

BOMBAY HIGH COURT

Namdeo Chimnaji Tapre

Vs.

Govinddas Ratanlal Bhatia

A.F.O.D. No. 57 of 1963

(Kotval and Abhyankar, JJ.)

15.04.1963. 11.07.1963

JUDGMENT

Kotval, J.

1. This is another election appeal. It relates to the election to the Maharashtra Legislative Assembly from constituency No. 164 of Khamgaon, including Khamgaon town.

2. The following dates out of the programme announced for the election are material for our purposes :

- (1) The last date for filing of nominations was ... 20th January 1962
- (ii) The scrutiny of nominations was to take place on ... 22nd January 1962
- (iii) The date on which the poll was to be taken was ... 22nd February 1962
- (iv) Counting took place on ... 26th and 27th February 1962.
- (v) The result was declared on 27th February 1962.

At all material times during the process of election the Returning Officer and the Election Officer under the Representation of the People Act, 1951, were one and the same person, Mr. M.B. Lawale.

3. The respondents Nos. 1 to 6 to this appeal were candidates for election and the respondents 7, 8 and 9 had filed nomination papers for election but their nominations came to be rejected and several of the grounds taken in the election petition pertain to the rejection of these nominations. As to the candidates who stood for election the number of votes obtained by each were as under:-

Name	Number of votes obtained.	Party for which stood
Respondent No. 1 Govinddas Ratanlal Bhatia (who	33,238	Congress

has given evidence in this case as R.W. 5).

Respondent No. 2 Tukaram Ganpat Kumar (who has given evidence in this case as P.W. 5).	21,319	Peasants and workers (S.M. Samiti).
Respondent No. 3 Bhaskar Sangrao Deshmukh.	301	Jan Sangh.
Respondent No. 4 Krishnarao Ganpatrao Deshmukh.	1,730	Nag-Vidarbha Andolan Samiti.
Respondent No. 5 Vithalrao Amrita Wankhede.	1,047	Independent candidate.
Respondent No. 6 Purushoattam Sheoram Shekdar.	563	Independent candidate

As a result of the poll, the respondent No. 1 Govinddas Ratanlal Bhatia was declared elected, and the petition out of which the present appeal arises challenged his election.

4. The election petition was presented by the two appellants Namdeo Chimnaji Tapre and Namdeo Wakuji Araj. They claimed to be electors within the meaning of Section 81 of the Representation of the People Act. They alleged several grounds on which they claimed that the election of the first respondent ought to be declared void. The principal ground was that the nomination papers of the respondents 7 to 9 which had been rejected by the Returning Officer were improperly rejected and the election was consequently liable to be set aside under Section 100 of the Act. The second ground was that there were several contracts entered into with the State Government by the respondent No. 1 in the course of his business. One such contract was for the supply of printed lists of voters for this same election. The other contract was for providing transport for under-trial prisoners and/or convicts between Buldana jail and other places in the district. According to the petitioners, the subsistence of these contracts worked a disqualification under Section 7(d) of the Act disentitling the respondent No. 1 from standing.

5. The first respondent raised a number of pleas in answer and he denied the fact that he was the owner of the particular press known as "Dinkar Mudranalaya" of Khamgaon, in which the voting lists were printed. According to the petitioner, he was a partner along with several other persons. In connection with the second objection, the respondent No. 1's stand was that the rejection of the nominations of the respondents Nos. 7, 8 and 9 was proper. The respondent No. 7 did not put in appearance and was throughout ex parte. The respondents Nos. 8 and 9 filed their written statements but it does not appear that thereafter they took part in the trial of the election petition.

6. Now, it is unnecessary here to state the respective pleadings of the parties upon all the issues which were framed by the Election Tribunal, because after some arguments Mr. Manohar on behalf of the appellants has with discrimination confined himself to the two important grounds which we have referred to.

7. The first ground argued is as to the rejection of the nomination paper of the respondent No. 8 by the Returning Officer Mr. Lawale. It is not in dispute that the nomination paper of the

respondent No. 8 Bhiku Ambuji Shegaonkar was presented by the candidate in person on 19th January 1962. There is a dispute as to what happened on the date of presentation and as to whether the Returning Officer at all scrutinized the nomination paper or asked him to appear on a subsequent day, but it is clear that he passed a written order on 22nd January 1962, which is endorsed on the reverse of Ex. 125. That order was as follows :

"In accordance with the provisions contained in Section 36 of the Representation of the People Act 1951, I examined and scrutinized this Nomination paper and order as below :

There is a difference in the surnames of both the candidate and his proposer as compared with the voters' list. Hence this nomination paper is illegal and invalid and is being declared as such."

It is that order with which we are here concerned.

8. The objection which was upheld to the nomination of the respondent No. 8 was that there was a difference between the surname mentioned in the nomination paper and the voting list in the case of both the candidate and his proposer. In the nomination paper the names were as follows : Candidate. The list of voters is at Ex. 36 and according to the candidate and the respondent No. 1 these names were covered by entries Nos. 690 and 427 in the list of voters. So far as the respondent No. 8 is concerned, the relevant entries are from 682 to 691, which are as follows : So far as the proposer Honaji is concerned, the entries are from Nos. 423 to 427 in the electoral roll for ward No. 11, which are as follows :

It will be noticed that the surname as mentioned in the nomination paper of the candidate as well as of the proposer is Shegokar, whereas, according to the findings, in the list of voters it was "Tayade" in the case of the respondent No. 8 and "Sukhale" in the case of the proposer Honaji. Now, it was argued on behalf of the petitioner that this difference has arisen because of the ditto sign " " which is mentioned against the other names of persons above the respective entries pertaining to the respondent No. 8 and the proposer. Actually there is no surname as such mentioned in the voting list against the name of the respondent No. 8 or the proposer, but where the surname ought to be there is the ditto sign.

9. It was also the case of the petitioner that no one had challenged the identity of the candidate and no one stated that the name mentioned in serial No. 690 did not pertain to the respondent No. 8. It was alleged that the surname of the respondent No. 8 is not "Tayade" and that there is no "Bhiku Ambuji Tayade" in Ward No. 13 in house No. 307 appertaining to the entry in the roll. It was specifically averred that the entry No. 690 in the roll related to the respondent No. 8. According to the petitioner, the Returning Officer failed in material respects in the performance of his duties. He should have scrutinized the nomination paper forthwith when it was presented under Section 33(4) of the Act, which he failed to do. Another stand which the petitioner has taken in the petition is that the surname is not essential to be mentioned in the nomination paper, nor is it any part of the name of the candidate as prescribed by the rule, and therefore there was

no substantial error in the nomination paper upon which it could possibly have been rejected by the Returning Officer. Paragraph 6(d) of the petition is in this respect of some importance because it was argued that it has at no stage been controverted in the reply filed by the first respondent, and paragraph 6(d) alleged :

"It is submitted that Shegokar is not a surname. Number of residents of Shegaon call themselves Sheogaonkar or Sheogokar. The mention of surname in voter's lists is redundant and is not prescribed by statute. Similarly mention of surname in nomination paper is redundant and unnecessary.

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10. In reply the respondent No. 1 dealt with these allegations in the petition in paragraph 6 of the written statement. It was urged that the respondent No. 1 has not specifically denied these allegations in the petition, The respondent contended that paragraph 6 of his written statement was sufficiently specific. Paragraph 6 begins with the statement. "The contents of para 6(a)(b)(c) are denied", and then follows a detailed statement. Reading the paragraph it does appear that he had not controverted the allegations in paragraph 6(d) of the petition specifically. Mr. Mandlekar on behalf of the respondent No. 1 pointed to several allegations in paragraph 6 of the written statement to which we shall refer when we consider the arguments, but it is clear that directly paragraph 6(d) of the petition has nowhere been denied or otherwise answered.

11. Now, so far as the Election Tribunal is concerned, it found upon a consideration of Section 33(1) and (4), Sections 36(1), (2) and (4) and the rules that the mention of the surnames in the nomination paper is not a requirement of the law. The necessary finding is as follows :

"There can thus be no doubt that surnames did not at all constitute an essential requirement of the description of voters in the electoral roll."

But then the Election Tribunal went on to say that "if the surnames are mentioned they cannot just be ignores as a total superfluity" and that because they are mentioned in the nomination form of the respondent No. 8 they "are bound to subscribe to the identity of the persons". The Tribunal thereafter held that the

"discrepancy in the surname could not possibly be regarded as trivial or inconsequential. Indeed, it pointed to the persons of different families altogether."

12. So far as the procedure for the receipt of the nomination papers by the Returning Officer and his scrutiny thereafter are concerned, the Tribunal has found that on the date of presentation the Returning Officer did not check the nomination paper of the respondent No. 8. From its finding it is clear that it accepted the petitioners' contention that there was no objection taken to the identity of the respondent No. 8 as being the correct person described in the nomination paper. It also accepted as a fact that the nomination papers, Exhibits 125 and 126, were duly signed and presented before the Returning Officer by the respondents Nos. 8 and 9. The Tribunal, however,

held that the nomination papers were properly rejected because it took the view that the omission to mention the correct surname was of a substantial character.

13. Mr. Manohar on behalf of the appellants has urged that in the first place there was no substantial defect in the nomination paper and that it was really a defect or an inadvertent error which has crept in the voting list. Because of that it has been made to appear that the nomination paper was defective. In any case he urged that a surname was not essential to the validity of the nomination paper either as a matter of practice or in law. He strongly criticized the action of the Returning Officer and the procedure which he followed before he passed his order rejecting the nomination of the respondent No. 8. According to him, the procedure followed by the Returning Officer infringed both Sections 33 and 36 of the Act and the rules, and it was in consequence of the wrong procedure which he followed that the wrong order came to be passed.

14. Before we turn to the contention raised on behalf of the appellants, it is necessary to refer to certain provisions of the Representation of the People Act. The objection, as it has been pressed before us, is founded on the provisions of Section 100(1)(c) of the Act which says :-

"100. Grounds for declaring election to be void. -

(1) subject to the provisions of Sub-Section (2) if the Tribunal is of opinion -

** ** *

(c) that any nomination has been improperly rejected;

** ** *

the Tribunal shall declare the election of the returned candidate to be void."

There is nothing in Sub-Section (2) which affects this particular clause of Section 100(1). As to the nomination of candidates, provision has been made in Chapter 1, Part V of the Act, and Section 32 provides that any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat under the provisions of the Constitution and the Act. Then follow the provisions of Section 33, dealing with the manner of presentation of a nomination paper and the requirements of a valid nomination, and for the purposes of the point raised before us, Sub-Secs. (1) and (4) are material. They provide as follows :

"33. Presentation of nomination paper and requirements for a valid nomination. -

(1) On or before the date appointed under clause (a) of Section 30 each candidate shall, either in person or by his proposer, between the hours of eleven O'clock in the forenoon and three O'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under Section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer.

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(4) 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 those entered in the electoral rolls :

Provided that the returning officer shall permit any clerical or technical error in the nomination paper in regard to the said names or numbers to be corrected in order to bring them into conformity with the corresponding entries in the electoral rolls, and where necessary, direct that any clerical or printing error in the said entries shall be overlooked."

Section 36 of the Act makes provision for a scrutiny of nominations by the Returning Officer, and since several of the actions of the Returning Officer in this case (Mr. Lawale) have been challenged before us, it is worthwhile reproducing here the material provisions of Section 36. They are Sub-Secs. (1), (2) and (4) as follows :

"36. Scrutiny of nominations. - (1) On the date fixed for the scrutiny of nominations under Section 30, the candidates, their election agents, one proposer of each candidate, and one other person duly authorized in writing by each candidate, but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in Section 33.

(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds :

(a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely :- Articles 84, 102, 173 and 191, and Part 2 of this Act, or

(b) that there has been a failure to comply with any of the provisions of Section 33 or Section 34; or

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

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(4) The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character."

15. The provisions of Sub-Section (1) of Section 33 require that each candidate shall on or before the last date for the presentation of nomination papers fixed under Section 30(a) either in person or by a proposer, deliver to the Returning Officer at the place specified in the notice issued under Section 31, a nomination paper completed in the prescribed form and signed by the candidate and by the elector of the constituency as proposer. Sub-Section (4) indicates what the Returning Officer is to do when the nomination paper is presented to him and it shows that he is required to satisfy himself on several questions. Of the several duties prescribed, the first is that he shall

satisfy himself that the names and the electoral roll numbers of the candidate and his proposer, as entered in the nomination paper, are the same as those entered in the electoral roll. Then there follows a proviso which enjoins the second duty upon the Returning Officer, and that is that he

"shall permit any clerical or technical error in the nomination paper in regard to the said names or numbers to be corrected in order to bring them into conformity with the corresponding entries in the electoral rolls".

It seems that this requirement of the law was expressly made in order to obviate just such a mistake as has occurred in the present case, that is to say, a discrepancy between the names in the nomination paper and the corresponding entries in the electoral rolls; and the scope of the duty of the Returning Officer is indicated by the words "shall permit". The proviso to Sub-Section (4) further prescribes a third duty in the following words :

"and where necessary, direct that any clerical or printing error in the said entries shall be overlooked."

So far as this duty is concerned, it is a duty enjoined upon the Returning Officer irrespective of whether the candidates or proposers or any other person asks for the correction. The difference between the second requirement and the third is clear. The second requirement is directed to correcting errors in the nomination paper, whereas the third requirement contained in the proviso to Sub-Section (4) of Section 33 is directed to overlooking any clerical or printing errors in the entries in the electoral roll.

16. The Returning Officer has not been examined in this case by either party and the petitioners who are mere electors could obviously not be expected to know what transpired when the nomination papers were presented by any other candidates. Thus, there is no evidence to indicate what happened when the nomination paper of the respondent No. 8 was presented to the Returning Officer. But Sub-Section (4) of Section 33 requires that on presentation of the 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 those entered in the electoral roll. Having regard to this mandatory provision and the duty cast upon the Returning Officer to satisfy himself on these particulars we should ordinarily have presumed that the Returning Officer performed his duty, but we shall presently show that in this case, there are clear indications that he did nothing at all at the time of presentation.

17. The following are the indications on the record that he could not have performed any part of his duties under Section 33(1) or (4). In the first place, the nomination form which was admittedly presented to him on 19-1-1962 does not bear any endorsement by him that he has scrutinized it or accepted it or rejected it. The only order he passed was three days later on the date of scrutiny. That order was passed on 22nd January 1962 on the reverse of Ex. 125 and he merely observed :

"There is a difference in the surnames of both the candidate and his proposer as compared with the voter's list. Hence this nomination paper is illegal and invalid and is being declared as such."

No other ground of objection is mentioned for the rejection of the nomination paper.

18. Now, it is clear that the only ground which the Returning Officer found on 22-1-1962 for rejecting the nomination paper was precisely the one ground on which he had to satisfy himself under Section 33 at the time of the presentation of the nomination paper i.e. on 19-1-1962. Thus, if he had performed his duty under Section 33 at the time of presentation, the occasion to pass the order on 22nd January 1962 would never have arisen. That, in our opinion, is a sufficient indication that the Returning Officer did not scrutinize or look at the nomination paper at all on 19-1-1962 at the time it was presented, and so failed to discharge the duty prescribed under Section 33. There is also no evidence whatsoever that he performed that duty.

19. Dealing with the provisions of these sections, in *Rangilal v. Dahu Sao*¹, Wanchoo, J. observed :

"The result of these provisions is that the proposer and the candidate are expected to file the nomination papers complete in all respects in accordance with the

¹ AIR 1962 SC 1248

prescribed, form; but even if there is some defect in the nomination paper in regard to either the names or the electoral roll numbers, it is the duty of the Returning Officer to satisfy himself at the time of the presentation of the nomination paper about them and if necessary to allow them to be corrected, in order to bring them into conformity with the corresponding entries in the electoral roll. Thereafter on scrutiny the Returning Officer has the power to reject the nomination paper on the ground of failure to comply with any of the provisions of Section 33 subject however to this that no nomination paper shall be rejected on the ground of any defect which is not of a substantial character."

The decision clearly indicates that it is the duty of the Returning Officer to scrutinize the nomination papers on presentation and compare the entries in the nomination form with the entries in the voters' list and permit corrections to be made. That all this was done not at the time of the presentation of the nomination paper in this case but subsequently on 22nd January 1962 shows that the Returning Officer did not perform his duties under Section 33 on the presentation of the nomination paper.

20. So far we have assumed that there was such an error as would vitiate the nomination form but that has been very strongly disputed on behalf of the appellants by Mr. Manohar. Turning then to the merits of the controversy, it has to be noticed first of all that the objection itself did not emanate from any of the rival candidates of their election agents or any third person but it was

raised 'suo motu' by the Returning Officer himself. The Tribunal has found that at the time the order on the reverse of Ex. 125 was passed, the respondent No. 8 was not present. As to that we shall have something to say presently, but it was argued before the Tribunal that the objection was raised 'suo motu' by the Returning Officer and that he was not justified in raising it himself. That was answered by the Tribunal by observing in paragraph 15 :

"The fact that no one objected to that identity did not at all absolve the Returning Officer from his duty to see that identity was satisfactorily established."

In making these remarks the Tribunal overlooked two things :

(1) that the duty arose at the stage of presentation and at that stage the Returning Officer did not perform his duty. If he had performed his duty at the proper stage he would have been bound to order correction and the occasion for rejecting the nomination may not have arisen;

(2) that in this case no one had disputed the identity as such. It was not the respondent No. 1's case before the Tribunal or before us that the candidate and the proposer in the disputed nomination were not the very persons whose names appear in the entries in the voting list at serial Nos. 690 and 427.

21. Next, let us examine the view which the Returning Officer took in his order and how the Tribunal dealt with it. The consideration which is most important in our view we have already indicated. Even the Returning Officer did not hold in his order that in fact the identity of the candidate and his proposer had not been established or that it was at all in doubt. He did not hold that the candidate and his proposer were really not the persons mentioned in the voting list at entries Nos. 690 and 427 respectively. All that he held was that the surnames did not tally. In fact, there is no doubt or dispute in this case that the respondent No. 8 was the very person who was covered by the entry at serial No. 690, and the proposer was the very person who was the person mentioned in the entry at serial No. 427.

22. Next, so far as the findings of the Tribunal are concerned, there does not appear to be any clear finding upon the facts given by the Tribunal as to whether identity was established or not. In dealing with this point the evidence of the first respondent Govinddas at Ex. 121 was referred to and the Tribunal quoted the following passage from that evidence :

"I knew respondents 8 and 9 by names. When their nomination papers came for consideration, I had no doubt that those nomination papers were theirs."

As to this evidence the Tribunal observed :

"But it does not appear that he so expressed to the Returning Officer. In any case, the

Returning Office was not bound to act upon what the respondent No. 1 felt about the matter. Satisfaction of identity was essentially a subjective experience and the Returning Officer could be hardly blamed for his inability to obtain such satisfaction in the absence of the persons concerned."

Now, it may be noticed that this is the only finding which the Tribunal has given on the question of identity and it does not amount to a finding that the persons mentioned, in entries Nos. 690 and 427 were not the persons who are mentioned in the nomination form.

23. What is of greater importance is that the Tribunal has not disbelieved the evidence of the respondent No. 1 Govinddas. On the other hand, it appears it has accepted it. The Tribunal's reasoning however was that it did not appear that the respondent No. 1 had expressed his satisfaction regarding the identity to the Returning Officer. In other words, the respondent No. 1 had not told the Returning Officer that he had no doubt about the identity of the respondent No. 8 and his proposer and it was clear to him. But what about the evidence given by Govinddas before the Tribunal ? There is no verdict upon that evidence and its credibility. It seems to us moreover that whether the respondent No. 1 stated it or not to the Returning Officer it was for the Returning Officer to have ascertained it at the time of presentation. We have already shown that at the preliminary stage when the nomination form was presented he made no inquiry whatsoever. His order does not show that he made any inquiry as to the identity at the subsequent stage. All that the order shows is that there was a difference in the surname of both the candidate and his proposer as compared with the voting list. In our opinion, that finding is a clear finding that there was only a clerical or technical error in the nomination paper and not that there was any substantial difference as to identity.

24. Upon the evidence of the respondent No. 1 as R.W. 5 it is clear that the respondent No. 8 and his proposer were the persons mentioned in the relevant entries 690 and 427. This is also borne out by the evidence of the respondent No. 3 Bhaskar Deshmukh as P.W. 6 for the petitioners. He has stated in paragraph 2 :

"We had no doubt as to the correctness of the nomination paper of respondents Nos. 8 and 9."

We may incidentally also point out here that in the petition itself it is averred :

"No one had challenged the identity of the candidate and no one had stated that the person mentioned at serial No. 690 is a different person"

and though the respondent No. 1 in his written statement was content to generally deny the contents of paragraphs 6(A), (B) and (C) of the petition, he did not specifically controvert this allegation of the petitioners that no one has challenged the identity of the candidate. In that state of the pleadings and the evidence, we can see no reason why we should not accept the evidence

to which we have referred, of the respondent No. 1 and the respondent No. 3. In our opinion, there is no doubt that the identity of the candidate as being the respondent No. 8 and his proposer as being Honaji Manaji, covered by entries Nos. 690 and 427 in the voting list, is established.

25. In the decision of the Supreme Court in Rangilal's case, AIR 1962 Supreme Court 1248 to which we have referred above, the object and purpose of these provisions of the law requiring the giving of the name and serial number in the voting list were discussed and their Lordships observed in paragraph 5 :

"The purpose of this provision is that the Returning Officer should be able readily to check that the proposer and the candidate are voters on the electoral roll."

If that be the purpose, then it seems to us that upon the entries made in the present nomination form read with the entries in the electoral roll that purpose had been fulfilled by the nomination form filed by the respondent No. 8. It may also incidentally be observed here that that was the only purpose to which the Returning Officer did not apply his mind when he passed his order on 22nd January 1962.

26. Now, the relevant objection which the Returning Officer found was that the surnames of both the candidate and his proposer did not tally with the voters' list, and the next question that arises is whether having regard to the provisions of Section 36(4) that was at all a defect in the nomination form and if a defect whether it was substantial. The relevant form as prescribed by the Conduct of Election Rules, 1961, is Form No. 2-B in Part V of the Statutory Rules and Orders. Rule 4 of the Conduct of Election Rules prescribes that every nomination paper presented under Sub-Section (1) of Section 33 shall be completed in such one of the Forms 2-A to 2-E as may be appropriate. The appropriate form in the instant case, as we have already observed, was Form No. 2-B. The entries required to be filled in, in the nomination form are as follows :

1. Full name of proposer.
2. Electoral roll number of proposer.
3. Name of candidate's father/husband.
4. Full postal address of candidate.
5. Electoral roll number of candidate.

The form has to be signed by the proposer and the candidate, and the candidate has to state the symbols which he had chosen in the order of preference. The two requirements so far as the name of the proposer and the candidate are concerned, are in entries Nos. 1 and 3, i.e. "full name of proposer," and "name of candidate's father/husband". If these are the requirements of the nomination paper then it is clear that so far as the nomination form in the present case is concerned it was properly and correctly filled in. The name of the candidate and his father and the full name of the proposer have been mentioned. Nowhere does the law require that the

surname should be mentioned, and if could just as well have been deleted from the form.

27. The difficulty which faced the Returning Officer was apparently created by the entries in the electoral roll. The exact entry in the electoral roll (Ex. 36) so far as the candidate is concerned is : The exact entry so far as the proposer is concerned is : It is clear from these entries in the election roll that the surname as such is also not mentioned against the entries and yet the Returning Officer felt that the surnames were different. The reason appears to be that he relied upon the two commas " , , " signifying in the English language the notation for "Ditto", and so reading, the entry, he read backwards until a similar ditto mark in all the entries above entries Nos. 690 and 462 were exhausted, and there was a specific surname found which surname he read into the entries concerning the candidate and the proposer.

28. Now, in the electoral roll (Ex. 36) the eight entries above entry No. 690 also do not contain the surname but only the ditto marks, and it is only when we come to entry No. 682 that we find the surname of the Kisan Zadu mentioned as "Tayade". Therefore, the Returning Officer inferred that all the rest of the names below containing the ditto marks were Tayades by surname. In fact, if that process of reasoning were to be applied, a glance at the electoral roll would show that all the persons from entry No. 682 to 710 would be Tayades by surname. In other words, all the serial entries of those 28 persons would show that surname as Tayade. Similarly, so far as the proposer Bhikuji Sambhuji is concerned, the entries above that entry go up to entry No. 455 where we find the surname actually mentioned against the name of one Rambhau Sampat as "Bangar" and the Returning Officer therefore held that Bhiku Sambhuji's surname was also "Bangar". Here again we may point out that entries Nos. 455 to 475 are all covered by the ditto marks below the surname "Bangar" in entry No. 455, and therefore, according to the reasoning of the Returning Officer all these 20 persons must be held to have the surname "Bangar".

29. There was considerable argument at the bar as to what was the significance of these two commas. No doubt, so far as the English language is concerned, that is a mark which is well recognized and connotes the word "Ditto" which, as the Oxford English Dictionary tells us, is an Italian word corresponding to the English word "said". The example given at page 544 of Volume 3 of the Oxford English Dictionary is 'il detto libro' - "the said book", and the Italian word "detto" is equivalent to the English word "Ditto". The same dictionary also points out that the word "Ditto" means "by extension; the aforesaid, the same, used in accounts and lists; (where also abbreviated Do, or expressed by two dots or commas, or a dash) to avoid repetition of a word or phrase appearing above; hence in commercial, office, and colloquial language." Having regard to this meaning attached to the sign in the English language, there can be no doubt that the ordinary sign of two commas would signify that the same word "as above" continues to be used wherever the sign is used. But it was argued with considerable force that it is impossible to suppose that the candidates and voters would understand the sign in the sense in which it is used in the English language. In the first place, the voting lists are by law required to be in the vernacular and in the instant case the voting list Ex. 36 was actually in the Marathi language, and it is extremely doubtful if the class and type of voters in these Constituencies could have

understood by these signs that the surname on the top was continued. If they had so understood there is no doubt that the candidate at the time of presentation would have pointed it out to the Returning Officer, for, as we have already shown, there was absolutely no doubt as to the identity of the respondent No. 8 'vis-a-vis' the entry No. 690, nor of the proposer Honaji 'vis-a-vis' the entry No. 427.

30. Apart from this, on behalf of the petitioners the voting lists for the same area in the previous elections to the Legislative Assembly have been filed. They are at Exhibits 59 and 61. In the voting list Ex. 61 which is the voting list for the General Elections of 1952, at serial Nos. 295, 296, 297 and 298 we find the following persons shown there :

It may be noticed that in this electoral roll the inverted commas have not been used so far as the surnames are concerned. All the persons shown in the above entries are shown as residing in house No. 103, and their respective ages in the two lists Ex. 36 and Ex. 61 show that they were the same persons as are mentioned in entries Nos. 690, 691 and 692 in Ex. 36 with the exception of Ambuji Ramji Shegokar. Similarly, a comparison of Ex. 59 with entries in Ex. 36 will show that the same names in the same order continued in voting list for the 1957 elections. They are entries Nos. 315, 317, 318 and 319. On behalf of the petitioners there has also been filed a document Ex. 79 showing that Ambuji Ramji Shegokar died on 23-8-1959. That is an extract from the register of the Shegaon Municipality where all these persons reside and it certainly establishes that the father of the respondent No. 8 passed away in 1959.

31. Now, the point which Mr. Manohar has made is that in the voting lists for 1952 and 1957 the name of Ambuji Ramji Shegokar is shown as the first among the four names in the family, viz., of Ambuji himself, Gunkabai, Bhiku and Sayabai. That is as it should be, because Ambuji was the head of the family. But he died in 1959, and the officer who corrected that entry in the electoral roll must have merely put a line through the name of the deceased person in order to delete, and therefore the surname disappeared but in doing so, the officer failed to see the drastic effect he was thereby producing on the entries below where under the surname "Shegokar" the ditto marks stood. With the removal of the word Shegokar along with the name of Ambuji, the ditto marks of his son and wife below read backwards to a completely different surname. We have already pointed out that in the voting lists of 1952 and 1957 the surnames are not mentioned against the remaining members of the family, namely, Gunkabai, Bhiku and Sayabai, but only against Ambuji. Therefore, the removal of Ambuji's name upon his death also resulted in the removal of the surname and that surname has disappeared for the first time in the voting list for the 1962 elections and the sign of ditto came to be used. The result was that the ditto sign had to be read upwards until any surname was reached, namely, that of "Tayade" in the case of the respondent No. 8 and "Bangar" in the case of the proposer Bhikuji Sambhuji. This, in our opinion, is a very probable explanation, for as to how the error crept into the voting list. But it is not necessary for our purpose to go into that explanation, for the surname was not a 'sine qua non' under law, for the validity of the nomination paper.

32. It seems to us that the candidature or otherwise of a candidate standing for election to the

High office of the membership of the State Assembly should not be made to depend upon whether the two commas are there against his name or not and upon inferences as to what name those two commas apply to. The previous practice adopted in the elections of 1952 and 1957 of repeating the surname in every case was a sensible and wise practice, and we can see no reason why that practice was given up only in this election, unless that it was for the convenience of the printers of the voting lists. There is also the fact that in the instant case the printers of the voting list were none other than a partnership firm in which the elected candidate was himself a partner. It is this short cut to the work of preparing voting lists which results in these grave errors and graver consequences to the candidates. In this case we have no doubt that the nomination paper of the respondent No. 8 came to be rejected by the Returning Officer simply because he relied upon the two commas against his name and with the aid of those commas read backwards his surname until the wrong entry was reached. In our opinion, there was no error at all in the nomination form. The nomination form does not require that the surname should be mentioned, but the error, if at all, which weighed with the Returning Officer, was an error due to the faulty printing of the voters' list.

33. Then we turn to the question whether assuming that there was an error, the nomination form ought to have been rejected outright. Having analysed the evidence and the material before us with a view to seeing what the error consists of, it is pretty plain to us that it is not the sort of error which is referred to as substantial error in Sub-Section (4) of Section 36. The injunction contained in Section 36(4) is clear enough. It says :

"The Returning Officer shall not reject any nomination on the ground of any defect which is not of a substantial character."

We have indicated what in our opinion is the true defect in this case, and it is not necessary to re-emphasize that if at all it was an error, it was not an error of a substantial character. In fact, even the Election Tribunal itself appears to have felt this when it held that the surname did not at all constitute an essential requirement of the description of voters in the electoral roll. It has also not found that the person who stood as candidate and the person who proposed him were not covered by the entries in the voting lists Nos. 690 and 462. We are therefore somewhat surprised to find that though the Election Tribunal held that the "surname did not at all constitute an essential requirement of the description of voters in the electoral roll", it still went on to hold that the "discrepancy in the surname could not possibly be regarded trivial or inconsequential". It seems to us that there was a clear conflict in the two findings given by the Tribunal - the one in paragraph 12 and the other in paragraph 13.

34. The argument which the Election Tribunal adopted was, to quote it in its own words :

".....if the surnames are mentioned, they cannot just be ignored as a total superfluity. They are bound to subscribe to the identity of the persons."

Since there is no doubt in the present case as to the identity of the candidate and his proposer, this argument cannot possibly prevail. In our opinion, therefore, the ground upon which the nomination paper of the respondent No. 8 was rejected was not a valid ground at all, having regard to the provisions of Sections 33 and 36 read with the rules and the nomination form. In any event, assuming that there was a defect, that defect was not of a substantial character within the meaning of Sub-Section (4) of Section 36. The Returning Officer, therefore, was in error in rejecting the nomination paper.

35. Cases of similar other errors have occurred from time to time. Two such instances are to be found in the cases mentioned below, one of which we have already referred to AIR 1962 Supreme Court 1248 and *Dev Kanta v. Kusharam Nath*², where the constituency was wrongly mentioned, and in both these cases their Lordships of the Supreme Court held that the defects were not substantial, but perhaps the more crucial observation is to be found in *Karnail Singh v. Election Tribunal, Hissar*³, In that case the nomination paper of a candidate was rejected on the ground that column No. 8 in the nomination form was not duly filled up and the name of the sub-division was not stated therein in describing where the candidate lived. When the error was put before Mahajan, C.J., he observed :

"The only defect pointed out was that the name of the sub-division was not stated therein, but on the evidence it was quite clear that there was no difficulty in identifying the candidate and the candidate himself pointed out to the Returning Officer the entry of his name in the electoral roll. The defect, in these circumstances, was a technical one and the Tribunal was perfectly right in holding that the defect was not of a substantial character and that the nomination paper should not have been rejected."

These weighty observations emphasized the crucial point to be considered on the scrutiny of the nomination form, namely, that it is to be filled in, in order to identify the candidate and therefore if the identity of the candidate is once established, any other defects not affecting the identity would be clerical or technical defects and not substantial. In this case, as we have already said, there is no doubt was to the identity of the respondent No. 8 or of his proposer.

36. We next turn to the provisions of Section 100 under which the petitioners claim relief. Though other grounds were urged for the relief which the petitioners claim, viz., that the election of the respondent No. 1 should be declared void, it does not seem necessary here to consider those grounds. Suffice it to say that the other ground urged in this case was that the election of the respondent No. 1 was vitiated because he was disqualified to stand under Section 7(d) of the Act as he had a subsisting contract with the Maharashtra State Government at the material time. That would be a ground which, according to the appellants, falls within Section 100(1)(a) or Section 100 (1)(d)(iv). So far as the ground which we have found vitiates the election in the present case is concerned, the petitioners' case falls under Section 100(1)(c). That section says :

"100.(1) Subject to the provisions of Sub-Section (2) if the Tribunal is of opinion-
** ** ** ** ** ** ** ** ** ** **

(c) that any nomination has been improperly rejected;

or

² AIR 1961 SC 1125

³ 10 Ele LR 189 (SC)

** ** ** ** ** ** ** ** ** **

the tribunal shall declare the election of the returned candidate to be void."

On behalf of the respondents it was urged that even assuming that it is found that the nomination form of the respondent No. 8 was wrongly rejected because of the provisions of Sections 33 and 36 of the Act, still it can hardly be said that it was "improperly rejected" within the meaning of Section 100(1)(c). Mr. Mandlekar relies upon two decisions of the Supreme Court in *N.T. Veluswami v. Raja Nainar*⁴, and *Durga Shankar v. Raghuraj Singh*⁵, Dealing with the expression "improperly rejected" in Section 100(1)(c) in the case first mentioned, the Supreme Court held :

"Now, the whole controversy between the parties is as to what the expression 'improperly rejected' in Section 100(1)(c) means. According to the appellant; when the nomination paper of a candidate who is under no such disqualification as is mentioned in Section 36(2) has been rejected, that is improper rejection within Section 100(1)(c). According to the respondent, when the nomination paper of a candidate is rejected by the returning officer on the ground that he is subject to a specified disqualification, the rejection is improper, if it is found that that disqualification does not exist. If the former view is correct, then the scope of an enquiry before the Tribunal must extend to all matters which are mentioned in Section 36(2), and if the latter, then it must be limited to determining whether the ground on which the returning officer has rejected the nomination is well-founded. Now, to decide what the expression 'improperly rejected' in Section 100(1)(c) precisely imports, it is necessary to examine the relevant provisions of the Act bearing on the question and the setting of the above section therein." After examining the relevant sections the Court observed :

"In the context, it appears to us that the improper rejection or acceptance must have reference to Section 36(2), and that the rejection of a nomination paper of a candidate who is qualified to be chosen for election and who does not suffer from any of the disqualifications mentioned in Section 36(2) would be improper within Section 100(1)(c), and that, likewise, acceptance of a nomination paper of a candidate who is not qualified or who is disqualified will equally be improper under Section 100(1)(d)(i).....

Reading Section 100(1)(c) in the context of the whole enactment, we think that an enquiry before the Tribunal must embrace all the matters as to qualification and disqualification mentioned in Section 36(2), and that it cannot be limited to the particular ground of disqualification which was taken before the returning officer." Therefore, there is here a clear ruling of the highest Court that

every ground of qualification or disqualification is open for consideration in deciding whether the nomination paper was improperly rejected within the meaning of Section 100(1)(c) and the consideration whether it was improperly rejected or not is not limited to the one ground which was urged before the Returning Officer. In that view, we think that the grounds upon which the nomination paper of the respondent No. 8 was rejected in the instant case could well fall within the ambit of the words "improperly rejected" and can be considered both by the Election Tribunal and by this Court. Though apparently a somewhat different view

⁴ AIR 1959 SC 422

⁵ AIR 1954 SC 520

may have been taken as was argued by Mr. Mandlekar, in the other case namely, AIR 1954 Supreme Court 520 in the subsequent decision to which we have just referred their Lordships referred to that case and distinguished it. In our opinion, therefore, the later pronouncement of their Lordships must prevail even assuming that there is such a conflict. The case in AIR 1954 Supreme Court 520 was also further considered in a later decision in *S.M. Banerji v. Sri Krishna*⁶, at p. 373, paragraph 10, and the observations made therein re-emphasize the view taken in AIR 1959 Supreme Court 422 as the correct view.

37. Then we turn to certain objections which Mr. Mandlekar pressed for our acceptance upon which he claims that the election, petition filed in the instant case by the appellants should fail. One of these objections was as to the security deposit accompanying the election petition. The security deposit in the instant case was an amount of Rs. 2000/- deposited by the petitioner No. 1 Namdeo Chimanji Tapre. Obviously, the second petitioner, who is Namdeo Wakuji Araj, had not deposited any separate amount and it is that which is the gravamen of the objection. It is argued that each petitioner should have made a separate deposit. The matter falls to be decided by the provisions of Section 117 of the Representation of the People Act and Section 117 requires that

"the petitioner shall enclose with the petition a Government Treasury receipt showing that the deposit of Rs. 2000/- has been made by him either in a Government Treasury or in the Reserve Bank of India in favor of the Election Commission as security for the costs of the petition".

The contention is that the section says that the petitioner shall enclose a Government Treasury receipt for the requisite amount and that only the first petitioner has so enclosed it and not the second petitioner, and therefore, the entire election petition is liable to be rejected in limine.

38. In the first place, we think that when the words are used in Section 117 "the petitioner shall enclose", by any ordinary canon of construction, the use of the singular in the section would include the plural, and therefore, mutatis mutandis where there are two petitioners the section should be read to include both the petitioners, and that construction is warranted upon the provisions of the General Clauses Act itself. In that event, though there may be more than one petitioner, so long as one deposit is made for the election petition, we think that the election petitioners would comply with the requirements of Section 117. But apart from that we do not

think that the objection, even if sustained, can be of any practical assistance to the first respondent, for, the character and capacity in which both the petitioners moved the Election Tribunal are the same and both sought to contest the election of the first respondent because under Section 81 of the Act they were electors. Therefore, even assuming that one of the two electors had not made a deposit, his petition alone would be liable to be dismissed. But so far as the first petitioner is concerned, he has fully complied with the provisions of Section 117 and he would be entitled to continue the petition. In that event, the petition cannot be dismissed in limine, as the respondent would have it. We do not think that this objection affects the maintainability of the election petition.

⁶ AIR 1960 SC 368

39. Another objection was that the respondents 2 to 9, who had filed nomination papers, were unnecessarily joined in the petition. The contention is that the first respondent alone is interested in the result of the election petition and the respondents 2 to 9 (the first five of whom were the defeated candidates and the last three of whom were candidates whose nominations were rejected) had no interest in contesting the election petition. Therefore, there was a misjoinder of parties in the election petition and the petition was liable to be dismissed on that ground. In the decision of election petitions Section 90 prescribes that the election petition shall be tried by the Tribunal as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits, and therefore the objection will have to be determined as if the election petition were a suit. Now, had it been a suit, we do not think that an objection of this nature that superfluous parties were joined in the suit could possibly have resulted in the dismissal of the suit. At the most it may be a matter of costs. So long as the necessary party, the party who was directly and vitally interested, namely, the first respondent Govinddas, was made a party, the petition was validly constituted and was maintainable. We are unable to accept the objection raised.

40. Lastly, there is an objection as to the nomination paper of the 8th respondent whose nomination we have held was "improperly rejected" on a completely different ground. It was urged by Mr. Mandlekar that the 8th respondent had chosen the elephant as a symbol and that is clear from entry No. 2 in the latter part of the form in Ex. 125. Now, the list of symbols published by the Election Commission under Notification No. S. O. 2316, dated 19th September 1961 indicates that so far as this State is concerned, the elephant was a "reserved symbol", reserved for the Republican Party of India, and therefore Mr. Mandlekar has urged that the respondent No. 8 could not have adopted that as his symbol. In the first place it is in dispute whether the 8th respondent stood as an independent candidate or as a representative of the Republican Party of India. The respondent No. 8 did not go into the witness-box and the Tribunal had occasion to remark upon that conduct of the 8th respondent who was a party to the petition. Nor is there any proof aliunde. If there is anything significant far as this point is concerned, it is that none of the parties tried to give any evidence at all. The Tribunal has remarked in paragraph 16 though in connection with a different point but with reference to the respondents Nos. 8 and 9 "Neither of

those respondents went in the witness-box though specifically demanded by the petitioners....." We may incidentally observe here that in the written statement filed by these respondents they have taken a somewhat extraordinary stand in that they have said that they never intended to stand for election at all. That stand, though mentioned in their written statement is contrary to their very conduct in filing the nomination papers. If any explanation of their conduct in choosing the symbol was due, it was due from them or from the respondent No. 1 if he wanted to establish his objection that the nomination paper of the 8th respondent was liable to be rejected on that ground. In the absence of evidence we are unable to hold that the 8th respondent incorrectly chose the symbol of elephant. It has not been established that he was not a representative of the Republican Party of India. Rule 4 of the Conduct of Election Rules and its proviso were invoked by Mr. Manohar and a point of ultra vires was raised in answer by Mr. Mandlekar but we do not think that R. 4 would be attracted in the present case and therefore we need not consider the point of ultra vires. The proviso to R. 4 only deals with "failure to complete, or defect in completing, the declaration as to symbols in nomination papers", which is not the objection here. We hold that the nomination paper of the respondent No. 8 could not have been rejected upon the ground, that the "elephant", a symbol reserved for the Republican Party of India, was used by the respondent No. 8.

41. The last contention on behalf of the respondents is as to the presentation of the appeal in this Court. The appeal, it seems, was presented to this Court on 20-5-1953. At that time the summer vacation of the High Court had commenced and the work in the High Court was governed by a notification which is High Court Notification No. X-1603/63 issued under the signature of the Prothonotary and Senior Master of this Court. The Notification was published in the Maharashtra Gazette on the 27th December 1962, The contention is that in view of the fact that the High Court was in vacation, the presentation of the appeal was incompetent. So far as the presentation of the election appeal is concerned, it is governed by provisions of Section 116-A, Sub-Section (3), which requires that –

"Every appeal under this Chapter shall be preferred within a period of thirty days from the date of the order of the Tribunal under Section 98 or Section 99 :

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within such period."

It does not appear that any period of limitation as such under the Limitation Act governs the appeal. Under Sub-Section (3) it is to be presented within thirty days from the date of the order of the Tribunal and therefore the appellants could well have thought that they must present the appeal within 30 days from the date of the order of the Tribunal which fell during the vacation of this Court. Mr. Manohar on behalf of the appellants contended upon several provisions of law that there was no scope for extension on the ground that the summer vacation had intervened and therefore he was bound to present it during vacation. We do not think that we should go into that

question here because the appeal was rightly or wrongly filed and accepted by the office of this Court, and registered. Thus even assuming that the presentation was wrong, it does not cease to be an appeal pending in this Court, nor can it possibly affect our jurisdiction to entertain, hear or dispose it of whenever we chose to do so. Of course, that an appeal is filed before the expiry of the period of, limitation can hardly be a ground for its rejection. In any case, the appeal was in Court on the opening day of the High Court, was treated as an appeal in the office and so we do not think that this objection can be sustained or that the appeal presented to this Court was not validly presented. Apart from this, we may also point out that the notification issued by this Court itself justifies the presentation of this appeal during the summer vacation. All that the second paragraph of the notification says is that no work, unless of an urgent character, will be received after 1.15 p.m. There is no proof that the appeal was presented after 1.15 p.m. The appeal could always be presented before that time during the vacation. There is nothing in the other paragraphs of the notification to modify paragraph 2.

42. In the result, therefore, we allow the appeal set aside the finding of the Election Tribunal and hold that the nomination paper of the 8th respondent was improperly rejected within the meaning of Section 100(1)(c) of the Representation of the People Act, that as a consequence he was entitled to stand and contest the election against the first respondent and other candidates and was debarred from doing so by the wrong order of rejection. Therefore, the election of the first respondent must be declared void under the provisions of Section 100(1)(c). We set aside the election of the first respondent and declare that there is a casual vacancy.

43. The respondent No. 1 shall pay half the costs in this Court and the costs before the Election Tribunal.

Appeal allowed.