

Rafiq Khan and Another

Vs

Laxmi Narayan Sharma

Civil Appeal No. 6478 of 1995

(CJI A. M. Ahmadi, S. B. Majmudar, K. Venkataswami JJ)

14.03.1996

ORDER

1. The appellant is the original election petitioner whose Election Petition No. 14 of 1994 came to be dismissed by A. K. Mathur, J. of the High Court of Madhya Pradesh at Jabalpur. He has, therefore, preferred this appeal against the dismissal of his election petition. The brief facts giving rise to the appeal may be stated as under :

The elections for the 10th Vidhan Sabha, State of Madhya Pradesh, came to be notified and the last date of submission of nomination forms was fixed as 30-10-1993. Appellate 1 collected the nomination form on 28-10-1993 and got it filled up on the next date. He also collected the voters' list on 29-10-1993 and submitted the form on 30-10-1993 to the Returning Officer. His proposer was shown to be one Firoz Khan of the same constituency i.e. 242, Berasiya Assembly Constituency. The Returning Officer after verifying the form as required by sub-section (4) of Section 33 of the Representation of the People Act (hereinafter called the Act) accepted the same and entered the particulars thereof in the register as required by the Rules. The scrutiny of the nomination papers was fixed on 1-11-1993 and the last date for withdrawal of the forms was 3-11-1993. On the date of the scrutiny, the form of Appellant 1 came to be rejected and an order to that effect was passed as required by sub-section (6) of Section 36 of the Act. On 2-11-1993 the appellant met the Collector and protested against the illegal rejection of his nomination form. However, since there was no remedy available to him at that stage he had no alternative but to wait till the election was over. The polling took place on 24-11-1993 and the election results were declared on 30-11-1993. The respondent, L. N. Sharma was declared elected. Thereafter, the appellant along with Jodha Ram Gurjar (who had withdrawn his nomination before 3-11-1993) jointly filed an election petition on 11-1-1994 which was numbered as E.P. No. 14 of 1994. The principle question raised in the election petition was that the appellant's nomination form was wrongly and illegally rejected by the Returning Officer. In this connection the contention of the appellant was that the serial number of his proposer Feroz Khan was, initially, wrongly mentioned as 136 but before the form was submitted the mistake was corrected to 138 by converting the figure 6 into 8. In support of this contention he contends that he had taken out a photocopy of the nomination form on 29-10-1993 and, therefore, on the date of scrutiny of the nomination forms and proposer's number was shown as 138 and not 136 and, therefore, the Returning Officer was not justified in rejecting

the same. In other words, according to the said appellant even though he had initially mentioned the figure as 136 in the nomination form he had corrected it to 138 before he submitted the nomination form to the Returning Officer and, therefore, the Returning Officer was not correct in rejecting the nomination form on the ground that the name of the proposer did not appear at Serial No. 136. To prove this contention of illegal and improper rejection of his nomination paper, Appellant 1, besides examining himself, also called the co-petitioners Jodha Ram and the proposer Feroz Khan to the witness stand. The returned candidate on the other hand contended that the nomination form as submitted by the said appellant was defective and that the correction was perhaps made after the scrutiny and rejection of the nomination paper and, therefore, the learned trial Judge was right in taking the view that the correction was subsequent to the rejection of the nomination form. He contended that the correction, therefore, appeared to be a subsequent interpolation. The learned Judge also took the view that the rejection of the nomination form was neither illegal nor improper and that the election petition was wholly misconceived and unsustainable. In that view of the matter the learned Judge dismissed the election petition and hence this appeal.

2. There is no doubt that the appellant had submitted his nomination form on 30-10-1993. In the nomination form the proposer's number was initially written as 136 but was corrected by converting the figure 6 into 8 to 138. Was this correction made before the submission of the nomination paper or some time thereafter i.e. after it came to be rejected by the Returning Officer ? As pointed out earlier, besides himself the appellant relies on the evidence of Appellant 2 and the proposer Feroz Khan. There can be no doubt that all the three witness examined on behalf of the appellants are highly interested witness for the reason that Appellant 2 Jodha Ram had joined hands with Appellant 1 in filing of the election petition. Their evidence must, therefore, be scrutinised with great care. The successful candidate examined himself as RW 1 and RW 2 Shri Ram Maheshram, the Assistant Returning Officer (the Returning Officer then not being available). The learned trial Judge was not prepared to place implicit reliance on the testimony of the three witnesses PW 1, PW 2 and PW 3. He did not uphold the contention of the appellants that the nomination form was corrected before it was submitted and that there was no interpolation. The learned trial Judges has gone to the length of holding that the appellant was guilty of tampering with an important official document. The Assistant Returning Officer has deposed that after the forms were submitted, the candidate and the proposer were called to remain present at the time of scrutiny and even though their names were announced on the microphone, neither of them turned up and, therefore, after examining the forms by himself, he rejected the nomination paper since the name of the proposer did not appear at Serial No. 136 in the voter's list.

3. The learned counsel for the appellants took us through the electoral roll as well as the documentary evidence and contended that the learned Judge had overlooked certain important and significant aspects of the evidence placed on record. Firstly, he contended that before he submitted the nomination form he had taken out a photocopy and the same was appended to the petition. He says that his photocopy belies the contention that the figure 136 was changes to 138 after the rejection of the nomination paper. There is no other evidence except that of the appellants and the proposer in this behalf. In the first place it is difficult to understand why the Returning Officer should reject the nomination paper if the name of the proposer and the serial number are correctly recorded. Appellant 1 as well as his proposer say that they were not called before the rejection of the nomination paper. Now, in the ordinary course, official action must be presumed to have been done in accordance with the rules and procedure. Secondly, even on the statement of Appellant 1, he and

his proposer went to the place of scrutiny at about 3.00 p.m. Thirdly, it is an admitted fact that he did not raise any objection when his nomination was rejected on 1-11-1993. In ordinary course if he and his proposer were present at the time of scrutiny and their names were not announced on the microphone we would expect them to react by enquiring of the Returning Officer why his name was not announced at all. The evidence of RW 2 shows that the names of the candidates who had submitted the nomination forms were announced one after another and when his name was announced, neither he nor his proposer turned up before the Returning Officer. If he and his proposer were in fact present they would have responded to the call and if despite their presence his nomination form was rejected, there would be any number of independent witnesses available to corroborate his version, since even according to him the room was full. Therefore, the conduct of the appellant and his proposer does not seem to be natural; more so because both the appellant and his proposer are lawyers. They certainly would have reacted sharply if their names were not called out when the names of all others were called out. This unnatural conduct leads one to believe that the appellant's contention that his name was deliberately not announced as the Returning Officer had made up his mind to reject his nomination form, does not appear to be correct. Merely because he produced in Court a photocopy of the corrected nomination form cannot advance his case. He must satisfy the Court that the photocopy was taken out before the rejection of the nomination form. No doubt he has said so in his evidence but it is difficult to believe his version for the simple reason that if the form had been submitted after correction and the photocopy was taken out in advance, his conduct would have been totally different at the time when his name was not announced at the scrutiny of the nomination forms on 1-11-1993. Therefore, on the totality of evidence it is difficult to hold that the learned Judge committed any error in the appreciation of evidence placed before him. We do not think it necessary to express any opinion as to whether the appellant was guilty of tampering with the document at any point of time after its submission because that is a matter for investigation. However, we think that on the totality of evidence before the Court, the view taken by the High Court is a plausible view and we would not be justified in interfering with it.

4. The next contention urged by the learned counsel for the appellant is that even if the Court comes to the conclusion that there was an error in mentioning the figure 136 in the nomination form, that error could not be said to be of a substantial nature to entitle the Returning Officer to reject the nomination form. In this connection our attention was invited to the proviso to Section 33(4).

5. Now Section 33(4) says 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 in the same as those entered in the electoral roll. The proviso then proceeds to add that no misnomer and inaccurate description or clerical, technical or printing error in regard to any name or place mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll number of any such person in the nomination paper, shall affect the full operation of 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. It further provides that in such a situation the Returning Officer shall permit any such defect or deficiency to be corrected or record that the same shall be overlooked. Section 36 next deals with the scrutiny of nominations. Clause (4) of that provision provides that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. Sub-section (6) next provides that the Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same and in the case of the latter briefly indicate the reasons for such rejection. Now, in the instant case the reasons for rejection have been indicated though they are not endorsed on the nomination paper. That by itself, without anything more, cannot be said to be fatal as urged by the counsel for the appellant.

6. In *Rangilal Choudhury v. Dahu Sao* [(1962) 2 SCR 401 : 1962 SC 1248] a four-Judge Bench of this Court dealt with a situation where the appellant was elected as a member of the Legislative Assembly from Dhanbad while the nomination paper of the respondent was rejected on the ground that his proposer has nominated him for election from Bihar and not Dhanbad Assembly Constituency, in that, in the nomination paper he had mentioned "Bihar" before the words "Assembly Constituency" instead of the word "Dhanbad". Now this defect had arisen out of the mistake in the Hindi printed form of the nomination paper which did not conform to the form prescribed by the rules. The Election Tribunal held that the nomination paper was rightly rejected, but the High Court reversed that decision holding that the rejection was improper. This Court, after considering the impact of Sections 33 and 36 referred to earlier came to the conclusion that since the mistake had occurred on account of the inconsistency in the printed form in Hindi, the defect was not substantial in character. It would appear, therefore, that the decision turned on this vital fact that the Hindi version of the form itself carried a mistake for which the candidate would not be blamed.

7. In *Ram Awadesh Singh v. Sumitra Devi* [(1972) 3 SCC 131] it was held by a two-Judge Bench of this Court that on a combined reading of Section 33 and 36 it becomes clear that a misdescription of electoral roll number of the candidate or the proposer or their names in the nomination paper is not to be considered a material defect. In this case the appellant had filed his nomination from the Arrah Constituency from which he had contested in the earlier elections also. His name was entered in the electoral roll of Arrah Constituency in 1968. But, since his name also stood entered in the Sandesh Constituency it was deleted from the Arrah Constituency without notice to him. The deletion was shown in separate supplemental list while in the main electoral roll his name continued to be shown in the Arrah Constituency. When he went to file the nomination paper he was not aware that his name continued in the Arrah Constituency and, therefore, he had taken with him the certified copy of the electoral roll of the Sandesh Constituency. On the morning of 6-1-1969 he, however, learnt about the continuance of his name in the Arrah Constituency but he was not aware of the deletion of his name. Therefore, in the nomination paper he entered his electoral roll number as shown in the electoral roll of Arrah Constituency. He showed to the Returning Officer the certified copy of the Sandesh Constituency, a fact which was affirmed by the Returning Officer, and the latter after verifying the name of the appellant as well as his electoral roll number accepted his nomination paper since no objection was raised at that stage. The objection was raised for the time after the election. It was in this context held that the appellant was not to be blamed for the change in the separate list and the continuance of his name in the Arrah Constituency, otherwise he would have corrected the mistake and the Returning Officer too would have directed him to do so. It was in these special circumstances, that the Court came to the conclusion that the misdescription of the electoral roll number of the candidate or his proposer or their name in the nomination paper could not be said to be a material defect which could not be cured.

8. Our attention was lastly drawn to the decision of this Court in *Brij Mohan v. Sat Pal* [(1985) 2 SCC 652]. In this case Sat Pal had filed the election petition alleging that Dog Ram was registered as an elector at Serial Number 177, House No. 57 in Part 39 of the electoral roll of the Jind Constituency and Ram Pratap who proposed Dog Ram was registered as elector at Serial Number 313, House No. 6 in Part 39 of the same constituency. The name of Dog Ram and his postal address were correctly given in the nomination paper. But the part of the electoral roll was mentioned as 57 instead of 39 by mistake. So also in the case of the proposer, the serial number of the elector and the number of the constituency were correctly given but the house number was wrongly entered. These inaccuracies in the nomination paper were, contended the appellant, technical in nature and should have been rectified by the Returning Officer at the time of scrutiny. This Court held that the responsibility of producing documentary evidence of registration as elector in a different

constituency rests entirely on the candidate. It further held that it was not possible to generalise and hold that all errors in regard to electoral roll numbers of the candidate and the proposer in the nomination paper do not constitute defects of a substantial character. They would not be defects of sustained character only if at the time of scrutiny the Returning Officer either by himself or with the assistant of the candidate or his proper or any other person is able to find out the correct serial numbers of the candidate and the proposer by reference to the correct part number of the electoral roll. If that is not the case, he would be committing a great error by accepting the nomination paper without verifying whether a candidate was a voter in that constituency. It was, therefore, said that the question whether the defect is of substantial character or not, would depend on the facts of each case. Unless the defect is one which can be per se noticed and corrected at the stage of Section 33(4) or later at the stage of Section 36(4) without the need to refer to various other documents the same cannot be said to be of a non-substantial character. In the instant case also the defect as to the number could have been said to be not of a substantial character if the appellant had shown that the name of the proposer appeared on the very same sheet at Serial Number 138 instead of 136 i.e. only two steps away. In that case one can say that the Returning Officer could have verified the same if he had exercised due diligence. In such situation even if the appellant and his proposer were absent the court could have taken the view that the defect was not of a substantial nature. But the defect cannot be noticed unless the Returning Officer is required to sift through various other documents or the voters' list or is required to undertake an enquiry as to whether the proposer's name appears anywhere else in the voters list. The defect may not be one capable of being cured without the assistance of the candidate or his proposer and in such a situation he would be justified in rejecting the nomination paper. In the instant case since there is no evidence to suggest that the name of proposer appeared on that very sheet at Serial Number 138 instead of 136 in the electoral roll, we find it difficult to find fault with the rejection of the nomination paper by the Returning Officer.

9. In the result, we see no merit in the appeal and dismiss the same but make no order as to costs.