

Nahinder Singh
alias Wahinder
 Singh
 and others
 v.

The Union of
 India

—
 Falshaw, J.

the view of the Government that the date of expiration was the 14th and not the 4th of December, 1952.

Putting the case at its worst it seems to me that if the learned counsel for the petitioners is right on this point the only effect would be that any orders purporting to be passed under the Act between the 4th and the 14th of December, 1952, would be invalidated but in any case I am of the opinion that it is extremely unlikely that in introducing retrospective legislation of this kind either the Punjab Legislature or the President, under whose rule the State of Pepsu was at the time, could possibly have made a mistake of this kind on such a point. I, therefore, consider that there is no force in the objections of the petitioners to the validity of the law under which the impugned orders were passed and would order that the writ petitions now be dealt with by a learned Single Judge in connection with any other point that may arise out of them.

Chopra, J.

CHOPRA, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before S. S. Dulat and I. D. Dua, JJ.

SHRIMATI OM PRABHA JAIN,—*Appellant*

versus

GIAN CHAND AND ANOTHER,—*Respondent.*

First Appeal From Order No. 4-E of 1959.

*Representation of the People Act (XLIII of 1951)—
 Sections 33 and 36—Candidate's name not on the electoral
 roll on the date of nomination but on the roll at the time of
 scrutiny—Acceptance of nomination paper—Whether valid.*

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Held, that the qualification of a candidate to stand for election has to be examined not with reference to the date of his nomination alone but also with reference to the date fixed for the scrutiny of that nomination. The returning officer is required to apply his mind to the validity of the nomination only on the date of the scrutiny and if a candidate is duly qualified on that date, the returning officer cannot reject his nomination. The acceptance of nomination papers of a candidate whose name was not borne on the electoral roll on the date of nomination but had been placed on the electoral roll before the date of scrutiny was valid and proper.

First Appeal from the order of Shri Rameshwar Dial, Election Tribunal, Ambala, dated 29th August, 1959, declaring the appellant's election to the Punjab Vidhan Sabha, invalid...

D. N. AGGARWAL, R. N. AGGARWAL AND PREM CHAND JAIN, for the Appellants.

D. C. GUPTA, AND D. S. NEHRA, for the Respondents.

JUDGMENT

DULAT, J.—This is an appeal under section 116A of the Representation of the People Act, 1951, against an order of the Election Tribunal declaring the appellant's election to the Punjab Vidhan Sabha, invalid. The facts are not in dispute, and the appeal turns wholly on a question of law.

Dulat, J.

The appellant, Shrimati Om Prabha Jain, was elected to the Punjab Vidhan Sabha from the Kaithal Constituency in the Karnal District. The notification calling upon the constituency to elect a member was issued by the Governor on the 19th January, 1957. The last date for filing nomination papers was fixed as the 29th January, 1957, and the date for the scrutiny of nomination papers was the 1st February, 1957. It appears that the appellant's name was not on the electoral roll when the constituency was called upon to elect their representative, but she made an application to the Chief Electoral Officer for the inclusion of her name on

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the ground that she was qualified. This application was allowed and the appellant's name ordered to be included in the electoral roll of the Jind Constituency on the 31st January, 1957. The appellant filed her nomination paper on the 29th January, 1957, as she was bound to, that being the last date. In the column for filling the electoral roll number, the appellant mentioned that she had applied for her name being entered on the roll, but, of course, she could not mention any roll number. After her name was included in the roll, the appellant obtained a certified copy of the electoral roll of the Jind Constituency, and this certified copy she presented to the returning officer at the time of the scrutiny of the nomination paper on the 1st February, 1957. Objection was raised at that stage to the appellant's nomination on the ground that when she had filed her nomination paper, she was not an elector, as her name was not on the electoral roll. The returning officer, however, overruled this objection, finding that the appellant's name was included in the electoral roll as shown by the certified copy produced by her. The returning officer was of the view that as the appellant was qualified to stand for election on the 1st February, 1957, her nomination paper could not be rejected. At the polls the appellant secured the largest number of votes and was, therefore, declared elected. This led to an election petition by Gian Chand, respondent, challenging the election on the ground that the appellant's nomination paper had been improperly accepted and that had materially affected the election. The argument, again, was that the appellant's name not being on the electoral roll at the time her nomination paper was filed, she was not qualified to stand for election. This argument found favour with the Election Tribunal and the election was, therefore, declared invalid.

It is contended on behalf of the appellant that the returning officer was required to scrutinize the nomination papers on the 1st February, 1957, and that he could have rejected the appellant's nomination only on one of the grounds mentioned in section 36 of the Representation of the People Act, 1951, and, as none of these grounds existed, the returning officer could not have rejected her nomination paper, as indeed he did not, and his order cannot be called improper. The question, therefore, is whether the returning officer acted improperly in accepting the appellant's nomination paper. This, of course, he did on the 1st February, 1957. It is clear that he could have rejected the nomination paper only if any of the grounds mentioned in section 36 of the Act of 1951, existed. On these matters both counsel are in substance agreed. The controversy merely is whether any valid ground for the rejection of the appellant's nomination paper existed on the 1st February, 1957. The respondent's contention is, as held by the Election Tribunal, that because the appellant's name was not on the electoral roll on the 29th January, 1957, she could not have been validly nominated to stand for election and, that being so, the nomination should have been rejected. This argument ignores the state of facts existing on the 1st February, 1957, and focusses attention on the state of things existing on the 29th January, 1957. It is, however, clear that the returning officer was required to apply his mind to the validity of the nomination only on the 1st February, 1957, and it is admitted that he could not have rejected the nomination on the 29th January, 1957. It seems to me, therefore, that the state of facts existing on the 1st February, 1957, had more importance than the facts existing on the 29th January, 1957, and the returning officer was justified in giving due weight to those facts. It is said that if this view

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prevails, then anybody not qualified to stand for election on the date of nominations would still be entitled to do so in case the disqualification happens to be removed by the date of scrutiny. That would be so, but I see no harmful consequence resulting from it, and, if a person is in fact qualified to stand for election at the time his or her nomination paper is scrutinized, there seems no reason why he or she should be debarred from so doing. There is nothing in the Representation of the People Act, 1951, as it now stands, to indicate that Parliament's intention was to place all the emphasis on the date of the nomination and none on the date of the scrutiny, and if, therefore, the returning officer in this case held that the appellant was entitled to stand for election—as she was on the date of the scrutiny qualified to do so—, it seems to me difficult to say that his decision was improper.

The Election Tribunal, it appears, largely depended on a decision of the Madras High Court, in *Balasubrahmanyam v. Election Tribunal* (1). That decision does support the argument adopted by the Election Tribunal, but the decision was made before the recent amendments to the Representation of the People Act, 1951, and some of those amendments are significant. The Madras High Court relied for their view on the definition of an 'elector' contained in section 2 of the Act as it then stood. The definition ran thus—

“ 'elector', in relation to a constituency, means a person whose name is for the time being entered in the electoral roll of that constituency.”

Much of the argument before the Madras High Court turned on the expression “whose name is

(1) 7 E.L.R. 496

for the time being entered” and also on the words “is qualified”. It is significant that this definition has since then been altered and in the present Act the words are—

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“‘elector’ in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force, and who is not subject to any of the disqualifications mentioned in section 16 of the Representation of the People Act, 1950.”

The other amendments worth mentioning concern sections 33 and 36. In section 33, before the amended Act, sub-section (6) ran thus—

“If at the time of the presentation of the nomination paper the returning officer finds that the name of the candidate is not registered in the electoral roll of the constituency for which he is the returning officer, he shall for the purposes of sub-section (5) require the person presenting the nomination paper to produce either a copy of the electoral roll in which the name of the candidate is included or a certified copy of the relevant entries in such roll”

and sub-section (5) was in these words—

“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 and seconder as entered in the nomination paper are the same as those entered in the electoral roll.”

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In the present Act, sub-section (4) is substantially the same as sub-section (5) of the previous Act, but sub-section (5) of the present Act, which has taken the place of the old sub-section (6), is differently worded and it now runs as under :—

“33. (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 shall, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny.”

In the present case the appellant was an elector of a different constituency, and it is clear that she was required to file a copy of the electoral roll or its relevant part before the returning officer, but this she could do at the time of the scrutiny. This clear reference to the time of scrutiny indicates that Parliament was attaching considerable importance to the stage of scrutiny and deliberately made a change in the language of the Act for that purpose. Similarly, there have been changes made in section 36, the language of sub-section (4) concerning technical defects in a nomination paper having been changed and sub-section (7) differently worded. Counsel have also pointed to other amendments in the Act which it is unnecessary to mention. It is admitted that the Representation of the People Act, 1951, has been extensively amended obviously in view of several decisions under the old Act, and it is in these circumstances not possible to attach very great weight to decisions made under the Act as it stood before the amendments. Apart from this aspect of the matter, I find myself on principle unable to accept the view

that the qualification of a candidate to stand for election must be examined with reference to the date of his nomination alone and not with reference to the date fixed for the scrutiny of that nomination, for, as far as I can see, nothing is to be gained by adopting such a view, while considerable hardship can be avoided if the view is taken that if a candidate is fully qualified on the date of the scrutiny of his nomination paper, he need not be debarred from seeking election. It was said in the course of arguments that if this view is logically pursued, then there should be no objection to a candidate acquiring the necessary qualification even after the date of scrutiny, but that suggestion entirely ignores the procedural inconvenience that is bound to result if the matter is delayed beyond the date of scrutiny.

Reference is made on behalf of the respondent to a decision of the Patna High Court, *Chandra Shekar v. Jai Prakash* (1). That decision, however, is of no assistance in the present case, for there it was found as a fact that the name of the candidate had been included in the electoral roll before the filing of the nomination paper, and the argument raised before us, therefore, never arose in that case. No other decided case directly bearing on the question has been cited before us, although reference was made in passing to a decision of the Supreme Court in *Rattan Anmol Singh v. Ch. Atma Ram* (2), which decision concerns a wholly different matter.

The present is not a case where an otherwise qualified candidate may have been kept out of the election contest. The question here is whether an otherwise qualified candidate should have been debarred from fighting the election. On considering the matter in the light of the provisions of the

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(1) A.I.R. 1959 Patna 450

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

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Representation of the People Act, 1951, it appears to me that the returning officer did not act improperly when he accepted the appellant's nomination paper, and the Election Tribunal was, not justified in holding to the contrary.

As an alternative argument it was contended that the appellant's nomination ought to have been rejected on the ground that her nomination paper did not contain her electoral roll number and there was thus failure to comply with the provisions of the Representation of the People Act, 1951. It is, however, obvious that the appellant could not possibly have mentioned her electoral roll number at the time of filing the nomination paper, and, if the view be correct that she was entitled to stand for election because by the date of the scrutiny her name had been included in the electoral roll, then the omission of the electoral roll number from the nomination paper would in no sense be a substantial defect. The alternative arguments is thus pointless.

For these reasons, I would allow this appeal and set aside the order of the Election Tribunal and dismiss the respondent's election petition, but, considering all the circumstances, leave the parties to their own costs throughout.

DUA, J.— I agree.

Dua J.

B.R.T.

APPELLATE CIVIL

Before G. D. Khosla, C. J., and Tek Chand, J.

CUSTODIAN, EVACUEE PROPERTY AND OTHERS,—
Appellants.

versus

FIRM DHARAM PAUL-ASU RAM AND OTHERS,—
Respondents.

Execution Second Appeal No. 258 of 1955.

Administration of Evacuee Property Act (XXXI of 1950)—Sections 4 and 17(2)—Whether bar the pleas of res judicata and limitation in execution proceedings.

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Jan., 14th