

RAJASTHAN HIGH COURT

GopiKishan

Vs.

ShankerLalDakot

C. W. P. No. 4521 of 2004

(N.P. Gupta, J.)

03.11.2004

ORDER

N. P. Gupta, J.

1. This petition has been filed by the returned candidate, against the judgment of the Election Tribunal, being learned District Judge, Bikaner, dated 12-8-2004, accepting the election petition, and setting aside the election of the present petitioner, as Ward Member of Ward No. 4 of Nagar Palika, Nokha, in the election held on 21-8-2000.
2. Facts of the case are that elections of Municipal Board, Nokha were held in August, 2000, wherein the petitioner along with other 10 persons filed their nominations, which were scrutinized on 9-8-2000. In that scrutiny, the nominations of ShankerLal, Pushpa Devi and Prabhu Ram, s/o Mangilal were rejected. Thereafter in the polling, the present petitioner is said to have polled highest number of votes, being 386 votes, and was declared elected.
3. Challenging this election, on 19-9-2000 an Election Petition was filed by the present respondent. The election was sought to be challenged on various grounds, viz., that the Returning Officer wrongly rejected the nomination of the election petitioner, who had filed nomination as an independent candidate. His nomination was rejected on the ground, that the name of one of the five proposers, viz. Dana Ram was not found in part No.7 of the voter list, but was found in part No. 8 for which attention of the Returning Officer was invited at that time, to the effect that part No. 7 has erroneously been mentioned, and on that count nomination cannot be rejected, still the nomination was rejected, on the ground that part No. 7 was wrongly mentioned with respect to the proposes Dana Ram. The other ground raised is, that nomination of the other candidate Pushpa Devi was also wrongly rejected, on the ground that name of

one of her five proposers, viz. Manzoor Ali was also not found in part No. 7 but was found in part No. 8, at the same serial number, and the Returning Officer was requested with regard to this candidate also, but her nomination was also rejected. The next ground raised is that the nomination of Prabhu Ram, s/o Mangilal was also rejected on the ground, that name of his proposer Prem Chand was not found at S. No. 272, but was found at S. No. 273. Likewise, the name of proposer Madan Singh was not found at S. No. 115, but was there at S. No. 415, still on this count his nomination was rejected. The next ground raised was, that the nomination of another Prabhu Ram, s/o Shri Kana Ram was wrongly accepted, as his name was not entered in the voter list of Ward No. 15, and this Prabhu Ram had polled 349 votes, while the returned candidate polled 386 votes. Thus, the election was materially affected. The next ground raised is that another candidate Sohanlal was disqualified, inasmuch as, he had third issue after the cut off date, and had given a wrong declaration, about having two issues only. This Sohanlal had polled 80 votes, which again has materially affected the result. The next objection was, that the returned candidate GopiKishan was not eligible to contest the election, because he is accused of the offence under Section 8/18 of the N. D. P. S. Act, in which he has been granted bail by the High Court, and his case is either pending, or has resulted into conviction, but this fact has not been disclosed. Few other objections were also raised.

4. The election petition was contested by the returned candidate by filing a reply, that the nominations of Pushpa, Prabhu Ram, s/o Mangilal were rightly rejected, and the nominations of defendant Nos. 2 and 3 being Sohanlal and Prabhu Ram, s/o Kana Ram were rightly accepted, and the nomination of election petitioner was also rightly rejected. The learned Court below framed five issues; out of them issue No.1 related to the question, as to whether the nominations of election petitioner Shankerlal, Prabhu Ram, s/o Mangilal and Pushpa Devi were wrongly rejected, and issue No.2 was as to whether nominations of Sohanlal, defendant No.2, and another Prabhu Ram, s/o Kana Ram, defendant No. 3 were wrongly accepted.

5. During trial election petitioner examined himself, and Prabhu Ram, s/o Kana Ram, the husband of Pushpa Devi, while the returned candidate examined himself. The election petitioner produced certain documents as well.

6. The learned Court below, while deciding issue No. 1 noticed, that during course of arguments, the validity of rejection of nominations of election petitioner Shankerlal and Pushpa Devi, only, were contested, and the challenge on the ground of wrong rejection of nomination of Prabhu Ram, s/o Mangilal was not pressed, and after

discussing the evidence, learned Court below decided issue No. 1 partly in favor of the election petitioner, by holding, that the nominations of election petitioner and Pushpa Devi were wrongly rejected. Issue No.2 was not pressed during course of arguments. The other issues were also decided against the returned candidate, and in the result the election has been set aside.

7. Assailing the impugned order, it is contended by the learned counsel for the petitioner, the returned candidate, that the learned Court below has gone wrong in deciding issue No. 1, inasmuch as, the decision is based merely on Ex. 5 and Ex. 6, being certified copy of the relevant electoral roll, wherein the names of Dana Ram and Manzoor Ali find place in part No.8, while as a matter of fact, there is absolutely no evidence on record to establish that the two persons Dana Ram and Manzoor Ali, the proposers of Shankerlal and Pushpa Devi find place in part No. 8. Elaborating the argument, it was contended that, may be that Ex. 5 and Ex. 6 being the certified copies of the public documents are admissible in evidence, but then they have no evidentiary value, inasmuch as, Dana Ram and Manzoor Ali have not been examined before the learned Court below, to show, that they are the persons who had wrongly mentioned in nomination paper, about their name being in part No. 7, while they are the persons whose names find place in part No. 8. Likewise, the person who prepared the electoral roll has not been examined, and in absence of either of them, it cannot be said that the contents of Ex. 5 and Ex. 6 are proved. Learned counsel in this regard relied upon the judgment of Hon'ble the Supreme Court, in *Birad Mal Singh v. AnandPurohit*, reported in ¹and another judgment of this Court, in *Lala Ram v. Civil Judge (Sr. Div.) Jodhpur, S. B.* ²According to the learned counsel, heavy burden lay on the election petitioner, to establish the ground of challenge to the election, as alleged, and the Court below even need not look at the version, or stand, of the returned candidate, inasmuch as, even if the returned candidate were to keep silent, still it is for the election petitioner to prove, instead of the returned candidate. According to the learned counsel, if the matter is considered on these parameters, there is absolutely no legal, or reliable evidence on record, to establish, that the nominations of election petitioner and Pushpa Devi were wrongly rejected.

8. I have considered the submissions, and have gone through the election petition, being Annexure-1, and have also gone through the reply thereto,made available by the learned counsel for the petitioner during the course of arguments, and have also gone through the certified copies of the statements produced with the writ petition, the two judgments relied upon by the learned counsel and have considered the same.

9. In BiradMal's case, the question was, about the age of Hukmi Chand and SurajPrakash Joshi, and to prove their age, election petitioner examined certain witnesses, including the Principal of the New Government School, who stated on the basis of Scholars Register about the date of birth. The witness admitted in the statement, that entries in the Scholars Register are made on the basis of the entries made in the admission form, but could not produce the admission form, in original, or its copy. Likewise he also admitted, that Hukmi Chand was admitted in 9th Class, on the basis of transfer certificate issued by the Government Middle School, Palasni, from where he had passed 8th standard. It was noticed that SatyaNarainMathur, the signatory of the certificate Ex. 8, was not examined despite being alive. It was also noticed, that the evidence of Anant Ram, who merely proved the entries in Scholar's register, does not show, as to on what basis the entry relating to date of birth of Hukmi Chand was made. Likewise Kailash Chandra Taparia had produced counter-foil of Secondary Education Certificate, which was filed as Ex. 9. He admitted that the date of birth mentioned in the counter-foil of the certificate and in the tabulation form Ex. 12, was recorded on the basis of the date of birth mentioned by the candidate in the examination form, but the examination form, or its copy, was not produced. Thus, in substance, it was found, that primary evidence was not available. It was in this background held, that the date of birth mentioned in the Scholar's Register, has no evidentiary value, unless the person who made the entry, or who gave the date of birth, is examined.

10. Likewise in Lala Ram's case, the question was about the wife of the returned candidate having given birth to third child, after the cut off date, and to prove that fact, three documents Ex. 5, Ex. 6 and Ex. 7 were produced, being Live Birth Report Certificate, Indoor Patient Register, and entry of the Labor Room Register. This Court, after dealing with the evidence, available on record, which was led to prove these documents, and noticing the answers given by the respective witnesses, on being cross-examined with respect to each particular document found, that the three documents are not original, nor the certified copies of the original, nor do they bear the endorsement of their issuance, nor tendered by a competent person, nor are they public documents, and in addition, it was also noticed, that there are interpolations, and that the entries fail to establish the identity of lady, as wife of the petitioner, and thus, after detailed appreciation, it was found, that these documents cannot be considered piece of evidence in support of the plea of the election petitioner.

11. Bearing in mind the proposition propounded in the aforesaid judgments, I proceed

to consider the case in hand.

12. At the very outset it may be observed, that the burden of proof apart, inherently election petition is a civil litigation, and the pleadings, and the material on record, is not required to be appreciated in the manner like a criminal case. Obviously, the celebrated principle of 'variance between pleading and proof', is very much attracted in the matter of appreciation of evidence, even in election petitions.

13. With this background, if the matter is considered, the relevant pleading of the election petitioner are contained in para-2 (d) and 2 ([k]). According to para 2(d) it is alleged, that part No. 7 of the name of the proposer Dana Ram was not found to be correct, but his name was found in part No. 8, for which the election petitioner requested the Returning Officer, that part No. 7 has erroneously been mentioned, and the nomination may not be rejected, but the Returning Officer declined, on the ground, that if part No. 7 is wrong then he would reject the nomination. Likewise in para 2 ([k]) the pleading taken is, that with respect to the name of the proposer Manzoor Ali, his name was not mentioned at S. No. 30 in part No. 7, whereon the Returning Officer had given out, that he will reject the nomination, whereupon the husband of Pushpa Devi pointed out that name is there at the same S. No. in part 8, and part 7 was erroneously mentioned, but no heed was paid, and the nomination was rejected. In other words, the consistent and categorical case of the election petitioner is, that the name of the respective proposer was there in part No. 8, however, since in the nomination paper it was mentioned to be part No. 7, despite showing to the Returning Officer the existence of the name of the proposer in part No. 8, at the same serial number, the nominations were rejected. In reply to these two paras, on the side of the returned candidate a very vague reply has been given, and it has been contended, that the nominations were rightly rejected. In other words, it was not controverted, that the name of Dana Ram or Manzoor Ali was not mentioned in part No. 8, or that the name of Dana Ram and Manzoor Ali, as appearing in part No. 8, was of different Dana Ram and Manzoor Ali, and not of the proposers of the respective candidates. I may rather gainfully quote the precise contents of the relevant paras of the reply, being para 2(d) and 2([k]) respectively, which read as under :- -

(Vernacular matter omittedEd.)

13A. Coming to the evidence produced by the parties, the election petitioner Shankerlal, as A.W.1, has deposed, that the voter list of every ward was divided into two parts. Returning Officer scrutinized the nomination papers and checked

the names of the candidate and proposers with the respective voter lists, and the proposer Dana Ram was found to have mentioned part No. 7, while it should have been part No. 8, whereupon he requested the Returning Officer, that it was an accidental mistake, whereupon the Returning Officer saw the voter list and found the name of Dana Ram in part No. 8, but did not accept, and rejected the nomination paper. Likewise he has also deposed about rejection of the nomination of Pushpa Devi, by deposing, that while scrutinizing, identical discrepancies were found with respect to one proposer of Pushpa Devi, being Manzoor Ali, and on not finding the name of the proposer in part No. 7, the Returning Officer asked the husband of Pushpa Devi, whereupon the husband gave out that the name is in part No. 8, whereupon the Returning Officer found the name of Manzoor Ali in part No. 8, still her nomination was rejected. He has proved his nomination paper as Ex. 1, and nomination paper of Pushpa Devi as Ex. 2, the voter list of Ward No. 4 as Ex. 3, and has also proved Ex. 5 and Ex. 6 being the certified copies of the relevant extracts of the voter lists, showing the existence of name of Manzoor Ali and Dana Ram respectively. What is significant to note is, that this witness has been cross-examined only to the effect, that no written objection was submitted to the Returning Officer, and that the voter list available with the candidate was shown to the Returning Officer. It was suggested that voter list was not shown, which suggestion was denied, and the last suggestion is, that the nominations are rightly rejected, which suggestion has also been denied. This is the whole cross-examination. In other words, significantly, the witness has not at all been cross-examined with respect to Ex. 3, Ex. 5 and Ex. 6, on whatever aspect, i.e. as to whether the documents are not certified copies, or that the contents thereof are not correct, or that Dana Ram and Manzoor Ali, as shown in Ex. 5 and Ex. 6, are persons, other than those, who were the proposers of the two candidates, or that names of the two proposers Manzoor Ali and Dana Ram did not at all exist in any voter list of the relevant ward.

14. The next witness is A.W.2 PrabhuRam, he is the husband of Pushpa Devi, whose nomination has been rejected. He has deposed, that at the time of scrutiny he was present on behalf of his wife. On scrutiny it was found, that the name of her proposer Manzoor Ali was there in part No. 8, but in the nomination it was wrongly mentioned to be in part No. 7. On his request the Returning Officer had seen the voter list of part No. 8, and found the name of Manzoor Ali to be there, still the nomination was rejected, on the ground, that in the nomination, part No. 7 was mentioned. Similarly he

has deposed about Shankerlal in identical terms. He has also proved Ex. 2, being the nomination paper of Pushpa Devi, Ex. 5 to be the certified copy of the voter list, regarding her proposer Manzoor Ali, and Ex. 6 to be the certified copy regarding Dana Ram, and has proved the nomination paper of Shankerlal as Ex. 1. In cross-examination of this witness as well, all that has been suggested is, that scrutiny commenced at 11.30, while he was there up to 2.30, scrutiny of their nomination paper commenced at 11.30. Other suggestion admitted by the witness was, that no written objection was submitted in this regard. He admitted to have purchased the voter list, and to be possessing the voter list earlier also, and to have received the final voter list subsequently. He has admitted that his wife was present at the time of scrutiny. Practically this is the whole cross-examination. Thus, this witness has also not been examined on the aforesaid aspects, like the name of Dana Ram having not been found in part No. 8 at the time of scrutiny, or Ex. 5 and Ex. 6 not being certified copies, or being incorrect copies, or about Manzoor Ali and Dana Ram, shown therein, being different persons, or the like.

15. Suffice it to observe, that when the two witnesses have categorically deposed the facts pleaded in the election petition, constituting the ground of challenging the election, and also produced the certified copy of the relevant abstract of the voter list, being Ex. 5 and Ex. 6, and on these aspects both the witnesses are not at all cross-examined, the obvious result is, that it has to be taken, that the returned candidate does not challenge that part of the testimony of the witnesses. Voter list is undisputedly a public document, and according to Section 76 of the Evidence Act, every public officer having custody of public document, which any person has a right to inspect, is required to give copy on demand, and on payment of legal fee therefor, together with the certificate, duly dated and signed by such officer, along with the seal, and such copy to be called certified copy. Then according to Section 77, such certified copy may be produced, in proof of the contents of the public documents or parts of the public documents, of which they purport to be copy. In that view of the matter, Ex. 5 and Ex. 6, have been produced as the certified copies of the public documents, and according to Section 77, they are to be produced in proof of the contents of public documents, or part of the public document, of which they purport to be copy. In the present case, these two documents have been produced, and have been proved by A.W. 1 and A.W. 2, to be the certified copies of the relevant extracts of the voter list, and no cross-examination is directed on this aspect of the evidence, even at the cost of the repetition, not even as to whether the documents are not certified copies. That being the position, the documents being Ex. 5 and Ex. 6 are clearly, not only

admissible in evidence, they are themselves, a substantive piece of evidence. Admissibility of evidence and relevance thereof, are subjects which are covered by Sections 5 to 55 of the Evidence Act, and Section 77 makes the certified copy, by itself, a substantive piece of evidence. Of course, what is the evidentiary value of these documents has obviously to be looked into as an independent question.

16. In this background, a look at the statement of present petitioner, being returned candidate N.A.W.1, shows that, he has deposed in the examination in chief, that the nominations of Shankerlal and Pushpa Devi had been rejected because names of their proposers were not there in the voter list. Significantly, he deposed that at the time of scrutiny no objection was raised by anybody, rather the candidates even did not speak. This is the whole relevant part of the examination in chief. In other words, even by word of mouth, after recording of evidence of the election petitioner as A.W.1 and A.W. 2, the returned candidate has not even chosen to depose, that Exs. 5 and 6 are not certified copies, or that the names of the two proposers, Manzoor Ali and Dana Ram, were not there in any part of the voter list, or that the names of persons finding place in part No. 8, as Manzoor Ali and Dana Ram, are persons other than those who were proposers of the two candidates. In that view of the matter, so far as the present petitioner is concerned, the matter is required to be considered, only from the stand point, that no objection was raised at the time of scrutiny. In this background, if the cross-examination of this witness is looked into, he has admitted, that all the candidates who had filed nominations were present at the time of scrutiny, but the proposers were not there, then he has deposed, that the name of Dana Ram proposer of Shankerlal was not there in the voter list, but then the Returning Officer only knows as to on what ground his nomination was rejected. He has admitted, that voter list of Ward No. 4 comprises of two parts being part Nos. 7 and 8. Then he has deposed that the name of Dana Ram, the proposer of Shankerlal, was not there in any part of the voter list of Ward No. 4, and claimed to have seen both the parts. Then he has deposed, that it is likely, that in voter list of part No. 8 of Ward No. 4, name of Dana Ram s/o Laxmi Narayan may be there at S. No. 17, but at the time of scrutiny it was not there, otherwise, had it been there, the nomination of Shankerlal would not have been rejected. He has then deposed, that he does not recollect, that at the time of scrutinising the nomination of ShankerLal, the Returning Officer was verifying the names of the candidates and the proposers from the part No. and serial No. from the voter list. Then he has admitted, that the Returning Officer was checking from the original voter list. He has also admitted, that normally if any deficiency was found in the nomination, the Returning Officer used to call the candidate and ask. Then he has

also deposed that at that time the Returning Officer called Shankerlal and asked that the name of his proposer Dana Ram is not being verified from the part of voter list, and at that time Shankerlal did not speak anything, and stood silently. He has denied the suggestion, about Shankerlal having pointed out the name of Dana Ram in the voter list in part No. 8 at S. No. 17. He has admitted that these things have not been pleaded in the written statement. Then on the aspect of nomination of Pushpa Devi again, he has deposed that the Returning Officer asked all the three candidates about deficiency of their nomination, but the candidate did not speak anything, and kept silent. Then the petitioner has further admitted that the Returning Officer himself had seen the voter list of Part Nos. 7 and 8 of Ward No. 4, and when he did not find the name of the proposers, Manzoor Ali and Dana Ram in both the lists, then the nominations were rejected. Thus, according to the changed version in the cross-examination, at the time of scrutiny, the voter list of part Nos. 7 and 8 of Ward No. 4 was seen, for verifying the existence of the name of both the proposers Dana Ram and Manzoor Ali, and not finding either of them, the nominations were rejected. Significantly, this version clearly cuts across the deposition in examination in chief, about the candidates having stood silently, and having not pointed out anything. Again significantly, it is not put to A.W.1 or A.W.2, that at the time of scrutiny, both parts Nos. 7 and 8 of voter list were seen, and in both the parts names of Dana Ram and Manzoor Ali were not found, and therefore, nominations were rejected.

On the face of this state of evidence, the proposition, that the petitioner wants this Court to accept is that there is absolutely no legal or reliable evidence to show that the names of the proposers of Shankerlal and Pushpa Devi being Dana Ram and Manzoor Ali were there in the voter list. The submission was made in different ways, but then the scope of interference, and the principles of appreciation of evidence, even as laid down in the cases of Birad Mal Singhvi and Lala Ram also do not at all help the petitioner. In this regard it is significant to note, that in Lala Ram's case, the witnesses proving the documents 5, 6 and 7 were respectively cross-examined threadbare, on every aspect of the document, and it was elicited in the cross-examination, that the documents are neither original, nor certified copies, and they do not bear any outward number, the signatures purportedly being there were not proved, and were pointedly put to the deponent, interpolations in the documents were pointed out, and it was in the background of these circumstances, that the documents were considered, coupled with the fact, that positive finding was recorded by this Court that the documents are neither public documents nor the certified copy of the public document. While as noticed above, the things in the case in hand are entirely otherwise, inasmuch as, the

documents are certified copies of the public documents, and there is not even a suggestion against their genuineness or reliability, of the contents, much less is there any basis to doubt all these things. Even on the parameters of Birad Mal Singhvi's case, there also the relevant witnesses were cross-examined on the particular aspect of the documents, and it was elicited, that the evidence being given by them is no evidence, and the documents do not constitute any evidence, while in the present case even this is conspicuously absent.

17. In these circumstances, when the learned trial Court has found, that the returned candidate has not specifically denied the pleading of the election petitioner, about the Returning Officer finding the existence of the name of proposers, Dana Ram and Manzoor Ali, in part No. 8, and this aspect is established from the statements of A.W.1 and A.W. 2, notwithstanding this nominations had been rejected, this finding cannot be said to be suffering from any error. Significantly, as noticed above, even the returned candidate, has admitted in cross-examination that the Returning Officer had seen both the parts being parts Nos. 7 and 8 of Ward No. 4. This obviously means, that even when attention of Returning Officer was invited to the factum of existence of names of proposers in part No. 8 of voter list of ward No. 4, the nominations were rejected. According to Ex. 1 and Ex. 2, the nominations had been rejected on the ground, that the name of one of the proposers was not found at the respective Serial No. in part No. 7 of Ward No. 4, and has not been rejected on the ground, that their names were not found in both the Parts 7 and 8. In that view of the matter, it cannot be said that at the time of scrutiny the names of the proposers were not found in the voter list to be there in part No. 8 of Ward No. 4.

18. The question that could then arise is, as to whether the nomination could be rejected merely on the ground that the name of the proposer was not found in that part only, being part No. 7, though it was available in the voter list of part No. 8, of that very ward ? However, at the opening of the arguments itself, learned counsel for the petitioner fairly admitted that if their names were there in the voter list of part No. 8 of Ward No. 4, then the nomination could not be rejected on that ground. Therefore this aspect need not detain me.

19. The result of the aforesaid discussion is, that I do not find any error in the finding recorded by the learned trial Court on issue No. 1.

20. The obvious result is, that the writ petition has no force, and is hereby dismissed summarily.

Petition dismissed.

Cases Referred.

1. AIR 1988 SC 1796

2. Civil Writ Petition No. 4553/2002 decided on 26-8-2003