

duty towards each other and towards their offsprings which nature and God have entrusted to their care to be brought up with their co-operative joint efforts. Their child is entitled to the affection of both of them and also to a home, to deny which is perhaps both unjust and anti-social. The basic requirement of indispensable tolerance and mutual understanding in matrimonial life is unfortunately not sufficiently realised by many spouses in modern times; normally constituted spouses properly educated with healthy mental outlook are expected not to make mountains out of mole hills; nor to magnify small differences and bickerings. It is their social duty to discipline into compatibility their differences of temperament, and not to exaggerate and let loose their passions, frivolous dislikes and abnormal impulses. On the contrary, they should control them and keep them within social restraints. It is for this reason and to avoid further bitterness that I am directing that the parties should bear their own costs, so that even now they may realise in calm and sober moments the disastrous consequences of their obstinacy, and earnestly try to forget the past differences and start their life anew for their own sake; for the sake of their child and for the sake of the society.

As already observed this appeal fails and is hereby dismissed but without any costs.

B.R.T.

APPELLATE CIVIL

Before Inder Dev Dua and Daya Krishan Mahajan. JJ.

PRITAM SINGH,—Appellant

versus

RANJIT SINGH AND OTHERS,—Respondents

F. A. O. No. 1-E of 1964

Representation of the People Act (XLIII of 1951)—Ss. 33 and 34—Conduct of Election Rules—Rule 4 and Form

M. P. Shree-  
vastava  
v.

Mrs. Veena

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1964

July, 14th.

*2-A—More than one nomination papers filed by a candidate—Copy of the electoral roll containing the name of the candidate filed with only one of the nomination papers—Whether can be considered in support of other nomination papers at the time of scrutiny—Right of franchise—Importance of—Additional grounds of challenge to the nomination papers—Whether can be taken before the Election Tribunal—Returning Officers and Assistant Returning Officers—Duty of, while scrutinising nomination papers.*

*Held*, that in view of the provisions of section 33(4) of the Representation of the People Act, 1951, on the presentation of a nomination paper, the Returning Officer is under an obligation to satisfy himself that the names and electoral roll numbers of the candidate or his proposer, as entered in the nomination paper, are the same as those entered in the electoral rolls, and the Returning Officer is also enjoined to 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; in case of necessity he is empowered even to direct that any clerical or printing error in the said entries should be overlooked. Under sub-section (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 should be filed along with the nomination paper, but if not so filed, they are to be produced before the Returning Officer at the time of scrutiny. It is obvious that the Returning Officer has at least to apply his mind to the fact whether or not such electoral roll or the relevant entry is filed along with the roll because he is expected to go through the nomination paper in order to perform his duty enjoined on him by sub-section (4). Under sub-section (6) of this section a candidate can seek to be nominated by not more than four nomination papers and under section 34(1) proviso where a candidate has been nominated by more than one nomination paper for election in the same constituency, only one deposit is required by him under that sub-section. This deposit can either be made in cash with the Returning Officer or the candidate may enclose with the nomination paper a receipt showing that the said

sum has been deposited by him or on his behalf in the Reserve Bank of India or in a Government treasury: section 34(2). These provisions clearly suggest that all the nomination papers of a candidate must be treated as a part of his nomination in the given election from the particular constituency. The object of filing the relevant electoral roll or a part thereof with the nomination paper and of its production at the time of scrutiny, in case it has not already been filed, is obviously to enable the Returning Officer to scrutinise it and satisfy himself that the candidate is an elector of the constituency of which he claims to be one. The production of such roll or a part thereof has to be substantially complied with and to hold that even though with one of the nomination papers of the candidate the said roll or a part thereof has been filed, it is nevertheless necessary to produce another copy thereof with the other nomination paper would be to take a too narrow and technical view of this provision and to defeat its real purpose and object. There would be substantial compliance with section 35(5) when the relevant part of the electoral roll has been filed with one of the nomination papers and it can be looked at and considered while scrutinising the other nomination papers of the candidate.

Rule 4 of the Conduct of Election Rules and the printed form 2-A do not touch the question of compliance with section 33(5 and (6) of the Representation of the People Act and they do not throw any light on the point whether or not non-production on the date of scrutiny of separate roll with each one of the several nomination papers of the same candidate is a substantial defect.

The importance and solemnity of the duty of the Returning Officer under section 33(4) and (5) cannot be too much exaggerated for an improper rejection of the nomination papers of a candidate may result in serious consequences to the State, to the constituency and the candidate inasmuch as it would nullify the election itself. Recognising the supreme importance of the right of franchise, the Parliament has expressly provided that improper rejection of nomination by itself and without more renders the election of the returned candidate void: the

importance of the right of franchise deserves in the larger public interest to be borne in mind by all officers, tribunals and Courts dealing with election contests.

*Held*, that it is open to a party in an election petition before the Tribunal to urge additional grounds of challenge to the nomination papers of a candidate to the ones taken before the Returning Officer.

Held, that the Returning Officer and the Assistant Returning Officers must discharge their functions while dealing with the nomination papers with a conscientious sense of responsibility, and they must be fully posted with the correct legal position touching their functions. While scrutinising the nomination papers, from the very nature of his duty, a Returning Officer performs functions which are judicial or at least *quasi-judicial* in character. He must, therefore, be fully aware of the basic and elementary principles of law applicable and he must apply his mind to the problems judicially with the sense of detachment and impartiality of an officer performing functions of judicial character, completely unmindful of, and uninfluenced by, political, personal or other extraneous considerations and influences, keeping himself discreetly insulated from the effect of power-politics, political controversies and their subversive influences. While appointing Returning Officers, therefore, the appointing authority would do well, in the larger public interest, to keep these vital considerations in mind.

*First Appeal from Order of Shri M. L. Puri, Election Tribunal, Patiala, dated the 8th November, 1953, dismissing the election petition and ordering that the petitioner would pay Rs. 300 as costs to respondent No. 1.*

B. S. DHILLON, ADVOCATE for the Appellants.

D. K. PURI, AND NISHAT SINGH GREWAL, ADVOCATES, for the Respondents.

## ORDER

The Judgment of the Court was delivered by:—

Dua, J.

DUA, J.—Was the nomination of Shri Wazir Singh Jaijee (respondent No. 5 in this Court) improperly rejected by the Returning Officer? is the only question which has been argued in this Court in this appeal and which falls for determination.

The controversy in the present appeal arises out of the general elections held in 1962. Shri Ranjit Singh (respondent No. 1 in this Court) was successful in the election to the House of the People from Sangrur Parliamentary Constituency. Shri Pritam Singh, appellant, who was also one of the contesting candidates to the said seat, feeling aggrieved challenged Shri Ranjit Singh's election by means of an election petition under the Representation of the People Act, 1951; he also claimed a declaration of himself having been duly elected. The last prayer does not concern us, because it was dropped even during the proceedings before the Election Tribunal. Shri Wazir Singh Jaijee was also one of the candidates who had filed three nomination papers, all of which were rejected by the Returning Officer. The Election Tribunal did not consider the rejection to be improper. Hence the present appeal.

Coming straight to the question at issue, it may be pointed out that on 27th of January, 1962, three nomination papers were presented by the said Shri Wazir Singh Jaijee as a candidate for election to the Parliament from the Sangrur Parliamentary Constituency, their serial numbers before the Returning Officer being 11, 14 and 15. In the first two the proposer was one Shri Naranjan Singh and in the third Shri Shib Darshan Singh. The relevant portions of the three nomination papers, to which reference has been made at the

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bar for their respective arguments on the two sides, are reproduced—

“No. 11  
Form 2-A.  
Nomination Paper

(See rule 4)

Election to the House of the People

(To be filled by the proposer)

I hereby nominate WAZIR SINGH as a candidate for election from the 22, Sangrur Parliamentary Constituency.

1. Full name of proposer Naranjan Singh.
2. Electoral roll number of proposer 1446—Chural Khurd, part No. 17 (Patwar-Halqa) Chon Halqa, Lahra, district Sangrur.
3. Name of candidate's father ... Harchand Singh.
4. Full postal address of candidate ... Wazir Singh, son of Harchand Singh, Ward No. 4, 3 Bridges, Simla.
5. Electoral roll number of candidate 1853.

Date 27-1-1962.

(Sd.) NARANJAN SINGH.

(Signature of proposer).

No. 14  
Form 2-A.  
Nomination Paper

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(See rule 4)

Election to the House of the People

(To be filled by the proposer)

I hereby nominate Wazir Singh as a candidate for election from the No. 22, Sangrur Parliamentary Constituency.

1. Full name of proposer: Naranjan Singh.
2. Electoral roll number of proposer Sangrur Parliamentary Constituency, Lahra Assembly Constituency, part No. 17, Voter No. 1446, village Chural Khurd.
3. Name of candidate's father ... Harchand Singh.
4. Full postal address of candidate .. Wazir Singh, son of S. Harchand Singh, Ward No. 4, 3 Bridges, Simla.
5. Electoral roll number of candidate ... Ambala (S.C.) Parliamentary Constituency, Simla Assembly Constituency, Part No. 4, Voter No. 1853, Ward No. 4, Simla.

Dated 27th January, 1962.

(Sd.) NARANJAN SINGH,  
(Signature of proposer).

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No. 15

Form 2-A.

Nomination Paper

(See rule 4)

Election to the House of the People

I hereby nominate WAZIR SINGH as a candidate for election from the No. 22. Sangrur Parliamentary Constituency.

1. Full name of proposer ... Shib Darshan Singh.
2. Electoral roll number of proposer Sangrur Parliamentary Constituency, Sunam State Legislative Assembly Constituency, Part No. 20, village Chatha Nakta, Voter No. 27.
3. Name of candidate's father ... Harchand Singh.
4. Full postal address of candidate ... Wazir Singh, son of Harchand Singh, Ward No. 4, 3 Bridges, Simla.
5. Electoral roll number of candidate ... Ambala (S.C.) Parliamentary Constituency, Simla Assembly Constituency. Part No. 4, Voter No. 1853, Ward No. 4, Simla.

Date 27th January, 1962.

(Sd.) SHIB DARSHAN SINGH,  
(Signature of proposer).



Nomination Paper No. 11 which is exhibited as P.W. 2/3 has a note in the margin showing that the treasury receipt and voters list was attached. The name of the proposer in this document is stated to be Naranjan Singh and his electoral roll No. 1446—Chural Khurd—Part No. 17 (Patwar Halqa) Chon Halqa Lehra, district Sangrur. The electoral number of the candidate is shown to be 1853. This nomination paper, as the endorsement at its back shows, was delivered to the Returning Officer at his office at 12 noon on 27th January, 1962 and apparently the officer concerned does not seem to have taken any step on that date. On the day of scrutiny which was fixed for 29th January, 1962, this nomination paper was rejected and the order of rejection in the handwriting of the Returning Officer after the printed matter stating that he had examined this nomination paper in accordance with section 36 of the Representation of the People Act is as follows:—

“Rejected because the name of Parliamentary Constituency and the name of the village and the Assembly Constituency and the part number of electoral roll of the candidate is not mentioned. Also the name of his Parliamentary Constituency of the proposer is not given.”

It is noteworthy that this paper was not rejected on the ground that a copy of the electoral roll of the Constituency of which the candidate is an elector or a relevant part thereof or a certified copy of the relevant entries of such roll had not been either filed along with the nomination paper or produced before the Returning Officer at the time of the scrutiny; as is required by section 33(5) of the Representation of the People Act; 1951 (hereinafter called the 1951 Act). Nomination paper

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No. 14 which is exhibited as P.W. 3/B was also proposed by Naranjan Singh and it has at the margin a note stating that the treasury receipt and voters' list had been attached with the other form. In this paper the electoral roll number of the proposer is stated to be Sangrur Parliamentary Constituency Lehra Assembly Constituency, Part No. 17, Voter No. 1446, village Chural Khurd. The electoral roll number of the candidate is given to be Ambala (S.C.) Parliamentary Constituency, Simla Assembly Constituency, Part No. IV, Voter No. 1853, Ward No. 4, Simla. This nomination paper, as the endorsement at its back shows, was presented to the Returning Officer at 12.50 p.m. on 27th January, 1962 and the operative portion of the order is as follows:—

“The following objections have been taken against this nomination paper (No. 14):—

- (i) That it has not been properly presented inasmuch as the form does not show whether it has been presented by the candidate or the proposer.
- (ii) That it does not contain a copy of the electoral roll of the Constituency concerned or of the relevant part thereof or a certified copy of the relevant entries mentioned above, and
- (iii) That the amount of Rs. 500 deposited in the treasury purports to have been deposited on behalf of Shri Wazir Singh, son of Shri Harchand

Singh of Patiala, whereas the address of the candidate as given in this nomination paper is entirely different.

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I have heard the candidate as well as his learned counsel and the learned counsel for the objector. My observations are as follows:—

- (i) It is correct that the Assistant Returning Officer who actually received this nomination paper did not strike off candidate/proposer properly to show who had actually presented it, but the Assistant Returning Officer is present at the moment and he certifies that this nomination paper was presented by the candidate himself. Objection No. (i) is, therefore, overruled.
  
- (ii) A perusal of the nomination paper reveals that the certified copy of electoral roll of the constituency or of the relevant part thereof or a certified copy of these entries is not enclosed along with this nomination paper. It is correct that this nomination paper contained a marginal note to the effect that the needful had been done with the other nomination paper. The question, however, arises whether each nomination paper has to be self-contained or whether there are certain documents which if filed with one nomination paper can be considered

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as having been filed with the others also. My opinion is that the intention of law is quite clear. This is borne out by section 34 of the Representation of the People Act, 1951, wherein it is mentioned that where "a candidate has been nominated by more than one nomination paper for election in the same constituency, not more than one deposit shall be required of him . . . .". If the intention of the law or the rules was that like the deposit itself all other relevant papers such as the entries mentioned above with the objection were to be filed only with one nomination paper and were to be taken as having been filed with the rest there was no point in making special clarification about the deposit alone. I feel that this has been an omission on the part of the candidate.

Having said so I will now take up the request of the candidate that the scrutiny of this nomination paper may be adjourned and he may be allowed an opportunity to produce the relevant documents. In this connection the learned counsel for the candidate has pointed out section 36(5) of the Representation of the People Act, 1951, wherein it is laid down that if an objection is raised by the Returning Officer or is made by any other person, the candidate concerned may be allowed time to rebut it not later than the

next day but one followed by scrutiny. I have given this request my careful consideration and feel that the omission sought to be rectified by the candidate is not a rebuttal strictly speaking and that giving him an opportunity to furnish the relevant documents mentioned above, which he omitted to file with the nomination paper would not be covered by this. I requested the candidate to produce these documents before me now if he had them but he wanted an adjournment. In this connection I have referred the candidate to para 5 page 14 of the Handbook for candidates issued by the Election Commission of India whereby the candidates have clearly been asked to keep ready in their possession, in order to meet any possible objection, 'a copy of the current electoral roll or a certified copy of the entry in the current roll bearing the candidate's name and that of his proposer'. Clause 5 of section 33 of the Representation of the People Act, 1951, also mentions that 'where the candidate is an elector of a different constituency (as in the case of present candidate) 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.'

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From all this I am quite clear in my mind that no adjournment can be given to the candidate to produce these documents and that he should have been ready with all of them while coming up for this scrutiny.

(iii) A perusal of the treasury receipt shows that Rs. 500 have been deposited in the treasury on behalf of Shri Wazir Singh, son of Shri Harchand Singh of Patiala, whereas the candidate is mentioned as Shri Wazir Singh, son of Shri Harchand Singh, Ward No. 4, 3 Bridges, Simla. The signature of the candidate on the nomination paper styles him as Wazir Singh Jaijee. The objection taken by the learned counsel for Shri Nirbhai Singh is that there may be scores of persons of this name as well as parentage in Patiala and that from a scrutiny of the nomination paper Shri Wazir Singh, son of Shri Harchand Singh, of Patiala does not by any manner or means identify him as Shri Wazir Singh Jaijee or Shri Wazir Singh, son of Shri Harchand Singh of Ward No. 4, 3 Bridges, Simla. I have, however, examined the treasury receipt which also bears the signature of the candidate as Shri Wazir Singh Jaijee. It would, therefore, appear that this is only a clerical mistake and that the money has been deposited on behalf of the candidate, who has actually signed the nomination paper. This objection is overruled.

My conclusions, therefore, are that while I overrule objection Nos. (i) and (iii) I uphold objection No. (ii) for which reason the nomination paper is rejected."

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Nomination paper No. 15, which is exhibited as P.W. 2/2, has been proposed by Shiv Darshan Singh, whose electoral roll number is stated to be Sangrur Parliamentary Constituency, Sunam State Legislative Assembly Constituency, Part No. 20, village Chatha Nakta, Voter No. 27 and the electoral roll number of the candidate has been given to be Ambala (S.C.) Parliamentary Constituency, Simla Assembly Constituency, Part No. 4, entry No. 1853, This was presented at 12.55 on 27th January, 1962, and the order dated 29th January, 1962, is as follows:—

"The following objections have been taken against this nomination paper (No. 15):—

- (i) That it has not been properly presented inasmuch as the form does not show whether it has been presented by the candidate or the proposer.
- (ii) That it does not contain a copy of the electoral roll of the Constituency concerned or of the relevant part thereof or a certified copy of the relevant entries mentioned above, and
- (iii) That the amount of Rs. 500 deposited in the treasury purports to have been deposited on behalf of Shri Wazir Singh, son of Shri Harchand

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Singh, of Patiala whereas the address of the candidate as given in this nomination paper is entirely different.

I have heard the candidate as well as his learned counsel and the learned counsel for the objector. My observations are as follows:—

- (i) It is correct that the Assistant Returning Officer who actually received this nomination paper did not strike off candidate/proposer properly to show who had actually presented it, but the Assistant Returning Officer is present at the moment and he certifies that this nomination paper was presented by the candidate himself. Objection No. i) is, therefore, overruled.
- (ii) A perusal of the nomination paper reveals that the certified copy of the electoral roll of the constituency or of the relevant part thereof or a certified copy of these entries is not enclosed along with this nomination paper. It has been argued that the above-mentioned documents have been attached with nomination paper No. 11, and that the same should be considered as having been attached with this nomination paper also. The question, however, arises, whether each nomination paper has to be self-contained or whether there are certain documents which if filed



with one nomination paper can be considered as having been filed with the others also. My opinion is that the intention of law is quite clear. This is borne out by section 34 of the Representation of the People Act, 1951, wherein it is mentioned that where 'a candidate has been nominated by more than one nomination paper for election in the same constituency, not more than one deposit shall be required of him. . .'. If the intention of the law or the rules was that like the deposit itself all other relevant papers were to be filed only with one nomination paper and were to be taken as having been filed with the rest there was no point in making special clarification about the deposit alone. I feel that this has been an omission on the part of the candidate.

Having said so I will now take up the request of the candidate that the scrutiny of this nomination paper may be adjourned and he may be allowed an opportunity to produce the relevant documents. In this connection the learned counsel for the candidate has pointed out section 36(5) of the Representation of the People Act, 1951, wherein it is laid down that if an objection is raised by the Returning Officer or is made by any other person, the candidate concerned may be allowed time to rebut it not later than the next day but one followed by

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scrutiny. I have given this request my careful consideration and feel that the omission sought to be rectified by the candidate is not a rebuttal strictly speaking and that giving him an opportunity to furnish the relevant documents mentioned above, which he omitted to file with the nomination paper would not be covered by this. I requested the candidate to produce these documents before me now if he had them but he wanted an adjournment. In this connection I have referred the candidate to para 5 page 14 of the Handbook for candidates issued by the Election Commission of India whereby the candidates have clearly been asked to keep ready in their possession, in order to meet any possible objection, 'a copy of the current electoral roll or a certified copy of the entry in the current roll bearing the candidate's name and that of his proposer'. Clause 5 of section 33 of the Representation of the People Act, 1951, mentions that 'where the candidate is an elector of a different constituency (as in the case of present candidate) 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.'

From all this I am quite clear in my mind that no adjournment can be given to the candidate to produce these documents and that he should have been ready with all of them while coming up for this scrutiny.

(iii) A perusal of the treasury receipt shows that Rs. 500 have been deposited in the treasury on behalf of Shri Wazir Singh, son of Shri Harchand Singh of Patiala whereas the candidate is mentioned as Shri Wazir Singh, son of Shri Harchand Singh, Ward No. 4, 3 Bridges, Simla. The signature of the candidate on the nomination paper styles him as Wazir Singh Jaijee. The objection taken by the learned counsel for Shri Nirbhai Singh, is that there may be scores of persons of this name as well as parentage in Patiala and that from a scrutiny of the nomination paper Shri Wazir Singh, son of Shri Harchand Singh of Patiala does not by any manner or means indentify him as Shri Wazir Singh Jaijee or Shri Wazir Singh, son of Shri Harchand Singh of Ward No. 4, 3 Bridges, Simla. I have, however, examined the treasury receipt which also bears the signature of the candidate as Shri Wazir Singh Jaijee. It would, therefore, appear that this is only a clerical mistake and that the money has been deposited on behalf of the candidate, who has actually signed the nomination paper. This objection is overruled.

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My conclusions, therefore, are that while I overrule objections Nos (i) and (iii) I uphold objection No. (ii) for which reason the nomination paper is rejected."

When the matter was raised in the election petition, the returned candidate Shri Ranjit Singh raised a further objection that the voters' list attached with the nomination paper No. 11 was not a complete copy of the electoral roll of the constituency concerned, nor was it a complete relevant part thereof, nor a certified copy of the relevant entry in such roll and that, therefore, paper No. 11, also did not comply with the provisions of section 33(5) of the 1951 Act. It was in addition pleaded that the candidate's name as given in paper No. 11 was Wazir Singh and that it was not possible to find that this Wazir Singh was really Wazir Singh Jaijee the candidate. The proposer Naranjan Singh was also pleaded not to be an elector in village Chural Khurd. The further objection in regard to paper No. 11 that the electoral roll produced therewith was not a complete copy was also repeated in regard to these two nomination papers. It was further averred that the rejection of Wazir Singh Jaijee's nomination papers did not materially affect the result of the election.

As already observed, all these three nomination papers were held by the learned Election Tribunal to be invalid and, therefore, to have been properly rejected by the Returning Officer. In so far as nomination paper No. 11 is concerned, I may merely notice the arguments addressed by the learned counsel for the appellant without commenting on them in detail because we are satisfied that this nomination paper did not comply with the requirements of section 33 of the

1951 Act. In regard to the nomination papers Nos. 14 and 15, the learned Tribunal observed that the defects found in respect of nomination paper No. 11 did not exist in these two nomination papers "inasmuch as all necessary particulars, regarding the candidate and the proposer have been mentioned in these two papers." These papers were, therefore, in the opinion of the learned Tribunal, not liable to be objected to on any of the grounds on which nomination paper No. 11 was rejected; these two papers were, however, rejected on the ground that no copy of the electoral roll had been produced with them or before the Returning Officer at the time of the scrutiny. The contention that the copy of the electoral roll attached with the nomination paper No. 11 could have been looked at by the Returning Officer was repelled by the learned Tribunal in the following words:—

"As regards the copy of the roll that stood appended to nomination paper No. 11, I am of the view that neither it could be legally taken into consideration for purposes of nomination papers No. 14 and 15 nor that was a copy warranted under above referred section 33(5). According to the prescribed procedure each nomination paper is to be taken up for scrutiny separately and learned counsel for the petitioner is not correct in his contention to the contrary. Accordingly nomination paper No. 11 was taken up first and as already noted it was rejected and rejected rightly. Thereafter nomination papers Nos. 12 and 13 were taken up and after those were scrutinised, papers at Nos. 14 and 15 were taken up. As is clear, none of these nomination papers had a copy of the electoral

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roll appended to itself. I do not think the Returning Officer was required while scrutinising Nos. 14 and 15 to look back to the nomination paper No. 11 in order to verify the particulars from the copy of the electoral roll lying appended to it.”

It was added that even otherwise the electoral roll so appended to paper No. 11 was neither a copy of the entire electoral roll nor a verified copy of part No. IV; nor a certified copy of the relevant entries therein. In this connection it was noticed that the copy filed ended at serial No. 1524; whereas in fact the total voters recorded in part No. IV in the original roll is 1848. The roll appended to paper No. 11 was in the circumstances construed by the learned Tribunal to mean merely copies of relevant entries in the roll and not the electoral roll or relevant part thereof; the entries not being certified did not fall within the contemplation of section 33(5). This defect was observed to be common to all the three nomination papers. In regard to nomination papers Nos. 11 and 14; the Tribunal further found them to be defective inasmuch as the name of the village of the proposer was given to be Chural Khurd and the serial number of his vote mentioned as 1446. Village Chural Khurd; according to the Tribunal; had only 847 voters and it was village Chural Kalan in the list of which Naranjan Singh was a voter at serial No. 1446. The two villages Chural Khurd and Chural Kalan were undoubtedly stated to be close to each other but the misdescription in the village was also held to be wrong resulting in non-compliance with the legal provisions and; therefore; rendering the papers to be liable to rejection on that score as well.

Now it is not disputed that Wazir Singh Jaijee had made a request to the Returning Officer to grant him time for producing the voters' list for the purposes of the nomination papers Nos. 14 and 15 but the same had been rejected. That time should have been granted was urged before the learned Election Tribunal who agreed with the views of the Returning Officer; observing that under section 33(5); it was necessary for Shri Wazir Singh to produce at the time of scrutiny a copy of the electoral roll or of the relevant part thereof or a certified copy of the relevant entries.

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On appeal in this Court; the appellant's learned counsel has assailed the view both of the Returning Officer and of the Election Tribunal in regard to the three nomination papers. I may first deal with the question whether non-production of the electoral roll or a part thereof along with each one of the nomination papers Nos. 14 and 15 was a substantial defect when a copy of a part of the electoral roll had actually been produced along with nomination paper No. 11; which also contained a receipt for the deposit of Rs. 500. The respondents' learned counsel has very strenuously urged that each nomination paper is a separate entity and has for all purposes to be considered as a self-contained document. It must comply with all the provisions of section 33 of the 1951 Act. In support of this contention; reference has been made to *Shri Baru Ram v. Smt. Prasanni and others* (1). The following passage at p. 99 has been particularly relied upon:—

“Mr. Jai Bhagwan who presented his nomination paper to the Returning Officer on

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(1) A.I.R. 1959 S.C. 93.

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January 29, 1956, was admittedly not an elector in the constituency of Rajaund in the district of Karnal. It is alleged that he was a voter in another constituency. When his nomination paper was presented he did not produce a copy of the electoral roll of the said constituency or of the relevant part thereof or a certified copy of the relevant entries in the said roll; nor did he produce any of these documents on the first of February which was fixed for scrutiny of the nomination papers. When the Returning Officer noticed that the candidate had not produced the relevant documents, he gave him at his request, two hours' time to produce it. The candidate failed to produce the document within the time allowed and thereupon the Returning Officer rejected his nomination paper under section 36(2)(b) of the Act. It is true that the candidate subsequently purported to produce before the officer his affidavit that his name was entered as a voter in the list of voters (No. 1074), constituency No. 6, Karnal Baneket No. 21, Volume 10), but the Returning Officer refused to consider the said affidavit because he had already rejected his nomination paper under section 36(2)(b). Thus the rejection of the nomination paper was the result of the candidate's failure to produce any of the prescribed documents before the Returning Officer."

On these facts, the rejection was upheld. A little lower down the Court also observed that the



requirement of section 33(5) was mandatory inasmuch as the statute requires the candidate to produce the prescribed evidence and provides a penalty for his failure to do so. The contention that non-production of the requisite copy was not a defect of a substantial character did not impress the Court and it was observed:—

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“There is no doubt that the essential object of the scrutiny of nomination papers is that the Returning Officer should be satisfied that the candidate who is not an elector in the constituency in question is in fact an elector of a different constituency. The satisfaction of Returning Officer is thus the matter of substance in these proceedings; and if the statute provides the mode in which the Returning Officer has to be satisfied by the candidate it is that mode which the candidate must adopt.”

The appellant has, on the other hand, to begin with, referred to a decision of the Madras High Court in *N. P. Velusami Theyar v. G. Raja Nair and others* (2), according to which the object of section 33(5) of the Act of 1951, is that there should be evidence that the candidate in question is an elector of a different constituency and if that fact is reasonably clear, and what purports to be a certified copy of the relevant entry relating to him had been filed, any defect in the copy even if it is a defect which consisted in an interpolation or a scoring off of any part of the copy, would not amount to a defect of a substantial character within the meaning of section 36(4), and the nomination cannot be rejected for non-compliance with section 33(5). The next decision

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relied on is from the Andhra Pradesh High Court in *Mohan Reddy v. Neelugiri M. Rao* (3). In that case the nomination of a candidate who was an elector in a different constituency was accompanied by a copy of the relevant entry of the electoral roll in which the candidate's name was registered. The copy was obtained from the office of the Deputy Collector who was the Electoral Registration Officer of the constituency and in whose custody the electoral roll was kept. It contained the seal of the Deputy Collector and was certified to be a true copy of the Record Keeper, and issued by the *peshkar* of the Deputy Collector's Office. There was also evidence to show that an application for the copy was made to the Deputy Collector and he had issued an order directing the *peshkar* to issue a certified copy. The nomination was, however, rejected by the Returning Officer on the ground that the copy was not a "certified copy" within the meaning of section 33(5) of the Act of 1951. In an election petition the Tribunal held that the nomination had been improperly rejected. On appeal the High Court held that the certified copy was in accordance with law, but assuming that it was not so, the defect was not one of a substantial character within the meaning of section 36(4) of the 1951 Act. The decision of the Supreme Court in *Rattan Amol Singh v. Atma Ram* (4), was distinguished. The appellant's counsel has also drawn the attention of this Court to *Pratap Singh v. Shri Krishna Gupta, etc* (5), in which the tendency of the Courts towards technicality has been deprecated and it is emphasised that it is the substance that counts and must take precedence over mere form. Some rules, according to this decision are

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(3) 14 E.L.R. 167.

(4) 10 E.L.R. 41.

(5) A.I.R. 1956 S.C. 140.

vital and go to the root of the matter, with the result that they cannot be broken; others are only directory and their breaches can be overlooked provided there is substantial compliance with the rules read as a whole and provided no prejudice ensues; when the Legislature does not itself state which is which Judges must determine the matter and, exercising a nice discrimination, sort out one class from the other along broad based, common-sense lines. Reliance has next been placed by the appellant on a decision of the Election Tribunal, Bikaner in *Ugam Singh v. Hari Singh and others* (6). The head-note of this decision reads thus:—

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“A candidate filed two nomination papers, one for Jalore A constituency and the other for Jalore B constituency, at the same time. He attached a certified copy of the electoral roll of Jodhpur constituency, in which his name appeared, with the nomination paper for Jalore A, and requested the Returning Officer to treat it as evidence for both the constituencies. The Returning Officer who held the scrutiny of the nominations on the same day, accepted the nomination for Jalore A and rejected that for Jalore B on the ground that a certified copy of the electoral roll or entry therein was not produced with it: *Held*,

- (i) that, as the Returning Officer was in possession of the certified copy of the electoral roll at the time of the scrutiny, though it was attached to the nomination for Jalore A,

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it was his duty to look into it and he acted improperly in rejecting the nomination for Jalore B;

- (ii) if the Returning Officer, has evidence other than a copy of the electoral roll to decide the question of identity and eligibility he can proceed on that evidence. He is not bound to rest his evidence on the electoral roll alone and reject a nomination if a copy of the roll is not produced.

Omission to mention in the nomination paper the part and sub-division of the electoral roll in which the candidate's name is entered is only a technical defect not of substantial character, where the identity of the candidate can be ascertained without them."

The respondents' learned counsel, it may be observed, has pointed out that this decision was under the old Act when the Returning Officer was required to call upon the candidate to produce the roll and there was no obligation imposed on the candidate to produce it himself. The next decision cited on behalf of the appellant is of the Madras High Court in *S. K. Sambandam v. Election Tribunal, Madras* (7).

The head-note of this case reads as under:—

"Where a candidate produced along with his nomination paper a printed copy of the Block of the electoral roll for the constituency, wherein his name was entered

as a voter, but the Returning Officer passed an order calling upon him to produce a certified extract from the electoral roll and rejected his nomination for non-compliance with this order: Held,

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- (i) that by producing the printed copy of the Block of the electoral roll in which his name appeared the candidate had substantially complied with the requirements of section 39(4) of the Representation of the People Act, 1951;
- (ii) even assuming that the provisions of section 39(4) were not complied with, the Returning Officer had no power under section 36(2)(d), or any other provision of law to reject the nomination for non-compliance with the proviso to section 30(4)."

It was further observed in this case that the purpose of the proviso to section 39(4) was not to prescribe ordeals for the intending candidates to undergo, but to provide for guides to the Returning Officer in deciding about the identity of the candidate and of the proposer and seconder. Needless to say that this decision, according to the respondents, was also under the unamended Act.

On behalf of the respondents, reference has also been made to a decision of the Supreme Court in *Brijendralal Gupta v. Jwalaprasad and others* (8), according to which the omission to specify the age of a candidate for election in the nomination

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(8) A.I.R. 1960 S.C. 1049.

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paper amounts to a defect of a substantial character within the meaning of section 36(4) of the 1951 Act and is a ground for rejection of the nomination under section 36(2)(b) and in such a case the Returning Officer is not bound to make an enquiry under section 36(2) as to his age and find out whether he is qualified to stand as a candidate under Article 173 of the Constitution. The fact that in the electoral roll the age of the candidate was specified and the Returning Officer could have satisfied himself as to his age easily by looking at the roll was considered not material in construing section 36(4). Support for this contention has been sought by the counsel from the following observations:—

“An enquiry which is necessary under section 36(2)(a) may and can be held for instance in cases where the nomination paper shows the age of the candidate as above 25, but an objection has been raised that in fact he is below 25 and as such incompetent to stand for election under Article 173 of the Constitution; in other words, the impugned nomination has complied with the provisions of section 33 and as such does not fall under section 36(2)(b) at all, nevertheless the validity of the nomination can be challenged on the ground that in fact Article 173 is not complied with. Cases falling under this class must be distinguished from cases falling under section 36(2)(b). In the latter class of cases the failure to comply with the provisions of section 33 being established, there is no scope for any enquiry under section 36(2)(a). Once the alleged non-compliance is proved, the defective nomination falls to be accepted or

rejected according as the defect is of an unsubstantial or of a substantial character. Therefore, it is not right to hold that even after the Returning Officer was satisfied that the omission to specify his age showed that the nomination paper of respondent 5 had not complied with the provisions of section 33, he should still have held an enquiry under section 36(2)(a). Non-compliance with the provisions of section 33 itself would justify the rejection of the nomination paper provided of course that the defect arising from the non-compliance in question is of a substantial character."

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The Supreme Court, it is needless to point out, considered the age to be as important as identity and the statement of age to substantially amount to declaration in that behalf, failure to specify which amounted to a defect of substantial character. This decision has been followed by a Bench of this Court on 8th April, 1963 in *Gurdip Singh v. Gurmej Singh*, F.A.O. No. 3-E of 1963. In this case, the declaration as contemplated by section 33 of the 1951 Act was not incorporated in the nomination paper and this was held to be fatal under the ratio of the Supreme Court decision. *Vinaya Kumar Diwan v. Raghunath Singh Kiledar* (9), is a decision of the Election Tribunal, Hoshangabad, which has next been cited on behalf of the respondents. In this case a candidate who was an elector of a different constituency instead of either filing along with his nomination or producing for scrutiny a copy of the electoral roll of that constituency or of a relevant part thereof or a certified copy of the relevant entry in such roll, as required by section 33(5), produced along with the nomination, a certificate purporting to

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be signed by the election officer to the effect that the candidate was a voter in a particular ward of that constituency and that his name appeared in the voters' list of that ward against a particular number and this was held not to be sufficient, thus necessitating rejection of the nomination. The production of a mere certificate of that nature amounted to non-compliance with the provisions of section 33(5) and the Returning Officer could not rely on any evidence other than that mentioned in the said provision of law. *Ranjilal Choudhury v. Dahu Sao and others* (10), has been relied upon by both sides. The head-note discloses the legal position as laid down in this decision in the following terms:—

“Generally speaking if the nomination paper does not disclose at all the name of the constituency for which the nomination has been made, the defect would be of a substantial character, for there would then be no way of knowing the constituency for which a candidate is being nominated. But there may be cases where the nomination form shows the constituency for which the nomination is being made, though there may be some defect in filling up the form. In such a case if the nomination form discloses the constituency for which the nomination is being made even though the form may not have been properly filled in in that respect, the defect in filling the form would not be of a substantial character.”

In the particular form in the reported case, the name of the candidate was rightly filled in but the proposer instead of putting down the name of the constituency, namely Dhanbad constituency,

(10) A.I.R. 1962 S.C. 1248.



put down the name "Bihar" there. So the proposal read as if the candidate was being nominated for the Bihar Assembly constituency. This was considered by the Supreme Court not to be a mistake of a substantial character and the rejection of the nomination paper on this ground was considered to be improper. The respondents' counsel has emphasised that this conclusion of the Supreme Court was influenced by the fact that the election there was a by-election and not a general election and that the mistake had occurred in the printed form whereas on behalf of the appellant stress is laid on the fact that a defect in the description of the constituency was not considered to be substantial.

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At this stage I may dispose of a small point which was sought half-heartedly to be raised on behalf of the appellant. According to him, the only point on which the Returning Officer had rejected the nomination could be considered by the Election Tribunal and the respondent was not entitled to urge any additional ground of challenge to the nomination of Wazir Singh Jaijee. In this connection some stress has also been laid on the fact that the returned candidate never cared to object to Wazir Singh Jaijee's nomination even before the Returning Officer. The point raised, in my opinion, is unsustainable because of the Supreme Court decision in *N.P. Velusami Thevar's case* (2) which was followed by this Court in *Bansi Ram Naru Ram v. Jit Ram Gehru Ram* (11). In *Rangilal Choudhury's case* (10), also additional defects were urged before the Tribunal and the Supreme Court dealt with those defects on the merits.

I may first deal with nomination paper No. 15 because as conceded by the learned counsel for

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(11) A.I.R. 1964 Punj. 231.

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the respondents, the only defect from which this paper is stated to suffer is that no copy of the electoral roll or a part thereof was separately attached with it. In order to understand the object, scope and effect of sections 33 and 34 of the 1951 Act, the provisions of sub-section (4) of section 33 must first be considered. On the presentation of a nomination paper, the Returning Officer is, according to this sub-section, under an obligation to satisfy himself that the names and electoral roll numbers of the candidate and his proposer, as entered in the nomination paper, are same as those entered in the electoral rolls and the Returning Officer is also enjoined to 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; in case of necessity he is empowered even to direct that any clerical or printing error in the said entries should be overlooked. Under sub-section (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 should be filed along with the nomination paper, but if not so filed, they are to be produced before the Returning Officer at the time of scrutiny. It is obvious that the Returning Officer has at least to apply his mind to the fact whether or not such electoral roll or the relevant part thereof or a certified copy of the relevant entry is filed along with the roll because he is expected to go through the nomination paper in order to perform his duty enjoined on him by sub-section (4). Under sub-section (6) of this section a candidate can seek to be nominated by not more than four nomination papers and under section 34(1) proviso where a candidate has been nominated by

more than one nomination paper for election in the same constituency, only one deposit is required by him under that sub-section. This deposit can either be made in cash with the Returning Officer or the candidate may enclose with the nomination paper a receipt showing that the said sum has been deposited by him or on his behalf in the Reserve Bank of India or in a Government treasury section 34(2). These provisions clearly suggest that all the nomination papers of a candidate must be treated as a part of his nomination in the given election from the particular constituency. The object of filing the relevant electoral roll or a part thereof with the nomination paper and of its production at the time of scrutiny, in case it has not already been filed, is obviously to enable the Returning Officer to scrutinise it and satisfy himself that the candidate is an elector of the constituency of which he claims to be one. The production of such roll or a part thereof has to be substantially complied with and to hold that even though with one of the nomination papers of the candidate the said roll or a part thereof has been filed, it is nevertheless necessary to produce another copy thereof with the other nomination paper would, in my opinion, be to take a too narrow and technical view of this provision and to defeat its real purpose and object. It is somewhat difficult to appreciate the contention that since nomination paper No. 11 had already been dealt with, the roll or a part thereof filed along with it could not be considered to be before the Returning Officer on the date and at the time of the scrutiny of nomination paper No. 15 and that its presence with paper No. 11 could not be considered to be a production of the roll or a part thereof by the candidate before the Returning Officer at the time of scrutiny. As I read these provisions, there would be substantial compliance

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with section 33(5) when the relevant part of the electoral roll had been filed with nomination paper No. 11.

Stress has been laid by Shri Sibal that Rule 4 of the Conduct of Election Rules, 1961, provides that every nomination paper presented under section 33(1) must be completed in such one of the Forms 2A or 2E as may be appropriate. It is stressed that the nomination paper must be completed strictly in accordance with the printed Form 2A. In my opinion, this rule and the printed form do not touch the question of compliance with section 33(5) and (6) and they do not throw any light on the point as to whether the non-production of a separate electoral roll for the purposes of paper No. 15 on the date of scrutiny is or is not a substantial defect. Needless to say that mere enactment of proviso to section 34(1) clarifying the requirement of only one deposit scarcely suffices to sustain the impugned construction of section 33(5) adopted by the Returning Officer and the Tribunal.

This brings me to the contention that the copy of the part filed with nomination paper No. 11 is not a copy within the contemplation of section 33(5). It has been argued that the relevant part of the electoral roll of the constituency in which the candidate was nominated is Part IV and a copy of the whole of this part was not produced. According to the respondents only pages Nos. 1 to 18 and page No. 23 of Part IV were produced and not pages 19 to 22 and 25. It is not disputed that the electoral number of the candidate Wazir Singh Jaijee was included in the part which was produced. The respondents have also produced before the Tribunal a complete roll of the constituency which has been exhibited as R.W. 4/4. We are, however, not

concerned with the entire roll. In support of his contention, the respondents' learned counsel has drawn our attention to certain rules of the Registration of Electors Rules, 1960. Rules 5 and 22 have been particularly relied upon. Both these rules occur in Part II of these rules in which "constituency" means an assembly constituency. Rule 5 dealing with the preparation of roll in parts lays down so far as relevant for our purpose that the roll shall be divided into convenient parts which shall be numbered consecutively and that the number of the names included in any part of the roll shall not ordinarily exceed two thousand. "Roll", it may be pointed out, under Rule 2(1)(e) means the electoral roll for a constituency. Rule 22 provides for final publication of roll which enjoins the registration officer to prepare a list of amendments to carry out his decisions under Rules 18, 20 and 21 and to correct clerical and printing errors or other inaccuracies and then to publish the roll together with the list of amendments, by making a complete copy available for inspection, etc. On such publication, the roll together with the list of amendments becomes the electoral roll of the constituency. It is contended that if some pages are missing from Part IV, then it cannot be considered to be a copy of the relevant part of the electoral roll within the contemplation of section 33(5). It has been contended that the name of Wazir Singh Jaijee might possibly have been scored out at page 25 which, according to the counsel, is the last page of Part IV; the fact that it was in reality not scored out is, according to the counsel, immaterial because the object of the production of the whole of the relevant part of the roll is to enable the Returning Officer to verify, check up and satisfy himself that the

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candidate is an elector in the constituency concerned and if the entire relevant part is not filed with the paper or produced at the time of scrutiny, then there is a failure to comply with section 33(5) and the defect is of a substantial character, taking the case out of section 36(4).

The appellant has, on the other hand, contended that the relevant part of the roll in which Shri Wazir Singh Jaijee is entered as an elector was filed with the nomination paper No. 11 and that merely because about four pages out of 25 were missing does not mean non-compliance with section 33(5); the missing pages, it is emphasised, are wholly irrelevant because the candidate's electoral number is at page 23 which is a new entry in 1961 and there is no question of there being any further correction before the election of 1962. At the bottom of page 23, the word 'samapat' (end) is printed and it has been stressed that the defect can by no means be described as substantial. Regarding the argument of the word "samapat" (end) being printed at the bottom of page 23, the respondents' learned counsel has asserted that this word is first printed after electoral No. 1848, which relates to a woman elector Gandhi living in the quarters of Mansfield. Again after electoral No. 1855, there is the word "samapat" (end); this particular part or sub-part, as the respondents describe it, begins with electoral No. 1849, and it may be remembered that it is this revised supplementary list in which Wazir Singh Jaijee's electoral roll number occurs. Then continues a list of electoral Nos. 1856, to 1892 with a final note at the end that there are no corrections and no cancellations. The electoral Nos. 1525 to 1848, on pages Nos. 19 to 22, according to the respondents, are not found in the copy of the part filed by Wazir Singh Jaijee nor are

electoral Nos. 1856 to 1892 there. It may be pointed out that it is not the respondents' case that these missing pages have otherwise no relevance except for the purpose of showing non-compliance with section 33(5).

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We have devoted serious thought to the elaborate arguments addressed at the bar and are of the view that nomination paper No. 15 of Wazir Singh Jaijee was improperly rejected. In view of this conclusion, it is unnecessary to express any considered opinion on the propriety of rejection of nomination papers Nos. 11 and 14.

On 27th January, 1962, nomination paper No. 15 was presented to the Returning Officer at 12.55 hours; on the same day nomination paper No. 14 had been presented five minutes earlier at 12.50 hours and paper No. 11 at 12 noon. Since the receipt of Rs. 500 on account of deposit was attached with paper No. 11, it is clear that the Returning Officer must have noticed—if not also formally noted—that these three papers were covered by one receipt which was attached with paper No. 11. It may also be remembered that under section 33(4), it is the statutory duty of the Returning Officer to 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; this duty is expected to be performed with due sense of responsibility and not casually, for, under the proviso to section 33(4) the Returning Officer is enjoined to permit any clerical or technical error in the nomination papers regarding names and numbers in order to bring them into conformity with the corresponding entries in the roll; he may also direct any clerical or printing error in the entries in the roll to be

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overlooked. The importance and solemnity of this duty cannot be too much exaggerated for an improper rejection may result in serious consequences to the State, to the constituency and the candidate inasmuch as it would nullify the election itself. The Returning Officer has, in my opinion, an obligation to check up if under section 33(5) the requisite roll, a part thereof or the requisite certified copy of the entry is filed with the paper, for that alone can enable him to effectively discharge his duty under section 33(4). In the case in hand, it is not shown that the Returning Officer was not satisfied about the entries in the nomination paper No. 15 being the same as those entered in the electoral roll; nor is the Returning Officer shown to have found the electoral roll filed with paper No. 11 to be defective. On the record of the proceedings before the Returning Officer, it may be presumed that the Returning Officer did satisfy himself that the entries in the three nomination papers presented by Wazir Singh Jaijee were the same as those entered in the relevant part of the electoral roll. Had there been any defect in the way of the Returning Officer satisfying himself and performing his statutory duty under section 33(4), one would have expected some kind of a note made by him because it would have only been fair to point out to the candidate this technical defect so that at the time of scrutiny he may be able to produce two more copies of the relevant part of the roll or at least to produce the missing pages from Part IV. The position perhaps appears to be that the Returning Officer did not consider the part of the electoral roll filed with nomination paper No. 11 to be defective or not in compliance with section 33(5). When the matter came up before the Returning Officer for scrutiny, it was Nirbhai



Singh, R. W. 1, a close relation of Ranjit Singh and his covering candidate for the election in dispute from Sangrur Constituency, who raised the objection to the nomination papers of Shri Wazir Singh Jaijee. As Shri Ranjit Singh, R. W. 5, tells us, scrutiny of Wazir Singh Jaijee's nomination papers took about an hour or  $1\frac{1}{4}$  hours. Although Nirbhai Singh would have us believe that the nomination papers were taken up in their serial order and not candidate-wise, I am inclined to take the view that in all probability when the Returning Officer was scrutinising nomination paper No. 15, he had virtually before him nomination paper No. 11 as well with which was attached the receipt for deposit and the part of the electoral roll Exhibit P.W. 2/4. Nirbhai Singh is clearly deeply interested in supporting the returned candidate as is clear from the testimony of both Nirbhai Singh and Shri Ranjit Singh, R. W. 5. Both of them are not only closely related but were the nominees virtually of the ex-Chief Minister of the Punjab, Shri Partap Singh Kairon, for Shri Ranjit Singh has in the witness box clearly stated that on 27th July, 1961, Shri Partap Singh Kairon went to him and requested him to contest this election and to fill in the application form to get the ticket. Shri Kairon had also asked him on the same occasion to telephone to Shri Nirbhai Singh to stand for Sangrur Assembly Constituency and to submit his application for the ticket. The version that the Returning Officer took up the nomination papers, according to the serial numbers and not candidate-wise appears to me to be improbable. Not that it very much matters because even if the scrutiny was according to the serial numbers, paper No. 11 must have been on the table before the Returning Officer and an hour or  $1\frac{1}{4}$  hours

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taken by him in scrutinising Wazir Singh Jaijee's nomination papers most probably included reference to paper No. 11, and this would, in my opinion, virtually and substantially amount to production of the part of the roll in question before the Returning Officer at the time of scrutiny. It is noteworthy that the Returning Officer at the time of scrutiny also did not consider the part of the electoral roll filed with paper No. 11 to be defective or not in compliance with section 33(4). The rejection of the nomination paper by the Returning Officer for the reasons given by him is clearly untenable and wrong in law.

As observed earlier, with the exception of about four pages which are missing Part IV is otherwise produced in full. The object of producing the relevant part of the electoral roll is to enable the Returning Officer to readily check that the candidate is a voter on the electoral roll. This clearly could be satisfactorily and without difficulty checked, and indeed there is nothing to suggest on the record, and the respondents' counsel has not argued, that the Returning Officer was not able to so check and satisfy himself, if he had decided to look at the part of the roll filed with nomination paper No. 11. Had this fact of missing pages been pointed out by the Returning Officer or the Assistant Returning Officer at the time of presentation of the nomination papers, or had an objection to this effect been raised at the time of scrutiny, Shri Wazir Singh Jaijee might well have either produced the missing pages at the time of scrutiny or asked for some time to do so; a request for time on this premise might well have been granted even by the Returning Officer. At any rate, the defect appears to

me to be unsubstantial because Jaijee's name is admittedly entered in the roll at page 23, having been added by way of rectification in 1961. Shri Jaijee has in the witness box as P.W. 3 unequivocally stated—and this is not controverted—that his name appears in the list P.W. 2/4, in Part IV, supplementary list of new names, because he had started his residence at Simla in 1960 and it was, thereafter that he got his name entered amongst voters in the year 1961. It may be recalled that it is not the respondents' case that Shri Jaijee's name was at any time before the impugned election of 1962 cancelled by further rectification. The final publication of the supplementary roll including page 23 may be presumed to have been done after considering objections, if any, to the new entries in accordance with the Registration of Electors Rules, and indeed it is not the respondents' case that any objection was ever raised to the entry relating to Shri Wazir Singh Jaijee. I am, therefore, inclined to take the view that both the Returning Officer and the learned Tribunal were wrong in holding that Shri Wazir Singh Jaijee's nomination deserved properly to be rejected; and for the reasons foregoing, the rejection must be held to be improper. If this nomination is held to have been improperly rejected, then the election must necessarily be held to be void and I hold accordingly. Recognising the supreme importance of the right of franchise, the Parliament has expressly provided that improper rejection of a nomination by itself, and without more, renders the election of the returned candidate void; section 100(1)(c), R. P. Act, 1951. The importance of the right of franchise deserves in the larger public interest to be borne in mind by all officers, Tribunals and Courts dealing with election contests. It is true that Shri Wazir Singh Jaijee has not filed any election petition; it is also

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pointed out that Shri Ranjit Singh did not himself object to the former's nomination and it was Shri Nirbhai Singh, the covering candidate for Ranjit Singh, who had raised objections, but it is not suggested that this factor can in any manner affect the decision of the issue; a nomination improperly rejected *ipso facto* invalidates the election of the returned candidate, the source from which the objection emanates being immaterial.

The respondents' learned counsel has also in the end attempted to raise an absolutely fresh point in this Court on appeal. He has tried to show that the electoral roll mentioned in section 33(5) must be construed to mean electoral roll for Parliamentary constituency and not the electoral roll for Assembly constituency, as was his case throughout the trial. We have disallowed this point, being a point neither raised in the pleadings, nor tried in the Tribunal; indeed, this argument really introduces a completely new case, to meet which the appellant had absolutely no prior notice before its presentation at the bar in reply by the respondents. Section 2(1)(f) of the Representation of the People Act, 1950, defines "parliamentary constituency" to mean a constituency provided by law for the purpose of elections to the House of the People. Section 13-D of this Act lays down that the electoral roll for every parliamentary constituency other than a parliamentary constituency in a Union territory shall consist of the electoral rolls of so much of the assembly constituencies as are comprised within that parliamentary constituency; and it shall not be necessary to prepare or revise separately the electoral roll for any such parliamentary constituency. Under section 18, no person is entitled to be registered in the electoral roll for any constituency more than once. In the Registration of

Electors Rules, 1960, there is no separate rule for preparing electoral rolls for a parliamentary constituency which is not a Union territory. In view of these provisions, we have felt constrained not to permit this new point to be raised because it would necessarily involve adjournment to the case to permit the appellant to be prepared on it and a further research; which on the facts and circumstances of this case; we do not consider to be justified.

Before concluding it may appropriately be observed that the Returning Officers and the Assistant Returning Officers must discharge their functions while dealing with the nomination papers with a conscientious sense of responsibility, and they must be fully posted with the correct legal position touching their functions. While scrutinising the nomination papers, from the very nature of his duty, a Returning Officer performs functions which are judicial or at least *quasi-judicial* in character. He must, therefore, be fully aware of the basic and elementary principles of law applicable and he must apply his mind to the problems judicially with the sense of detachment and impartiality of an officer performing a petition under Article 226 of un mindful of, and uninfluenced by, political, personal or other extraneous considerations and influences, keeping himself discreetly insulated from the effect of power-politics, political controversies and their subversive influences. While appointing Returning Officer, therefore, the appointing authority would do well, in the larger public interest, to keep these vital considerations in mind.

For the foregoing reasons, this appeal succeeds and allowing the same we reverse the order of the Election Tribunal and hold that the

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order rejecting Shri Wazir Singh Jaijee's nomination was improper. The impugned election of Shri Ranjit Singh, the returned candidate, must be, and is hereby, declared to be void. Parties in the circumstances are directed to bear their own costs throughout.

B.R.T.

REVISIONAL CRIMINAL

Before Shamsheer Bahadur, J.

MISRI SINGH,—Petitioner.

versus

PALA SINGH AND ANOTHER.—Respondents.

Criminal Revision No. 52 of 1964

1964  
—  
July, 15th.

*Code of Criminal Procedure (V of 1898)—S. 145—Magistrate recording his satisfaction about the existence of apprehension of breach of peace while passing the preliminary order—Whether bound to express satisfaction on that point in the final order as well.*

*Held, that the Magistrate having expressed his satisfaction about the existence of the apprehension of breach of peace at the time of passing the preliminary order, was not bound to repeat the expression of that satisfaction again in the final order which he passed under sub-section (6) of section 145 of the Code of Criminal Procedure, in the absence of any pleadings or evidence adduced by the parties showing that his satisfaction at the preliminary stage was not well founded.*

*Case reported under Section 438, Criminal Procedure Code, by Shri Diali Ram Puri, Additional Sessions Judge, Bhatinda, with his letter No. 387, dated 16th April, 1964, for revision of the order of Shri Birbal, Magistrate Ist Class, Bhatinda, dated the 20th November, 1963, ordering that the possession of the land in dispute be restored to respondents.*