

## APPELLATE CIVIL

*Before Dulat and Capoor, JJ.*

PT. CHARANJIT LAL,—Appellant.

*versus*

LEHRI SINGH,—Respondent.

**First Appeal From Order No. 43 of 1958**

1958

May, 20th

*The Representation of the Peoples Act (XLIII of 1951)—Sections 36 and 100—Non-mention of age in the candidates' nomination paper—Whether a substantial defect—Nomination paper rejected because no one testified to the age—Whether improper—Entry about age in the electoral roll—Evidentiary value of—Indian Evidence Act (I of 1872)—Section 114(e)—Presumption under—Whether applies to an entry about the age in the electoral rolls.*

*Held*, that under subsection (2) of section 36 of the Representation of the People Act it is incumbent on the returning officer, at the time of scrutiny, to examine the nomination papers and to consider and inquire into all

objections which may be raised or which he may discover himself, and if the candidate is not qualified under the requirements of clause (a) of subsection (2) of this section the nomination paper has to be rejected. The want of qualification under that clause is a defect of a substantial character to which the provisions of subsection (4) of section 36 would not be applicable.

*Held*, that whether a nomination has been improperly rejected or not, has to be considered in relation to the state of evidence before the Returning Officer at the time of the scrutiny. Where, neither the candidate nor the proposer nor any other person authorised on his behalf appears, at the time of scrutiny, to testify to his age, there is no course open to the Returning Officer but to reject the nomination paper and that rejection cannot be said to be an improper rejection within the meaning of section 100 (1)(c) of the Act.

*Held*, that an entry in the electoral rolls as to age is neither conclusive nor presumptive evidence. Under subsection (7) of section 36 a certified copy of an entry in the electoral roll is conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency but recourse cannot be had to this subsection for arguing that the age as mentioned in that entry also has an evidentiary value.

*Held*, that the presumption under clause (e) of section 114 of the Indian Evidence Act, to the effect that the official acts have been regularly performed is not applicable to an entry about the age in the electoral roll which is made on ~~hearsay~~ and is not verified or attested.

*hearsay*

*Appeal from the order of Shri Jawala Dass, Election Tribunal, Rohtak, dated 5th February, 1958, dismissing the petition and leaving the parties to bear their own costs.*

*Election petition calling in question the election of the respondent from the Ganaur Constituency of the Punjab Legislative Assembly declared on the 11th March, 1957, and claiming a declaration that the same is void under section 81 of the Representation of People's Act, 1951.*

D. K. MAHAJAN, for Appellant.

RAJINDER SACHAR and A. C. HOSHIARPURI, for Respondent.

## JUDGMENT

Capoor, J.

CAPOOR, J.—This is an appeal against the decision of the Election Tribunal, Rohtak, whereby the petition of Shri Chiranji Lal against the election of Shri Lehri Singh respondent from the Ganaur Constituency of the Punjab Legislative Assembly in March, 1957, had been dismissed.

The election contest was a straight one between the petitioner and the respondent in which the petitioner lost. On the 29th of January, 1957, the date fixed for submitting nominations, nomination papers were filed on behalf of three other candidates, besides the petitioner and the respondent, i.e., Mukhtiar Singh (P.W. 4) Suraj Bhan and Pirthi (R.W. 1). On the 1st of February, 1957, which was the date fixed for scrutiny, the nomination paper (Exhibit P.W. 1/1) of Pirthi was rejected by the Returning Officer Shri D. D. Jayal (P.W. 2),—*vide* his order, which is as follows:—

“The nomination is rejected as the age is not mentioned in the nomination paper. Neither the candidate nor the proposer or any person duly authorised on his behalf is present to testify to his age.”  
Mukhtiar Singh and Suraj Bhan withdrew their candidature within the time fixed for withdrawal.

Numerous grounds were raised in the election petition but the only one which was finally pressed was that the nomination paper of Pirthi had been improperly rejected. The petition went for trial on the following issues:—

- (1) Whether for grounds stated in clause (a) paragraph No. 7, the rejection of nomination of Shri Pirthi was improper and against law?

(2) Whether at the time of the filing of the nomination, Shri Pirthi was below 25 years of age?

Pt. Charanjit  
Lal  
v.  
Lehri Singh  

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Capoor, J.

Issue No. 1 was found by the Tribunal against the petitioner. On issue No. 2 its finding was that on the evidence on the record it could not be determined with any amount of certainty as to whether at the time of filing the nomination paper Shri Pirthi was above or below 25 years of age. In the result, the petition was dismissed, the parties being left to bear their own costs.

*Issue No. 1.*

The grounds in clause (a) of paragraph No. 7 of the petition (as referred to in issue No. 1) are as follows:—

“(a) That the nomination of Pirthi, son of Rakha Harijan of village Kasandha, Tehsil Gohana, District Rohtak, whose name appeared at No. 3480 in the Electoral Roll of Zail Khanpore, which is part V of Ganaur Constituency of the Punjab Legislative Assembly, was ~~im-~~properly rejected by the Returning Officer on the date of scrutiny without any objection on the part of other candidates and their authorised Agents present at the time of scrutiny and in spite of the fact that the petitioner objected to its being rejected on a technical ground, when from the Electoral Roll before the Returning Officer, he had looked up to the age entry of Pirthi, which was above the age required for being chosen as a candidate for the Assembly Seat of a State. The order of the Returning Officer rejecting

*oral*

Pt. Charanjit  
Lal  
v.  
Lehri Singh  
—  
Capoor, J.

the nomination of Pirthi candidate is clearly wrong and improper based on a most technical defect in the paper which was of no consequence whatsoever. The absence of the candidate was not material at all as his presence was not mandatory. The age column of the nomination paper was inadvertently left blank and it was a just technical error which the Returning Officer should have overlooked in view of the Rules and the Instructions issued on the point. The nomination of Pirthi Candidate was improperly rejected and the whole of the electorate has been deprived of its right to exercise their franchise for him. This improper rejection of the nomination paper of Shri Pirthi by itself makes the election of the respondent void."

A certified copy of the relevant entry in the electoral roll with regard to Pirthi is Exhibit P.W. 1/3 in which his age is mentioned as 28 years. The space with regard to the age of the candidate in the declaration to be filled by the candidate in the nomination paper, Exhibit P.W. 1/1, was left blank. The Returning Officer appearing on behalf of the petitioner stated that at the time when nomination paper of Pirthi was presented he did not go through it, but Pirthi who had appeared before him to present the nomination paper appeared to be much younger than 25 years and he, therefore, directed him to produce evidence in support of his age on or before the date of scrutiny. This was an oral order. Neither Pirthi himself appeared before him on the date of scrutiny nor any of his representatives or agents and hence the Returning Officer's suspicion about Pirthi being below 25 years of age was

confirmed and he, therefore, rejected his nomination paper. The Returning Officer further testified that all the three candidates including Shri Chiranji Lal petitioner who appeared before him at the time of scrutiny had agreed and told him that Pirthi's nomination paper deserved to be rejected and ought to be rejected. At the time of scrutiny he did see the entry in the electoral roll regarding Pirthi in which his age was recorded as over 25 years, but he did not accept this age. These, according to the Returning Officer, were the circumstances in which the order rejecting Pirthi's nomination was made by him.

Pt. Charanjit  
Lal  
v.  
Lehri Singh  

---

Capoor, J.

The narration of these circumstances as given by Shri Mukhtiar Singh and the petitioner himself is somewhat different. The petitioner stated that he filled in Pirthi's nomination paper but by inadvertence did not enter the age in Exhibit P.W. 1/1. This omission came to his notice at the time of scrutiny and he, therefore, requested the Returning Officer to refer to the electoral rolls and not to reject the nomination paper of Pirthi on the ground of his mere absence. No heed was paid to this submission. Shri Mukhtiar Singh's evidence is much to the same effect. He admitted, however, that after withdrawing from the contest he did election propaganda for the petitioner and he as well as his son-in-law Om Parkash were the counting agents of the petitioner. He is, therefore, clearly interested in the petitioner whose own statement in his favour, of course, has to be discounted. On behalf of the petitioner, it was argued that the Returning Officer had turned hostile and no portion of his evidence which was not borne out by the record should be believed. That submission I am unable to accept. The Returning Officer made the impugned statements

Pt. Charanjit  
Lal  
v.  
Lehri Singh  

---

Capoor, J.

in answer to questions put to him in examination-in-chief and accordingly the Tribunal was justified in turning down the request that the witness be declared hostile. Moreover, the evidence given by the Returning Officer as to the circumstances in which Shri Pirthi's nomination was rejected is corroborated by this candidate himself. He asserted that when the petitioner filled up his nomination paper, he told him that his age was about 24 years, but the petitioner said that he would look into this matter at a later stage and that Shri Pirthi should manage to bring a certificate of his age. Shri Pirthi went on to say that at the time he submitted his nomination paper Shri Jayal had asked him to produce his birth certificate and other evidence regarding his age, and since the witness was not able to get that certificate he did not appear before him on the date of scrutiny. Inasmuch as it was the petitioner who had filled up Shri Pirthi's nomination paper, it may be concluded that at that time at any rate both of them were friendly to each other. The evidence of Shri Mukhtiar Singh and the petitioner, to the effect that no one objected to the nomination of Shri Pirthi at the time of scrutiny, does not appear to be credible, because the opposite candidates would naturally be keen to point out defects which would enable the Returning Officer to throw out the nomination papers of their rivals. Accordingly, I would accept the testimony of the Returning Officer corroborated as it is by Shri Pirthi as to the circumstances in which the latter's nomination was rejected. Under Article 173 of the Constitution of India "a person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he (a) \* \* \* \*; (b) is, in the case of a seat in the Legislative Assembly not less than twenty-five years of age \* \* \* \*; and (c) \* \* \*."

Section 36 of the Representation of the People's

Act, 1951 (hereinafter referred to as the Act) provides for the scrutiny of nomination and subsection (2) thereof is as follows:—

Pt. Charanjit  
Lal  
v.  
Lehri Singh  

---

Capoor, J.

“36(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary, inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:—

(a) that the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely :—

articles 84, 102, 173 and 191, and Part II of this Act,

or

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

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

Under subsection (4) of section 36 the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character, and under subsection (8) of this section immediately after all the nomination papers have been scrutinised and decisions accepting or rejecting the same have been recorded, the Returning Officer shall prepare a list of candidates whose nominations have been found valid and affix it to his notice board. Under clause (c) of subsection



Pt. Charanjit  
Lal  
v.  
Lehri Singh  

---

Capoor, J.

(1) of section 100 of the Act, if the Tribunal is of the opinion that any nomination has been improperly rejected, it shall declare the election of the returned candidate to be void. Whether a nomination has been improperly rejected or not, has to be considered in relation to the state of evidence before the Returning Officer at the time of the scrutiny. The testimony of the Returning Officer shows that he rejected the nomination, because it did not appear to him that on the question of age the candidate Shri Pirthi was qualified to stand for election. The same is the purport of the order passed by him. If the rejection was merely on account of the age not being mentioned in the nomination paper the returning officer should not have written the second sentence of his order, i.e., "Neither the candidate nor the proposer nor any other person duly authorised on his behalf is present to testify to his age". The order of rejection is, therefore, based not only on account of the defect in the nomination paper but on account of want of qualification of the candidate.

Mr. D. K. Mahajan, on behalf of the petitioner, contended that the defect in the nomination paper was not one of a "substantial character" and in view of subsection (4) of section 36 of the Act ought to have been ignored by the returning officer. He pointed out that the statute does not require meticulous exactness in the filling up of the nomination paper and that matters which were considered by the legislature to be of the essence have been specified by it either in the statute itself, e.g., sub-sections (2), (3), (4) and (5) of section 33 or in the Rules made under the Act. Inasmuch as there was no specific provision in the Act or the Rules requiring the candidate to mention his age in the nomination form, it must be held that the omission to mention the age is not a

matter of substance. This argument is attractive but by no means conclusive. Under subsection (1) of section 33 the nomination paper has to be completed in the prescribed form. Rule 4 of the Representation of the People (Conduct of Election and Election Petitions) Rules, 1956. provides that every nomination paper presented under subsection (1) of section 33 shall be completed in such one of the forms 2A to 2F as may be appropriate. The form for election to the Legislative Assembly of a State as given in Schedule I to the Rules is form 2B. It provides a space which requires the candidate to make a declaration as to his age. No doubt, the same form requires the candidate to make a declaration about the symbols chosen by him in order of preference and the argument of Mr. Mahajan, that the mere fact that the declaration regarding choice of symbols was not correctly made in a nomination paper, would not justify its rejection, is correct, but it has been argued with some force by the other side that the requirement with regard to the mention of symbols cannot be placed on par with that regarding the mention of age, because unless there is material before the returning officer to decide whether the candidate is qualified or not from the point of view of age he cannot perform his function of preparing a list of validly nominated candidates under subsection (8) of section 36.

No direct authority on the point in issue has been cited by either party and in the circumstances of this case I do not feel called upon to give a firm finding as to whether the omission of the age of the candidate in the nomination form would by itself invalidate that nomination paper. In the present case, there was not only that omission but there was also no material before the returning officer whereby that omission could be made

Pt. Charanjit  
Lal  
v.  
Lehri Singh  
Capoor, J.

Pt. Charanjit  
Lal  
v.  
Lehri Singh  

---

Capoor, J.

good. The petitioner's learned counsel maintained that inasmuch as the age of the candidate (Pirthi) was mentioned as 28 years in the electoral rolls, the Returning Officer should have accepted that age and should not have gone further into the question of age even if objection on that point had been made by one or more of the other candidates. That position, I am unable to accept. Under subsection (2) of section 36 of the Act it is incumbent on the Returning Officer at the time of scrutiny to examine the nomination papers and to consider and inquire into all objections which may be raised or which he may discover himself, and if the candidate is not qualified under the requirements of clause (a) of subsection (2) of this section the nomination paper has to be rejected. The want of qualification under that clause must be considered a defect of a substantial character to which the provisions of subsection (4) of section 36 would not be applicable. On the evidence before the Returning Officer at the time of scrutiny in the present case there could be no alternative for him but to reject that nomination paper. The entry in the electoral rolls as to age was neither conclusive nor presumptive evidence. Under subsection (7) of section 36 a certified copy of an entry in the electoral roll shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency but recourse cannot be had to this subsection for arguing that the age as mentioned in that entry also has any evidentiary value. It was contended by Mr. Mahajan that the presumption under clause (e) of section 114 of the Indian Evidence Act, to the effect that the Court may presume that official acts have been regularly performed, would be available, but this presumption is hardly applicable to an entry about the age in the electoral roll

which is made on hearsay and is not verified or attested.

Pt. Charanjit  
Lal  
v.  
Lehri Singh  
Capoor, J.

The conclusion, therefore, is that it was incumbent on the Returning Officer in the present case to make an inquiry as to whether Shri Pirthi was qualified or not on the question of age to be candidate for the election, and that since neither the candidate nor the proposer nor any other person authorised on his behalf was present at the time of scrutiny to testify to his age, there was no course open to the returning officer but to reject the nomination paper and that rejection cannot be, therefore, said to be an improper rejection within the meaning of section 100(1)(c) of the Act.

*Issue No. 2.*

On this issue, the evidence before the Election Tribunal was meagre. The petitioner asserted that Pirthi was over 25 years of age but that oral statement is of course, of no value. He also produced certified copies Exhibits P. 1 to P. 4 from the entries relating to the birth of four children to Rakha, son of Rajal. Chamar, of village Kasandha. Out of these entries it is said that one (Exhibit P.3) dated the 30th of July, 1927, relates to Shri Pirthi. This is not so on the face of it, because the name of the child is Jaga. Moreover, certificate or any of the other copies related to no one appeared to say that this copy of the birth Shri Pirthi himself or his brothers and sister. No doubt, the name of Shri Pirthi's father is Rakha and he belongs to village Kasandha, but the possibility that there might be other persons named Rakha in that village is by no means excluded. The certified copies Exhibits P. 1 to P. 4, therefore, do not advance the case of the petitioner, and Pirthi himself stated that his age was 24 years at

Pt. Charanjit  
Lal  
v.  
Lehri Singh  

---

Capoor, J.

the time when he submitted his nomination paper. In these circumstances it cannot be said that the petitioner established that Shri Pirthi was qualified to stand as a candidate at the election.

I would, therefore, upholding the order of the Tribunal, dismiss the appeal with costs. Counsel's fee Rs. 250 (two hundred and fifty) only.

S. S. DULAT, J.—I agree:

R.S.