independent witness and Jaiprakash (RW 3), who is cousin and proposer of Ramprakash (PW 4), also has no reason to tell lies. I, therefore, see no reason to disbelieve the versions of the respondent (RW 1) as to what transpired when the nomination paper of Ramprakash (PW 4) came up for scrutiny and under which circumstances it was rejected by the Returning Officer."

After recording the above finding the learned Single Judge took into consideration the fact that in the nomination paper of Ramprakash, his name, his father's name, his postal address, the number and name of the constituency to which nomination paper related and the number of the part of the electoral roll of the same constituency in which part his name was entered as a voter were duly and correctly filled up. It was further observed that Ex. P1 a certified copy of that part of the electoral roll showed that the total number of voters registered therein was 1011 and the name of Ramprakash was entered therein at Serial No. 735. At the time of scrutiny, the Returning Officer must have

naturally been assisted by some members of his subordinate staff. Learned Single Judge further observed that according to the Returning Officer himself the nomination paper was put off by him in the midst of the scrutiny proceedings and it was rejected subsequently after the scrutiny of all other nomination paper was over. There was thus ample time to locate the serial number of the candidate in the abovementioned part of the electoral roll. The Returning Officer had admitted that no effort was made by him to locate it. Learned Single Judge thus concluded that it was not the contention of the Returning Officer that it was not possible for him to locate the name of Ramprakash in the electoral roll and find out his serial number but in fact the Returning Officer made no effort in this regard. Learned Single Judge distinguished a decision of this Court in *Lila Krishan v. Mani Ram Godara* (1985 Supp SCC 179 : 1985 Supp 1 SCR 592). He further held that the candidate's absence was immaterial and the Returning Officer could have himself found out the electoral number of the candidate Ramprakash readily with very little effort by referring to the electoral roll part mentioned in the nomination paper and the same being also available with him at the time of scrutiny the electoral number could have been found out without the assistance of any of the persons mentioned in Section 36(1) of the Act and the defect in the nomination paper cannot be held to be of a substantial character. Issue No. 1 was thus decided in favour of the petitioner Ajeem Khan and as a result of which the election petition was allowed and the election of Mathura Prasad was declared void.

7. Aggrieved by the decision of the High Court, Mathura Prasad the winning candidate filed the present appeal before this Court. We have heard learned counsel for the both the parties and in our view this appeal has to be allowed.

8. As already mentioned above the learned Single Judge himself did not accept the story as put forward by the petitioner Ajeem Khan, rather it was held that the entire story narrated by him was fabrication and the same deserved to be rejected outright. The Returning Officer who was an independent witness and Jaiprakash who was a proposer of Ramprakash were believed and it was held that the entire circumstances under which the nomination paper of Ramprakash came up for scrutiny and was rejected were correct. Thus a perusal of the circumstances put forward by these witness at the time of scrutiny and rejection of the nomination paper of Ramprakash show that himself was not present and even his proposer Jaiprakash after having gone to fetch Ramprakash did not return back and ultimately the Returning Officer rejected the nomination paper of Ramprakash. The order passed by the Returning Officer rejecting the nomination paper of Ramprakash clearly makes a mention that the candidate was not identified as per electoral roll. His representative had accepted the mistake also and was advised for correction but did not correct the same. The candidate did not correct after advising to correct the mistake. It further makes a mention that the candidate even did not appear at the time of scrutiny to correct the mistake. In the circumstances mentioned above we have no hesitation at all in holding that the Returning Officer was perfectly justified in rejecting the nomination paper of Ramprakash. It depends on the facts and circumstances of each case to find as to what mistake in a nomination paper can be considered a mistake of substantial nature. It is correct that the Returning Officer should not reject a nomination paper merely on a mistake of technical or formal nature, where the identity of the candidate can be ascertained by him on the material made available to him. He should also give an opportunity to the candidate or his representative present at the time of scrutiny to remove the defect. However, in case neither the candidate nor his representative is present and without removing such defect in the nomination paper the identity of the candidate cannot be ascertained, then there is no statutory duty cast on the Returning Officer to make a roving enquiry by going through the material placed before him and to remove such defect himself.

9. We may also refer to some cases cited before us at the bar. Dilip Kumar Gon v. Durga Prasad Singh ((1975) 1 SCC 401 : AIR 1974 SC 2343) is the case on which strong reliance has been placed by learned counsel or Ajeem Khan. In the above case in the column of printed nomination from meant for making a declaration of the candidates of the Scheduled Caste/Tribe contesting for a reserved seat, Abdul Hamid contesting from general constituency had not (a) filled his specific caste in the blank meant for that purpose and further (b) he had in that column left the words 'Scheduled Castes' unscored. The Returning Officer rejected the nomination papers on the ground that the failure of the candidate to delete the words 'Scheduled Castes' means that "he belongs to Scheduled Caste which is not true" and consequently, the nomination papers were not filled up properly. An elector of the constituency filed an election petition on the ground that the nomination papers of Abdul Hamid and Khatir Ali had been improperly rejected. Learned Single Judge of the High Court upheld the above rejection of nomination paper by the Returning Officer and held that the candidate's filling of these entries were on the face of it, not proper and did not comply with the requirements of law. It was further held that this defect was not trival or technical but of a substantial character. On appeal before the Supreme Court the judgment of the High Court was set aside and it was held as under : (SCC pp. 402-03, paras 7 & 8)

"The High Court's view that in scoring out only the word 'Jan-Jati' (tribe) and leaving the word 'Jati' (caste) untouched in the aforesaid column of the nomination form, Abdul Hamid had failed "to comply with the requirement of the law on the subject" was entirely misconceived. It overlooked the fact that the Jamtara Constituency was a 'General Constituency, and the seat for which the candidates wanted to contest the election was not a reserved seat. Section 33(2) of the Representation of the People Act, 1951 or any other statutory provision does not enjoin upon a candidate who in contesting the election for a general seat, and not for a reserved seat, to specify in his declaration his caste or tribe. Further the Returning Officer appearing as RW 2, had clearly admitted that at the time of the scrutiny of the nomination papers, he was aware that Abdul Hamid was not a member of the Schedule Caste and that he had deposited Rs. 250 as security. The omission to strike off the column in the printed nomination from relating to Scheduled Caste/Tribe did not amount to a defect in the eye of law, much less was it a defect of a substantial character, warranting rejection of the nomination papers. In Amolak Chand v. Raghuveer Singh ((1968) 3 SCR 246 : AIR 1968 SC 1203 : 36 ELR 185) the nomination papers of two candidates contesting for a general constituency were rejected on a similar ground. Holding that the rejection was improper, Ramaswami, J. speaking for the court stated the law on the point thus :

'The printed form 2-A is meant both for general and reserved constituencies but while it is obligatory for candidates in the reserved constituency to make a declaration in the proper column that he is a member of a particular caste or tribe, there is no such rule with regard to general constituency. Section 33(2) of the Act imposes an obligation on the candidate in the reserved constituency to make a declaration in the proper column but there is no such direction in the statute with regard to the general constituency. In our opinion, the mentioned of the caste of the candidate in the nomination form was a clear superfluity because it was not necessary for the candidate to fill in the column when he was contesting in a general constituency.'

In the light of what has been said above, we would, reverse the finding of the High

Court and hold that the nomination papers of Abdul Hamid were improperly rejected by the Returning Officer."

10. In the above case the facts were entirely different and it lends no assistance to the case set up by Ajeem Khan, respondent before us. In the above case it was clearly held that Section 33(2) of the Act or any other statutory provision does not enjoin upon a candidate who is contesting the election for a general seat, and not for a reserved seat, to specify in his declaration his caste or tribe. However, the Returning Officer had clearly admitted that at the time of the scrutiny of the nomination papers, he was aware that Abdul Hamid was not a member of the Scheduled Caste and that he had deposited Rs. 250 as security. Thus it was held that the omission to strike off the column in the printed nomination from relating to Scheduled Castes/ Tribe did not amount to a defect in the eye of law, much less it was a defect of a substantial character.

11. In *Brij Mohan v. Sat Pal* ((1985) 2 SCC 652 : (1985) 3 SCR 321) one Dog Ram had filed his nomination papers for contesting election to the Haryana Legislative Assembly from Jind Constituency. His name was proposed by Ram Pratap, an elector of the constituency. Dog Ram was registered as an elector at serial No. 177 and house No. 57 in part 39 of the electoral roll of the constituency whereas his proposer Ram Pratap was registered as elector at serial No. 313 and house No. 6 in part 39 of the same constituency. The name and postal address of Dog Ram were correctly given in the nomination papers but the part of the electoral roll was mentioned as 57 instead of 39 by an inadvertent mistake committed by the person who filed the nomination papers. Similarly in the case of the proposer the serial number of the elector and the numbers of the constituency were given correctly but the number of his house was wrongly entered in the column meant for the part of the electoral roll. At the time of scrutiny no other candidate or proposer objected to the acceptance of the nomination paper of Dog Ram but the Returning Officer of his own rejected the nomination paper on the ground that particulars of the candidate and the proposer had been wrongly entered in the nomination papers.

12. The High Court considered the question as to whether the nomination paper of Dog Ram was improperly rejected. On the evidence led by the parties the Single Judge found that the candidate Dog Ram and his proposer were registered as voters in the constituency and were qualified to contest the election and propose the candidate respectively. It was further found that errors in regard to electoral roll numbers of the candidates and the proposer in the electoral roll and the nomination paper do not constitute defects of a substantial character as mentioned in the proviso to Section 33(4) of the Act. Learned Single Judge accepted the evidence of the proposer (PW 2) to the effect that when he and the candidate presented the nomination paper, the Returning Officer told them that it was in order and that the Returning Officer had tripped them into an error and if the Returning Officer had told them that there were some discrepancies in the nomination paper they would have either made corrections then and there and could have gone more fully prepared to make objections at the time of the scrutiny. The High Court in these circumstances allowed the election petition on the ground that the nomination paper of Dog Ram was improperly rejected.

13. On appeal to this Court by the elected candidate it was held that the Returning Officer could not be said to have improperly rejected the nomination paper of Dog Ram. This Court did not believe the evidence of proposer (PW 2) which was not corroborated by the evidence of any other witness. In the facts and circumstances of the case it was held that the Single Judge was not justified in accepting the evidence of PW 2 and in holding that the Returning Officer was guilty of tripping the candidate and the proposer by any assertion on his part into anyone believing that there was nothing wrong in the nomination paper. In the above case this Court observed as under : (SCC pp. 663-64,

para 20)

"It is not possible to say generally and in the abstract that all errors in regard to electoral roll numbers of the candidate and the proposer in the electoral rolls or nomination papers do not constitute defects of a substantial character. They would not be defects of a substantial character only if at the time of the scrutiny the Returning Officer either by himself with the materials placed before him during the scrutiny or with the assistance of the candidate or his proposer or any other person is able to find out the correct serial number of the candidate and the proposer in the electoral roll. If that is not the case, he would be committing a grave error by accepting the nomination paper without verifying whether the candidate is a voter in that or any other constituency of the State and whether the proposer is a voter in that constituency ..... The candidate and the proposer are always expected to go fully prepared to meet any objection that may be raised by any candidate or even by the Returning Officer himself suo motu at the time of the scrutiny and they cannot be expected to go any the less prepared merely because the Returning Officer had received the nomination paper without raising any objection. It is the time of scrutiny which is done in the presence of all concerned that the nomination papers come up for more detailed consideration at the hands of the Returning Officer against whom there is no estoppel in regard to the statutory duty or scrutiny."

14. In the above case this Court clearly held that the defects would not be of a substantial character only if at the time of scrutiny the Returning Officer either by himself with the materials placed before him during the scrutiny or with the assistance of the candidate or his proposer or any other person is able to find out the correct serial number of the candidate and the proposer in the electoral roll. It nowhere lays down that it is the statutory duty of the Returning Officer himself to cure the defect at the time of scrutiny. We cannot read in the above authority, as sought to be argued by the learned counsel for the respondent, that in the case before us even though Ramprakash or any other representative on his behalf was not present to cure the defect, still it was the duty of the Returning Officer himself to find out the correct identity of Ramprakash. As already discussed above the learned Single Judge had himself held that the case set up by Ajeem Khan was a fabricated one and the story put forward by the winning candidate Mathura Prasad and the witnesses was correct. From the evidence of the Returning Officer it was clear that the defect in the nomination paper of Ramprakash was brought to the notice of his proposer Jaiprakash and the nomination paper was not rejected in the first round. An ample opportunity was given to Jaiprakash to bring Ramprakash but he failed to turn up. The nomination paper was then rejected after the scrutiny of all other nomination papers was over. The Returning Officer in the above circumstances was perfectly justified in rejecting the nomination paper of Ramprakash. Learned Single Judge wrongly distinguished the case of *Lila Krishan v. Mani Ram Godara* 1985 Supp SCC 179 : 1985 Supp 1 SCR 592)). In this case the election of the Lila Krishan from Fatehbad Constituency of Haryana Assembly was challenged on the ground that the nomination papers of two candidates being Mani Ram Chhapola and Raj Tilak had been improperly rejected by the Returning Officer. The proposer of Mani Ram Chhapola was one Brij Bhushan 'while proposer of Raj Tilak was Upendra Kumar'. Brij Bhushan's serial number in the electoral roll was 26 while Upendra Kumar's was 77. In Form 3-A these numbers were correctly indicated but in the nomination papers the numbers had been shown as 126 and 177 respectively. The Returning Officer rejected these nomination papers as the serial numbers of the proposers as disclosed in the nomination papers did not tally with the reference to the electoral roll. The High Court set aside the election of Lila Krishan holding that the Returning Officer acted mala fide and had either directly or indirectly been responsible for the alteration in the

nomination papers, since 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.

15. Appeal filed by Lila Krishan was allowed by this Court and it was held that the conclusion of the High Court that Returning Officer either by himself or through somebody caused the interpolation to be done was totally unwarranted. On the basis of the above facts it was held as under : (SCR headnote)

"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 or the Rules made thereunder. That is why an exception has been made by inserting sub section (4) of Section 36 of the Act. Therefore, to cast the obligation on the Returning Officer to look through the entire electoral roll of a particular part with a 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 a unworkable position."

# \* \* \*##

In the instant case, no one was available, for instance, when the Returning Officer took up the nomination paper of Mani Ram Chhapola, 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 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 defect not of substantial character. Moreover, it could not be statutory obligation of the Returning Officer to scrutiny 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 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. When scrutiny was taken up Mani Ram Chhapola and Raj Tilak on their own showing were not present before the Returning Officer. Similarly, the proposers, Brij Bhushan and Upendra 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 has 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. In the circumstances, if the nomination papers have been rejected for mistake 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. Therefore, the nomination papers were validly rejected."

16. Thus in the above case it was clearly laid down that to cast an obligation on the Returning Officer to look through the entire electoral roll of a particular part with a view to finding out the identity of the proposer is not the requirement of the law.

17. In the case before us even if it may be considered for a moment that by making some effort by the Returning Officer, the identity of Ramprakash could have been ascertained, there being no statutory duty cast on him to do so coupled with the fact that neither the candidate Ramprakash nor any representative on his behalf was ready to assist the Returning Officer in curing the defect and in proving the correct identity of Ramprakash, it cannot be said that the Returning Officer committed any error in rejecting the nomination paper of Ramprakash. The Returning Officer not only granted ample time but even brought the defect to the notice of Jaiprakash proposer but still the defect in the nomination paper was not removed.

18. In the result this appeal is allowed, the judgment of the High Court dated February 17, 1986 is set aside and it is held that the Returning Officer rightly rejected the nomination paper of Ramprakash.

19. The appellant would also be entitled to costs.

</html