

## APPELLATE CIVIL.

*Before Dulat and Capoor, JJ.*

SHRI RUP LAL,—Appellant.

*versus*

SHRI JUGRAJ SINGH,—Respondent.

**First Appeal from Order No. 15 of 1958.**

1958  


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 May, 20th

*Representation of Peoples Act (XLIII of 1951)—Sections 33 and 36—Mention of name and electoral roll number of proposer in the nomination form—Whether a matter of substance—Proviso to subsection (4) of section 33—Meaning of—Divergence between entries in nomination paper and relevant entries in electoral rolls—Effect of—Doubt not resolved at the scrutiny stage—Returning Officer, whether entitled to reject nomination—Rejection of nomination on the ground that the names of the proposers not found at the numbers of electoral rolls as given in the nomination form—whether proper.*

*Held*, that full name and the electoral roll number of the proposer are required to be mentioned in the nomination form in order to enable the Returning Officer to satisfy himself that the proposer is actually an elector of the constituency. This requirement of mentioning the name and the electoral roll number of the proposer in the nomination form must, therefore, be regarded as a matter of substance.

*Held*, that proviso to subsection (4) of section 33 makes it clear that the correspondence between the names and electoral roll numbers as entered in the nomination paper with those entered in the electoral rolls need not be meticulously exact and any clerical or technical error would be permitted to be corrected and any clerical or printing error shall be overlooked. All the same there should not be so much divergence between the entries in the nomination paper and the relevant entries in the electoral rolls that the Returning Officer is left in doubt as to whether they relate to the same person. If there is any such doubt and it is not resolved at the scrutiny stage, the Returning Officer has no alternative but to reject the nomination.

Held, that where the nomination paper has been rejected on account of the failure to comply with any of the provisions of section 33 (*vide* clause (b) of subsection (2) of section 36 as distinct from the requirements as to qualification mentioned in clause (a) of the same subsection) the consideration of the propriety or otherwise of rejection of the nomination papers cannot be divorced from the state of evidence before the Returning Officer at the relevant time. The scheme of the Act is that the various stages in the election process should be gone through in orderly sequence with the greatest possible expedition and leaving at every stage the least possible room for controversy. 87

Held, that when the entries with regard to the two proposers, i.e., electoral roll Nos. 7852 and 7853, were found to be deleted by the supplementary electoral roll, and there was nothing before the Returning Officer to show that these entries existed at other numbers, the Returning Officer could not be expected to hold up the scrutiny until he could go through the thousands of names in the entire electoral roll of the constituency in order to discover if possibly the names of the proposers concerned were at some other numbers. It would be immaterial if at some subsequent stage such as that of the trial of the election petition, the candidates concerned could point out that the names of their proposers were entered under totally different serial numbers and at other places in the electoral rolls. To hold in such circumstances that the nomination papers were improperly rejected by the Returning Officer would open the door wide to much uncertainty, expense and chicanery. e

*Election First Appeal from the order of Sh. Kul Bhusan, Election Tribunal, (District Judge), Bhatinda, dated 31st December, 1957, dismissing the election petition of the appellant.*

Election petition under Section 81 to 84 R.P. Act of 1951.

H. S. DOABIA and BALKISHAN JHINGA, for Appellant.

H. L. SIBAL and AMAR SINGH AMBALVI, for Respondent.

#### JUDGMENT

CAPOOR, J.—This appeal arises from the order of the Election Tribunal, Bhatinda, dated the 31st

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of December, 1957, whereby the petition filed by Shri Rup Lal, appellant calling in question the election of Shri Jugraj Singh, respondent from the Moga Constituency of the Punjab Legislative Assembly, was dismissed, the parties being left to bear their own costs.

The date on which nomination papers had to be filed for the above election was the 29th of January, 1957. The nomination paper filed by the appellant is Exhibit P.W. 1/F, according to which his proposer was Rawal Chand, P.W., whose electoral roll number was 7852 in Ward No. 8 of Moga Town. Another candidate Sukhdev Singh, P.W. also filed his nomination paper, Exhibit P.W. 1/H, on the same date and his proposer was Kabul (Kawal) Chand, son of Khazan Chand, with electoral roll No. 7853 in Moga Assembly Constituency Part 4. The date for scrutiny of the nomination papers was the 1st of February, 1957, and the scrutiny was conducted by Shri Bhim Singh, Sub-Divisional Officer, Moga (R.W. 1), who was the Returning Officer for the said election. Both these nomination papers were rejected by him and on the date fixed for scrutiny the order on the appellant's nomination paper was as follows :—

“The name of proposer Rawal Chand at 7852 has been scored out of electoral rolls. Rejected.”

The order on Sukhdev Singh's nomination paper was as follows :—

“The name Kabul Chand proposer is not found in electoral rolls. Even if it is Kewal Chand at 7853, it is scored out Rejected.”

In the election petition it was stated that the rejection of those nomination papers by the Returning Officer was improper inasmuch as the proposer of the appellant was shown at serial No. 1866 in the electoral roll and the proposer of Sukhdev Singh was shown as an elector at serial No. 16970. It was further urged in the petition that these entries were pointed out to the Returning Officer during the scrutiny, but he paid no heed, and, in any event, the defects were not of a substantial character. These arguments, however, were controverted by the respondent and the election petition went for trial on the following issues :—

- (1) Whether the ~~nomination~~ nomination of Shri Rup Lal was improperly rejected by the Returning Officer, Moga ? ?
- (2) If issue No. 1 is proved, what is its effect on the election of the respondent ?
- (3) Whether the nomination of Shri Sukhdev Singh was improperly rejected by the Returning Officer, Moga ?
- (4) If issue No. 3 is proved, what is its effect on the election of the respondent ?
- (5) Relief.

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The Tribunal decided issues Nos. 1 and 3 against the appellant and in the result the election petition was dismissed.

The undisputed facts are that in Ex. P.W. 12/1 on page 232 at serial Nos. 7852 and 7853 appear respectively the names of Rawal Chand and Kawal Chand, sons of Khazan Chand, shopkeepers by occupation in the Sadar Bazar, Moga. These two names were scored out by the supplementary list, Exhibit P.W. 12/2, at page 724, the ground being "has left" (*chala gia hai*), but in the original list under Basti Rehgaran on page 57 at serial No. 1866

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is the entry as to Rawal Ram, son of Khazan, labourer by profession, and at serial No. 16970 on page 495 of the supplementary list is the entry regarding Kabul, son of Khazan. The Tribunal has found that since there is no material discrepancy, it can be reasonably concluded that the elector shown at serial No. 1866 in Exhibit P.W. 12/1 is the proposer of the appellant while that shown at serial No. 16970 in the supplementary list is the proposer of Sukhdev Singh. The Tribunal has, however, held on a careful consideration of the entire evidence that when the objection was raised before the Returning Officer that according to the supplementary list the votes of Rawal Chand and Kabul Chand had been scored out, it was not pointed out to the Returning Officer during the entire period fixed for scrutiny that the two proposers were shown as electors under other numbers in the electoral rolls, and it was, therefore, concluded that the rejection of the nomination papers by the Returning Officer could not be considered to be an improper rejection. The Tribunal was further of the view that even if it had been pointed out to the Returning Officer that the two proposers were entered at other places in the electoral rolls, he could not at the time of scrutiny allow any amendment of the two nomination papers in order to show the correct position, as the error in the two nomination papers was not a clerical or technical error which could be overlooked under the proviso to subsection (4) of section 33 of the Representation of the People Act, 1951, (hereinafter to be referred to as the Act) nor was it a defect of an insubstantial character within the meaning of subsection (4) of section 36 of the Act.

Mr. Harbans Singh Doabia, on behalf of the appellant, maintained that the finding of the Tribunal on the question of fact was not justified on

the evidence, as the two candidates—the appellant and Sukhdev Singh—as well as the two proposers—Rawal Chand and Kabul Chand—and some other witnesses also appeared to say that it was pointed out to the Returning Officer during the time of scrutiny that though the names of the two proposers had been scored out from Nos. 7852 and 7853 in the original electoral roll they existed under other numbers. In particular, Mr. Doabia relied on the evidence of Shri Baij Nath (P.W. 11), a Pleader of Moga, who was a candidate for the same election and who was in fact the person who objected that the names of Rawal Chand and Kabul Chand had been scored out according to the supplementary list. Shri Baij Nath went on to say that it was represented to the Returning Officer that the names of the two proposers were mentioned at other numbers in the electoral rolls, but that the witness raised the further objection that the amendment could not be allowed at that stage. All this evidence was duly considered by the Tribunal and was not believed on the ground of vital discrepancies as mentioned in the judgment under appeal. In fact the cross-examination of some of the appellant's witnesses disclosed that it was until after the time of scrutiny was over that the discovery was made that the two proposers were shown in the electoral rolls under numbers other than those mentioned in the nomination papers which had been rejected. On this matter the evidence of the Returning Officer is to the effect that when the objection was raised as to the names of the two proposers having been scored out by the supplementary list, no one pointed out to him that their names were to be found at other places in the electoral rolls. He asserted that if this had been pointed out to him, he must have made a note thereof and must have taken it into consideration before announcing his decision. He also denied that any request was made to him for amendment

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and in fact no occasion could arise for that request, because as observed above the cross-examination of some of the appellant's witnesses disclosed that the fact of the two proposers' mention as electors at other numbers in the electoral rolls was discovered only after the scrutiny was over.

In the circumstances, the finding of the Tribunal on the question of fact appears unassailable, and the next question for determination is whether in the circumstances the rejection of the two nomination papers by the Returning Officer can be considered to be an improper rejection within the meaning of clause (c) of subsection (1) of section 100 of the Act so as to invalidate the election.

Whether there has been any improper rejection of a nomination is a question of fact depending on the circumstances of each case, and it is clear from the facts of this case as discussed above that on the material before him at the time of the scrutiny there was no alternative for the Returning Officer but to reject the two nominations. Mr. Doabia has, however, contended that inasmuch as the two proposers were entered as electors in the relevant electoral rolls, though at numbers other than those stated in the nomination papers, their qualification to act as the proposers was not affected by the cancellation of the entries at Nos. 7852 and 7853 according to the supplementary list. It was the mistake of those responsible for preparing the electoral rolls that the names of these two proposers were entered twice over. Hence, according to Mr. Doabia the defect in the two nomination papers was not one of substance and should be ignored in view of the provisions of subsection (4) of section 36 of the Act. He argued on the Authority of *G. Raja Nainar v. N. T. Velusami Thevar and others* (1), that the

(1) A.I.R. 1958 Mad. 198.

jurisdiction of the Election Tribunal is co-existent with that of the Returning Officer and while the enquiry open to the Returning Officer is summary in its scope, the issue has to be decided by the Tribunal after a trial, and it is open to a Tribunal to consider evidence which was not available to the Returning Officer at the time of the nomination or the scrutiny. It was urged by him that when the Tribunal in the present case found that the names of the two proposers were actually entered in the electoral rolls, it should have held that the rejection of the two nomination papers by the Returning Officer was improper.

The provisions of the Act bearing on the determination of this question are sections 33 and 36. The heading of section 33 is "Presentation of nomination paper and requirements for a valid nomination". Under subsection (1) of section 33, nomination paper has to be completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer. The form prescribed in the present case is 2-B which requires the full name of the proposer as well as the electoral roll number of the proposer. According to the footnote given in that form, the electoral roll number should include—(i) the name of the assembly constituency, (ii) the serial number of the part of the electoral roll in which the name of the proposer or the candidate, as the case may be, has been entered and (iii) the serial number of the entry in that part. According to subsection (4) of section 33, on the presentation of a nomination paper, the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls. The proviso to that subsection lays down that the Returning Officer shall permit any

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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 : and where necessary, direct that any clerical or printing error in the said entries shall be overlooked. The scrutiny of nominations is provided in section 36. On the date fixed for scrutiny the Returning Officer is required to examine the nomination papers and decide all objections which may be made to any nomination, and he may either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on several grounds, one of which is the failure to comply with any of the provisions of section 33 or section 34 (*vide* section 36(2)(b)). 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. The essential question for determination in each case, where nomination paper has been rejected, would, therefore, be whether the defect was of a substantial character.

One of the requirements for a valid nomination is that the candidature must be proposed by an elector of the constituency. The full name and the electoral roll number of the proposer are obviously required to be mentioned in the nomination form in order to enable the Returning Officer to satisfy himself that the proposer is actually an elector of the constituency, and as a matter of fact subsection (4) of section 33 now lays upon the Returning Officer the duty of satisfying himself after comparison with the electoral rolls that such is actually the case. The requirement of mentioning the name and the electoral roll number of the proposer in the nomination form must, therefore, be regarded as a matter of

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substance and this was also the view expressed in *Brij Sunder Sharma v. Election Tribunal Jaipur and others* (1), as well as in *P. N. Balasubrahmanyam v. Election Tribunal of North Arcot at Vellore and others* (2). The latter was a case in which the defect was an omission to mention the name of the constituency in the electoral roll of which the candidate's name was included and the electoral roll number of the candidate himself, but the principle, of course, would be the same if those particulars were omitted or wrongly stated with regard to the proposer of the candidate in the nomination paper. The proviso to subsection (4) of section 33 makes it clear that the correspondence between the names and electoral roll numbers as entered in the nomination paper with those entered in the electoral rolls need not be meticulously exact and any clerical or technical error would be permitted to be corrected and any clerical or printing error shall be overlooked. All the same there should not be so much divergence between the entries in the nomination paper and the relevant entries in the electoral rolls that the Returning Officer is left in doubt as to whether they relate to the same person. If there is any such doubt and it is not resolved at the scrutiny stage, the Returning Officer has no alternative but to reject the nomination. This appears to be the true cumulative effect of all the relevant provisions of the Act, and also finds support in authority.

In *Karnail Singh v. Election Tribunal, Hissar, and others* (3), the only defect in the nomination paper was that the name of the sub-division of the electoral constituency was not stated therein, but on the evidence it was clear that there was no difficulty in identifying the candidate and accordingly their Lordships of the Supreme Court

(1) A.I.R. 1957 Raj. 189 at p. 197.

(2) A.I.R. 1954 Mad. 730 at p. 733.

(3) 10 E.L.R. 189.

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held that the defect was not of a substantial character and that the nomination paper should not have been rejected. In the case before us the entries, viz., the electoral roll numbers of the two proposers mentioned in column No. 2 of the nomination papers had been scored out by the supplementary electoral roll, and on the material placed before the Returning Officer during the period of scrutiny it had to be held that the proposers could not be identified with the electors mentioned at those entries. In *Rattan Anmol Singh and another v. Ch. Atma Ram* (1), it was held that when the law enjoins the observance of a particular formality it cannot be disregarded and the substance of the thing must be there. In that case, the substance of the matter was the satisfaction of the Returning Officer at a particular moment of time (which in that case was the stage of nomination) about the identity of the person making a mark in place of writing a signature. In the present case, the Returning Officer had to be satisfied, if not at the stage of nomination at least at the stage of scrutiny, that the two proposers were duly entered as electors, and that also must be regarded a matter of substance. The decision in *Rattan Anmol Singh's* (1), case was discussed by their Lordships of the Supreme Court in *Pratap Singh v. Shri Krishna Gupta* (2), and the learned counsel for the appellant maintained that the previous view had been at least partially modified. In *Pratap Singh's* (2), case the question before their Lordships was if under the relevant rules the occupation of the candidate had to be mentioned in the nomination form and their Lordships held that omission to mention the occupation on the nomination paper was not a matter of substance. Here again, the test laid down was that that omission did not go to the root of the matter so long as

(1) A.I.R. 1954 S.C. 510.

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

there was any other material in the nomination paper to enable the candidate to be indentified beyond doubt. In this sense, there was no modification of the earlier decision in *Rattan Anmol Singh's* case. The next case requiring consideration is that of *Durga Shankar Mehta v. Raghuraj Singh and others* (1), where it was held that when the candidate appears to be properly qualified on the face of the electoral roll and the nomination paper and no objection is raised to the nomination, the Returning Officer has no other alternative but to accept the nomination, and in that case the acceptance of the nomination paper by the Returning Officer must be deemed to be a proper acceptance. It is certainly not final and the Election Tribunal may, on evidence placed before it, come to a finding that the candidate was not qualified at all, but then the election should be held to be void on the ground of the constitutional disqualification of the candidate and not on the ground that his nomination was improperly accepted by the Returning Officer. This authority gives some indication of the converse proposition, viz., that where the candidate or the proposer is not properly qualified on the face of the electoral roll and the nomination paper and the nomination is rejected, it would be not an improper rejection. In a case such as the present one, where the nomination paper has been rejected on account of the failure to comply with any of the provisions of section 33 (*vide* clause (b) of subsection (2) of section 36 as distinct from the requirements as to qualification mentioned in clause (a) of the same subsection), the consideration of the propriety or otherwise of rejection of the nomination papers cannot be divorced from the state of evidence before the Returning Officer at the relevant time. The scheme of the Act is that the various stages in

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(1) A. J. R. 1954 S. C. 520.

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the election process should be gone through in orderly sequence with the greatest possible expedition and leaving at every stage the least possible room for controversy. According to subsection (8) of section 36, immediately after all the nomination papers have been scrutinized and decisions accepting or rejecting the same have been recorded, the Returning Officer shall prepare a list of validly nominated candidates and affix it to his notice board. In a case such as that before us, when the entries with regard to the two proposers, i.e., electoral roll Nos. 7852 and 7853, were found to be deleted by the supplementary electoral roll, Exhibit P.W. 12/2, and there was nothing before the Returning Officer to show that those entries existed at other numbers, the Returning Officer could not be expected to hold up the scrutiny until he could go through the thousands of names in the entire electoral roll of the constituency in order to discover if possibly the names of the proposers concerned were at some other numbers. It would be to my mind, immaterial if at some subsequent stage such as that of the trial of the election petition, the candidates concerned could point out that the names of their proposers were entered under totally different serial numbers and at other places in the electoral rolls. To hold in such circumstances that the nomination papers were improperly rejected by the Returning Officer would open the door wide to much uncertainty, expense and chicanery of which there is perhaps already too much in elections. It is conceivable that a candidate may deliberately present a defective nomination paper knowing that it would be rejected at the scrutiny, but in case he failed in the election, to keep an argument in reserve for invalidating the election. I am not unaware that some hardship is involved in the present case. There was a mistake in the preparation of

the electoral rolls, because the name of the proposer Rawal Chand (Rawal Ram) was entered at two places in the original electoral roll, Exhibit P.W. 12/1, but a reference to the appellant's nomination paper, Exhibit P.W. 1/F, would show that the appellant was aware that there was a supplementary electoral roll in as much as the appellant's own name was in that supplementary roll. The hardships to the returned candidates in such cases would, however, be infinitely greater as they might have to undergo the trouble and expense of fighting election again on account of no fault of theirs.

The conclusion, therefore, is that the appellant has failed to show that either of the nominations referred to in issues Nos. 1 and 3 was improperly rejected, and I would, therefore, dismiss the appeal with costs. Counsel's fee Rs. 250 (two hundred and fifty).

DULAT, J.—I agree.

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