

RAJASTHAN HIGH COURT

Tej Singh

Vs.

Election Tribunal

Civil Writ Petn. No. 252 of 1953

(Bapna and Ranawat, JJ.)

02.02.1954

JUDGMENT

Bapna, J.

1. This is a petition under Article 226 of the Constitution of India for a writ of certiorari against the judgment of the Election Tribunal, Jaipur, dated 31st July, 1953.

2. The petitioner was elected as a member of the Rajasthan Legislative Assembly from the Amer 'A' Constituency in the last General Elections held in January-February, 1952. Respondent No. 3, Lallu Chand, was also a candidate for election from the same constituency, but his nomination paper was rejected by the Returning Officer. Lallu Chand filed an election petition, which was referred by the Election Commission to the Election Tribunal, Jaipur, which is respondent No. 1. The Election Tribunal, after enquiry, gave its decision on the 31st of July, 1953, that the nomination paper of respondent No. 3 was improperly rejected, and such rejection had adversely affected the election.

3. It was alleged that the Election Tribunal was not properly constituted, as Mr. P.L. Shome was not an advocate of the Rajasthan High Court. It was urged that under Section 86 of the Representation of the People Act, 1951, the advocate selected should be one practicing in the State. It was further alleged that the nomination paper of respondent No. 3 was, as a matter of fact, defective, inasmuch as the said respondent had not appointed anybody including himself as his election agent, which was a mandatory provision of Section 40 the Representation of the People Act, and, therefore, the declaration made in the nomination paper under Section 33(3) that he had appointed himself as his election agent was not true, and as a consequence, the

nomination paper of respondent No. 3 was not in accordance with law. It was accordingly urged that the Election Tribunal had committed an error in holding that the nomination paper had been improperly rejected by the Returning Officer. It was also urged that the nomination paper filed by respondent No. 3 had subscribed upon it certain signatures purporting to be of the proposer Sohanpal and seconder Dayachand, which were, as a matter of fact, forgeries, and the Tribunal had wrongly put the burden of proving them to be so on the present petitioner, and had looked at the case from a wrong angle, which had resulted in gross miscarriage of justice, it was prayed, that the decision of the Tribunal be quashed, and the Election Commission, respondent No. 2 be restrained by an injunction from acting upon that decision.

4. The learned Advocate General, who appeared for the Election Tribunal and the Election Commission of India, respondents Nos. 1 and 2, urged that the Election Tribunal had been properly constituted, that the Court had no jurisdiction to give any direction to the Election Commission of India, whose office was beyond the jurisdiction of this Court, that the burden of proving that the signatures of the proposer and seconder were not genuine was rightly cast on the petitioner, and that the declaration of appointment of self as election agent scribed on the nomination paper was a sufficient compliance of the provisions of Section 40 of the Representation of the People Act, as held by the majority of the members of the Election Tribunal.

5. Respondent No. 3, Lallu Chand, also supported the judgment of the Election Tribunal.

6. As to the objection of the petitioner regarding the invalidity of the constitution of the Election Tribunal on the ground that Mr. P.L. Shome was not an advocate of Rajasthan, the point has been settled by several decisions of this Court that an advocate practicing in the High Court of any one State can be appointed as a member of the Election Tribunal which has to function in any other State. Reference may be made to - '*Madan Mohan v. Bankatlal*,¹ (A) - '*Sangram Singh v. Election Tribunal, Kotah*',²; and - '*Rawat Man Singh v. Shri Roop Chand*',³. This objection, therefore, has no force.

7. The learned Advocate General raised one preliminary objection to the consideration of the petition on merits. It may be pointed out that the nomination paper of Lallu Chand was rejected by the Returning Officer on the ground that the candidate had

failed to mention whether he was standing for the State Legislative Assembly of the House of the People, as none (of the alternative choices) had been struck off. In the election petition filed by respondent No. 3, it was urged that in the alternative column he had specifically mentioned that he was standing for the Rajasthan Legislative Assembly, and had written the word "Rajasthan" opposite the printed words "Legislative Assembly" (Vidhan Sabha), and, therefore, the reasons on which the nomination paper was rejected were not correct. It was urged by the learned Advocate General that the election petition was based on ground (c) of Section 100 of the Representation of the People Act, and all that the Election Tribunal was authorized to enquire into was whether the rejection of the nomination paper as made by the Returning Officer was correct or otherwise, and that the respondents in the election petition were not entitled to raise any new ground to show that the nomination paper was defective in any other manner, and was liable to rejection on such other ground as well. In other words, the argument addressed was that the scope of the enquiry to be made by the Election Tribunal was restricted to an examination of the correctness or otherwise of the order of rejection as made by the Returning Officer, and it had no jurisdiction to enquire into certain other allegations made by the respondents to the petition, which may lead to the conclusion that the nomination paper was defective in other respects, and liable to rejection on those grounds and to maintain the order of rejection on those grounds. It was contended by the learned Advocate General that the nomination paper as filed by Lallu Chand clearly mentioned that he was filing the nomination paper for election to the Rajasthan Legislative Assembly, and, therefore, the rejection of his nomination paper by the Returning Officer was obviously incorrect, and if the other objection raised by the successful candidate before the Tribunal were thus shut out from enquiry under the law, the decision of the Election Tribunal was liable to be questioned on merits.

8. In our opinion, this preliminary objection has no force. Under Section 36(2) of the Act, the Returning Officer is directed to examine the nomination papers and to decide all objections which 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, refuse any nomination on any of the following grounds :

- (a) that the candidate is not qualified to be chosen to fill the seat under the Constitution or the Act; or
- (b) that the candidate is disqualified for being chosen to fill the seat under the

Constitution or the Act; or

(c) that a proposer or seconder is disqualified from subscribing a nomination paper under Sub-Section (2) of Section 33; or

(d) that there had been any failure to comply with any of the provisions of Section 33 or Section 34; or

(e) that the signature of the candidate or any proposer or seconder is not genuine or has been obtained by fraud.

The nomination paper is thus liable to rejection on any one or more of the five grounds, and this can be done either on objection or 'suo motu' by the Returning Officer. It is conceivable that there may exist more than one defect, but the Returning Officer may consider the rejection to be justified on only one of the objections and refuse the nomination on that ground alone. But the candidate, who wishes to call in question election which may be held subsequently on the ground that his nomination paper was improperly rejected has to aver his due nomination as a candidate, and that allegation involves an averment that the nomination paper did not suffer from any of the defects mentioned in Clauses (c) to (e) of Sub-Section (2) of Section 36. It is only when such candidate can prove that he had been duly nominated that the Election Tribunal can come to the finding that his nomination paper had been improperly rejected. In our opinion, therefore the respondent to an election petition is entitled to raise a plea that the nomination paper, though rejected on one ground by the Returning Officer was defective on one or more of the other grounds mentioned in Section 36(2), and such plea, if taken has to be enquired into by the Election Tribunal.

9. The main question, which has been raised by the petitioner in this case, is that the nomination paper filed by respondent No. 3 was invalid as the requisite declaration of appointment of himself as election agent as required by Section 40 of the Act was not made, and the mere declaration of appointment of his own self as election agent made in the nomination paper under Section 33(3) was not sufficient compliance with the provisions of Section 40. It was conceded before the Tribunal and also this Court that no separate declaration of his own appointment as election agent by respondent No. 3 had been made. The Tribunal by a decision of the majority of the members has held that the declaration made on the form of nomination paper that the candidate had appointed himself as his agent was sufficient compliance with the provisions of Section 40 of the Act. Section 40 requires that every person nominated as a candidate at an election shall before the delivery of his nomination paper under Sub-Section (1)

of Section 33 or under that section read with Sub-Section (4) of Section 39, as the case may be, appoint in writing either himself or some one other person to be his election agent, and when a candidate appoints some person other than himself to be his election agent, he shall obtain in writing the acceptance by such person of the office of such election agent. Under Sub-Section (3) of Section 33, every nomination paper delivered to the Returning Officer is to be accompanied by a declaration in writing subscribed by the candidate that the candidate has appointed as his election agent for the election either himself or another person, who is not disqualified under the Act for the appointment, and such person shall be named in the declaration, and no candidate is to be deemed to be duly nominated unless such declaration is delivered along with the nomination paper. Certain portions of the section, which are not relevant, have not been considered here. It is nowhere laid down in the Act that the letter of appointment of himself as election agent by a candidate has to be produced or filed on any other occasion. The requirement of acceptance by a third person, who may be appointed election agent is necessary, as such person is clothed with certain status, and enjoys certain privileges, and is liable to certain disabilities, and it would be unjust to saddle him with such responsibility without his agreeing to become an election agent. In case the candidate appoints himself as his election agent, such a consent by the very nature of things is not necessary. All that is required by Section 40 is that before the delivery of a nomination paper such appointment should be made. The nomination paper itself contains a column, where the declaration of appointment has to be made, and this column was certainly filled up in this case before the delivery of the nomination paper to the Returning Officer. This portion of the nomination paper bears a heading "Appointment of Election Agent". No form is prescribed for the appointment of self as election agent, though in the case of appointment of some other person there is Form 5A in Schedule I appended to the Representation of the People Rules, 1951. In our opinion, the view taken by the Election Tribunal that the declaration of appointment of self as election agent recorded prior to the delivery of the nomination paper to Returning Officer was sufficient compliance with the provisions of Sections 40 and 33(3), of the Act, is correct. In that view it must be held that the Tribunal has not disregarded any mandatory provision of the Representation of the People Act, and no ground for interference has been made out on that score.

10. It was next urged that the Tribunal had committed an error in requiring the petitioner, who was a successful candidate, to prove that the signatures purporting to be of the proposer and seconder on the nomination paper of respondent No. 3 were not

genuine, when the true facts were specially within the knowledge of respondent No. 3 who had procured the alleged signatures. In this, case both the proposer and seconder have averred that the signatures appearing on the nomination paper had been subscribed by them, and, therefore, it was obviously for toe successful candidate who wanted the nomination paper to be thrown out on a new ground, not considered by the Returning Officer, to pave the way for such finding. In other words, the successful candidate had to prove that the nomination paper was defective in certain other respects as well, besides those considered by the Returning Officer. The burden of proof was, therefore, rightly cast on the petitioner by the Election Tribunal.

11. Learned counsel for the petitioner also argued that the findings of the Tribunal were incorrect as a bare comparison of the signature on the nomination paper with the genuine ones would show that the signatures on the nomination paper had been fabricated. That argument is of no avail, for this was a question of fact decided by the Tribunal, and this Court is not sitting in appeal against the judgment of the Election Tribunal. The Tribunal has considered the arguments for and against the genuineness of the signatures, and has come to a certain conclusion, and such decision cannot be challenged in a petition under Article 226 of the Constitution on the ground that there was an error committed in the appreciation of the evidence. It has been held by their Lordships of the Supreme Court in - *'Veerappa Pillai v. Raman and Raman Ltd.'*⁴ that

"Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error or excess has resulted in manliest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made."

12. The petition has no force, and it is hereby dismissed with costs, which are assessed at Rs. 100/- each for either set of respondents.

Petition dismissed.

Cases Referred.

1. Civil Misc. Writ No. 14 of 1953'. D/d. 26-8-1953 (Raj)
2. AIR 1954 Raj 129
3. Civil Writ Petn. No. 153 of 1953, D/- 20-10-53 (Raj)
4. AIR 1953 SC 192