

## PATNA HIGH COURT

Ramayan Shukla

Vs

Rajendra Prasad Singh

Election Appeal No. 4 of 1958

(K. Sahai and N.L. Untwalia, JJ.)

04.10.1958

### JUDGMENT

#### **K. Sahai, J.**

1. This appeal is directed against an order dated the 22nd January 1958, passed by Mr. Ramjiwan Sinha, Sole Member of the Election Tribunal at Muzaffarpur. The petitioner, who filed the election petition, is the appellant in this Court.

2. The constituency in question in this case is the Darauli double-member constituency of the Bihar Legislative Assembly. Nomination papers were filed in time on behalf of nine persons for the general as well as reserved seats, including the successful candidates, Shri Rajendra Prasad Singh and Shri Basawan Ram, who are respondents Nos. 1 and 2, petitioner Ramavan Shukla, one Shivdayal Dubey and one Lakshman Raut. The Returning Officer rejected all the four nomination papers filed on behalf of Shivdayal Dubey, and accepted the nomination papers of others, including one filed by Lakshman Raut. In his election petition, the petitioner impugned the election on the grounds (1) that the Returning Officer had improperly rejected the nomination papers of Shivdayal Dubey, (2) that he had improperly accepted the nomination paper of Lakshman Rant, and (3) that respondent No. 1 was guilty of corrupt practices. The Tribunal arrived at findings against the petitioner on all these points. Hence it upheld the election and dismissed the election petition.

3. Appearing on behalf of the petitioner-appellant, Mr. Kanhaiya Prasad Varma has put forward the argument that the Returning Officer improperly rejected Shivdayal Dubey's nomination papers. He has not pressed the ground of improper acceptance of the nomination paper of Lakshman Raut. So far as the alleged corrupt practices are concerned, he has only pressed for our acceptance the allegations (a) that Shri Rajendra Prasad Singh, respondent No. 1, and his brother Radha Mohan Singh and others carried voters on station wagon No. WGJ 1995 on the 2nd March, 1957, from village Mairitanr to the polling station at Barpalia, and (b) that workers and relations of respondent No. 1 namely, Shri Ramji Singh, Shri Singhasah Singh and Shri Bishwanath Singh, carried voters on a hired cart from village Chetaur to the polling station at village Jaijore. He has not urged any other point.

4. The law relating to elections in our country is in a state of some confusion. There are two Acts bearing the same name, viz., the Representation of the People Act, and it is a co-incidence that both bear the same number, viz., XLIII. One of them was passed in 1950, and I will refer to it as the Act of 1950. The other Act was passed in 1951, and that Act will hereafter be referred to as the Act of 1951 in the course of this judgment. In exercise of powers conferred by Section 28 of the Act of 1950, the Central Government framed a set of rules called the Representation of the People (Preparation of Electoral Rolls) Rules in 1950. In supersession of these rules, the same Government has framed another set of rules, bearing the same name, in 1956. I will refer to the new rules as the Electoral Rules of 1956 and the old rules as the Electoral Rules of 1950. In exercise of powers conferred by Section 169 of the Act of 1951, the Central Government made one set of rules called the Representation of the People (Conduct of Elections and Election Petitions) Rules in 1951, and, in supersession of these rules, it has framed another set of rules, bearing the same name, in 1956. I propose to refer to the new rules as the Election Petitions Rules of 1956 and to the old rules as the Election Petitions Rules of 1951. In the interest of making this branch of the law better known and understood by the people, the authorities concerned will do well to take early steps to consolidate and simplify it.

5. The first question which I have to consider in this case is whether the Tribunal's finding that the Returning Officer rightly rejected the nomination papers of Shivdayal Dubey is correct. As I have said, four nomination papers were filed on behalf of Dubey, Two of them, bearing serial Nos. A/157 (exhibit 1) and A/158 (exhibit 1(a)) are on forms printed in Hindi. The other two, bearing serial Nos. A/159 (exhibit 1(b)) and A/160 (exhibit 1(c)), are on forms printed in English. In the forms printed in English, the heading "Election to the Legislative Assembly of Bihar" is correctly given in accordance with form 2B attached to the Election Petitions Rules of 1956 which is the form of nomination paper for election to the Assembly. In the forms printed in Hindi, however, some dots have been put before the heading, and it is indicated that the name of the constituency should also be given there. In the Hindi forms (exhibits 1 and 1(a)), 'Darauli Sadharan', which means Darauli general, has been written before the heading so as to indicate that the candidate was standing for election to the General seat of Darauli Constituency. In the column which is to be filled up by the proposer, there is a place where the name of the constituency has to be put in. In both exhibits 1 and 1(a), the word "Bihar' has been written at that place and not 'Darauli'. In the English forms (exhibits 1(b) and 1(c)), nothing has been written before or after the heading. In the place where the name of the constituency should have been mentioned in the column to be filled up by the proposer, the word 'Bihar' and not 'Darauli' has been written. In these forms, therefore, there is no mention at any place either by the proposer or the candidate that the latter was standing as a candidate from Darauli Constituency.

6. Rule 2(d) of the Election Petitions Rules of 1951 reads :

"(d) 'serial number of an elector in an electoral roll' includes such particulars regarding the name or description of the electoral area in reference to which the said electoral roll has been prepared as will identify the entry relating to such elector in that electoral roll"

The form of nomination paper is given in Schedule II attached to those rules. Foot-note 6 at the end of the form is :

"Where the electoral roll is sub-divided into parts and separate serial numbers are assigned to the electors entered in each part, a description of the part in which the name of the person concerned is entered must also be given in items Nos. 8, 10 and 14."

7. Those items relate, respectively, to the 'serial number of the candidate', 'serial number of the proposer' and 'serial number of the seconder' in the electoral roll. It may be mentioned that there was no provision in those rules or the Electoral Rules of 1950, directing any officer to divide the constituency into parts.

8. Rule 5 of the Electoral Rules of 1956 runs :

"The electoral registration officer shall prepare the electoral roll for the constituency in convenient parts which shall be numbered consecutively."

I have omitted the proviso because that is irrelevant for the purpose of this case. 'Electoral roll number' of a person has been defined in Rule 2(b) of the Election Petitions Rules of 1956 as follows :-

"(b) 'Electoral roll number' of a person means -

- (i) the serial number of the entry in the electoral roll in respect of that person;
- (ii) the serial number of the part of the electoral roll in which such entry occurs; and
- (iii) the name of the constituency to which the electoral roll relates;"

There is a note with reference to electoral roll number of the proposer and the candidate in form 2B which, as I have already said, is the form of nomination paper for election to a Legislative Assembly. It reads :

- "Here insert - (i) the name of the assembly constituency;
- (ii) the serial number of the part of the electoral roll in which the name of the proposer or the candidate, as the case may be, has been entered; and
  - (iii) the serial number of the entry in that part
- Illustration :-

Lucknow City East assembly constituency;

Part 7 :  
No. 358."

9. The proposer in all the four nomination papers (exhibits 1 to 1(c)) is Baijnath Tiwari. It appears that his serial number in the electoral roll is 173, while the serial number of Shivdayal Dubey in the electoral roll is 406. These numbers have been given in all the four nomination papers; but no other particular has been furnished. Neither the name of the constituency nor the number of the part of the constituency in which their names find place has been stated.

10. While rejecting nomination paper No. A/157 (exhibit 1), the Returning Officer has said :

"The nomination paper is most defective as the proposer has not properly mentioned the name of this constituency. The word 'Bihar' has been mentioned which is no constituency. "The electoral roll No. of proposer and candidate has not been written correctly with the result that neither the name and other particulars can be found out in the electoral roll nor their identity established."

While rejecting nomination paper No. A/158 (exhibit 1(a)), he has merely referred to the reasons given by him on nomination paper No. A/157. His order on nomination paper No. A/159 (exhibit 1(b)) is :

"The name of constituency and electoral roll number of proposer and candidate not mentioned in nomination paper. Hence this nomination paper is rejected."

11. The order on nomination paper No. A/160 (exhibit 1(c)) runs :

"Name of constituency not given. There is no constituency of the name of Bihar in this Sub-division. Electoral roll of proposer and candidate not mentioned according to rule. It is not possible to locate their names in electoral roll with these informations or entries Age not given in nomination paper. It is full of mistake and so rejected."

The Tribunal has held that the omission of the name 'Darauli Assembly Constituency in the nomination papers (exhibits 1 to 1 (c)) is not a defect of a substantial character because the word 'Darauli' has been mentioned at the top in the papers (exhibits 1 and 1(a)) and the order-sheet (exhibit E) shows that Returning Officer received the other two papers (exhibits 1(b) and 1(c)) as nomination papers for that very constituency. It has not attached any importance to the omission of the candidate's age from exhibit 1(c). The Sole Member of the Tribunal has given the opinion that there was no importance in the omission of the name of the constituency from items Nos. 2 and 5 in which the electoral roll numbers of the proposer and the candidate had to be given but has held that the Returning Officer rightly rejected all the four nomination papers because, though the constituency had not been divided into parts, the proposer ought to have given sufficient description of the portion of the electoral roll in which his name and the candidate's name were entered so as to enable the Returning Officer to locate those entries.

12. It appears that the electoral roll (exhibit 2) of Darauli Assembly Constituency is rather big. The constituency includes three police stations, namely, Darauli, Guthai and Mairwa Residents of 414 villages are enrolled, and the electors are 1,37,106 in number. There are separate serial numbers for the electors of each village.

13. The Electoral Rules of 1950 were framed on the 11th June, 1956, and were published in an extraordinary issue of the Gazette of India dated the 9th October, 1956. It is not disputed that the Electoral Registration Officer did not, in fact, divide the constituency into parts as required by R. 5 of those rules. The point which Mr. Varma has urged on behalf of the appellant is that the Tribunal was wrong in holding that the proposer should have given a description of the portions

of the electoral roll in which his name and Dubey's name are entered. He has submitted that the omission to give the number of the part of the electoral roll in which the names were entered is not a defect at all, much less a defect of a substantial character, because no part numbers existed as the Electoral Registration Officer had not divided the constituency into parts, Mr. Umesh Chandra Prasad Sinha, appearing on behalf of the respondents, has not disputed the Tribunal's conclusion that omission to mention the name 'Darauli Assembly Constituency' in the appropriate column of exhibits 1 and 1(a) is not a defect of a substantial character because the name of the constituency is, at any rate, given at the top in those nomination papers. He has also not disputed that the omission to give the candidate's age in exhibit 1(c) is immaterial. He has, however, argued that the Tribunal erred in holding that the omission to mention the name of the constituency at the top or in the column meant to be filled up by the proposer in exhibits 1(b) and 1(c) and the omission to give the name of the constituency in items Nos. 2 and 5 of each of the nomination papers did not constitute defects of a substantial character within the meaning of Section 36(4) of the Act of 1951. He has supported the Tribunal's opinion that, even though the constituency was not divided into parts, sufficient particulars should have been given in the nomination papers (exhibits 1 series) so as to enable the Returning Officer to locate in the voluminous electoral roll the entries of the names of the proposer and the candidate. The principles governing a case relating to election disputes are quite clear. I may only read, in this connection, the observations of Mahajan, C. J. in *Jagan Nath v. Jaswant Singh*<sup>1</sup>,

"The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the court possesses no common law power. It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly, interfered with and any petition seeking such interference must strictly conform to the requirements of the law. ....

"It is always to be borne in mind that though the election of a successful candidate is not to be lightly interfered with, one of the essentials of that law is also to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices." I have to keep the above principles in view in deciding the points raised by the learned Advocates. I wish to observe at the very outset that the purpose behind the provisions requiring particulars to be given against the serial number or the electoral roll number of the proposer or the candidate in the Election Petitions Rules, both of 1951 and 1956, appears to be the same. This can be succinctly stated as being for the purpose of enabling the Returning Officer at the time of scrutiny to find the entries of the names conveniently and quickly.

As no provision was made in 1950 or 1951 for dividing the constituency into convenient parts, Section 2(d) of the Election Petitions Rules of 1951 required such particulars regarding the name and description of the electoral area to be given as could lead to the identification of the entry relating to the elector concerned. The requirement was rather vaguely stated and much was left to the discretion of the proposer or the candidate. What exact particulars they gave could be determined by them so long as the description given by them enabled the Returning Officer to

identify the relevant entry. When provision was made in the Electoral Rules of 1956 for division of the Constituency into parts, all that was required under Section 2(b) of the Election Petitions Rules of 1956 was to give the serial number of the part and the name of the constituency, besides the serial number of the entry itself. This was obviously done because the number of the part can locate the area, and the serial number of the entry can locate the actual entry in question in that area. An omission which tends to defeat the purpose behind the provision requiring these particulars to be given must, therefore, be held to be material; but the degree of importance will be different in different circumstances. If the entry can be ascertained easily or if the particular which has been omitted to be mentioned or which contains some misdescription is not important and the candidate or his proposer points out the entry to the Returning Officer or is prepared to point it out, it cannot be described to be a defect of a substantial character. Reliance may be placed, in support of this view, on a decision of the Supreme Court in *Karnail Singh v. Election Tribunal Hissar*<sup>2</sup> The judgment in that case is short; but the facts appear from the judgment of the Election Tribunal concerned in *Ajayab Singh v. Karnail Singh*<sup>3</sup> against which the appeal was taken to the Supreme Court. It may be stated at once that the proposer, Baijnath Tiwari (R.W. 8), has stated that he was not present at the time of scrutiny on the 1st February, 1957, and there is nothing in the evidence on record to show that either Shivdayal Dubey or any one else on his behalf was present before the Returning Officer at that time. It cannot, therefore, he said that the relevant entries in the electoral roll relating to the names of the proposer and the candidate could be pointed out to the Returning Officer.

14. I fully agree with Mr. Varma that, in the circumstances of this case, when the constituency was not divided into parts, the omission to give the serial number of the part is not at all a defect. It seems to me however, that, in the absence of the serial number of the part, the proposer should have given such particulars as could enable the Returning Officer to identify the relevant entries. His failure to give those particulars created a practical difficulty and made the task of the Returning Officer extremely difficult and cumbrous, especially when neither he himself nor the candidate or any one else on his behalf was present to point out the relevant entries to him.

15. It also seems to me that the proposer should have given the name of the constituency against items Nos. 2 and 5 of the nomination papers as required by rule

2(b)(iii) of the Election Petitions Rules of 1956. The note in form 2B itself, which I have quoted, leaves no room for any mistake. Even an illustration has been given so as to make the requirement absolutely clear. Mr. Varma has not denied that the omission to give the name of the constituency against those items is a defect; but he has argued that the Tribunal was right in holding that it was not a defect of substantial character. In support of this argument, the first submission which he has made is that the Returning Officer could have assumed that the proposer and the seconder were registered in the same constituency, and, in any case, he could have ascertained the correct position on enquiry from those who were present before him at the time of scrutiny. He has drawn our attention to Sub-Section (1) of Section 33 of the Act of 1951 which requires that the proposer must be an elector of the constituency from which the candidate desires to stand for election. The point which he has attempted to make is that the proposer had to be an elector of Darauli Assembly Constituency, and, even though he did not say so against item No. 2 in the nomination paper, he should have been assumed to be an elector of that constituency. There seems to be no substance at all in this point. There is no presumption in law that a properly-qualified proposer has signed as proposer in a nomination paper. The Returning

Officer holds the scrutiny for the purpose of ascertaining, among other things, whether the candidate is properly qualified to stand for election and the proposer is qualified to sign as proposer. He cannot make any assumption of the kind urged by Mr. Verma.

16. Under Section 5(c) of the Act of 1951, a person registered as an elector of any assembly constituency may stand for election from any other constituency in the same State. Sub-Section (5) of Section 33 of the same Act provides :

"(5) where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny."

It is perfectly obvious that the Returning Officer cannot have any idea as to whether a candidate is an elector for the constituency from which he stands for election. As the name of the constituency was not mentioned against item No. 5 of any of the four nomination papers (exhibits 1 series), the Returning Officer could not even assume that the candidate was an elector for the Darauli Assembly Constituency.

17. Mr. Varma has drawn our attention to the evidence of respondent Rajendra Prasad Singh (R.W. 31) to the effect that both Shivdayal Dubey and Baijnath Tewari have their houses in Darauli Constituency. This does not, in my opinion, make any difference because it does not show that the respondent knew that these two persons were registered as electors for the Darauli Constituency. Even if he knew, I do not think that that would be of any avail to the appellant. The Returning Officer has a discretion under Sub-Section (2) of Section 36 to hold a summary enquiry; but the non-compliance with the rules was patent on the face of the nomination papers in this case, and I do not think that it was necessary for him to hold any enquiry when there is no evidence to show that the candidate or any one on his behalf prayed for an opportunity to prove anything in their favour. Mr. Varma has relied upon an observation of my learned brother Untwalia, J. in *Parmeshwar Kumar v. Lahtan Chaudhry*<sup>4</sup>, which is as follows :-

"I am of the view that where objections are raised to any nomination paper which requires an investigation or a summary enquiry of certain facts, it would have been proper for the Returning Officer to adjourn the hearing of the objections for some time or for a day. The matter, of course, would be different if any nomination, on the face of it, is invalid for violation of any statutory provisions of the Act or the rules framed thereunder."

18. It appears to me that the present case comes in the latter category of cases referred to by my learned brother.

19. In my judgment, the omission of particulars against items Nos. 2 and 5 of each of the nomination papers constitutes a defect of a substantial character within the meaning of Sub-Section (4) of Section 36 of the Act of 1951 because (1) the Returning Officer could not ascertain the relevant entries owing to the omission of particulars of the area in which the names are entered and the failure of the candidate or the proposer to point out those entries or to get

them pointed out to the Returning Officer, and (2) he would not ascertain whether the proposer and the candidate were respectively, qualified to be proposer and the candidate.

20. In support of my view, I may refer to a passage in paragraph 172 of Volume 14 of Halsbury's Laws of England (Third Edition) at page 95 which is as follows :

"A person's electoral number is his number in the register to be used at the election (including the distinctive letter of the parliamentary polling district in which he is registered) except that before publication of the register his number (if any) in the electors list for that register is to be used instead. It has been held that the giving of a wrong electoral number invalidates the nomination paper and the same result would apparently have followed if the electoral number had been omitted".

In *The Queen v. Tugwell*<sup>5</sup>, the question related to the validity of votes in the election of a town councillor. Cockburn, C. J. observed at page 712 :

"Now this is not an inaccurate description, but a total omission of 'description', which is one of the things required by Section 32, and the omission is not cured by Section 142, and is therefore fatal to the validity of the voting papers; no doubt there is a proviso that inaccuracy is not to vitiate, provided the description be such as to be commonly understood, but the words are not large enough to cure a total omission.

It may be hard in the present case, but as Section 6 of 22 Vict. c. 35 requires the same particulars' in a nomination paper, the same question might arise on the nomination paper, and the same construction must apply to both, and in the case of a nomination paper it is of great importance to have strict accuracy." I may also refer to the case of *Baldwin v. Ellis*<sup>6</sup>, The question in that case was whether the nomination papers of some candidates at an election to the rural district council had been rightly or wrongly rejected. Four candidates stated in the column which required them to state how they were qualified that they were Local Government electors but did not state the name of the parish for which they were qualified as Local Government electors, though they were legally required to do so. Horridge, J., held that the omission was fatal, and the Deputy Returning Officer was right in rejecting their nomination papers. He relied upon (1868) 3 QB 704 (supra), as "an authority for the proposition, that where there is an omission of a "description' required by a statute or statutory order that omission is not merely an inaccurate description of the person or place, but is a failure to comply with one of the requirements, of the particular Order in question, and that defect cannot be cured." While agreeing with him Swift, J., stated that omission to state particulars on a nomination paper as required by an order is not "a mere technicality, because unless the parish, for which the person nominated is qualified as a Local Government elector, is named no one could test whether or not he is qualified".

I may also refer to a decision of the Madras High Court in *Balasubrahmanyam v. Election. Tribunal, Vellore*<sup>7</sup>, in which the same view was taken and Baldwin's case 1929-11 KB 273, was followed.

21. In the circumstances mentioned above, I am satisfied that the Returning Officer was right in

the present case in rejecting the nomination papers of Shivdayal Dubey. That being so, it is unnecessary to consider whether the omission to give the name of the constituency at the top or at the place indicated for it in the column of the nomination paper which is meant to be filled up by the proposer is a defect of a substantial character.

22. It remains for me now to consider the question of alleged corrupt practices by, and on behalf of, Rajendra Prasad Singh, respondent No. 1. The Tribunal has considered the evidence on this point, and has come to the conclusion that there is no reliable evidence in support of these allegations. Mr. Varma has taken us through the evidence of the witnesses who have deposed on this point, and, I entirely agree with the Tribunal that the allegations have not been established. I proceed to give shortly my reasons for this conclusion.

23. (After discussing the evidence His Lordship concluded). For the reasons given above, I do not find any merit at all in this appeal. It is, accordingly, dismissed with costs. The hearing fee is assessed at Rs. 250/-.

**Untwalia, J.**

24. I entirely agree.

Appeal dismissed.

Cases Referred.

<sup>1</sup> AIR 1954 SC 210

<sup>2</sup>10 Ele LR 189

<sup>3</sup>6 Ele LR 368

<sup>4</sup>1958 Pat LR 171

<sup>5</sup>(1868) 3 QB 704

<sup>6</sup>(1929) 1 KB 273

<sup>7</sup>7 Ele LR 496