

Mangal Sain was his partner, and Mangal Sain was all the time contesting the auction. It is only when Mangal Sain's petition was rejected on the ground that he was not a claimant, that the petitioner was forced to step in. In these circumstances it cannot be held that the petitioner is guilty of laches. As a matter of fact, there is no clear finding given by any of the Rehabilitation Authorities that Mangal Sain was not a partner of the petitioner. Had there been such a finding, the position might have been different. I am, therefore, unable to accept the second contention of Mr. Sarhadi.

(12) The last contention of Mr. Sarhadi is that the petitioner did not specifically say in his petition that he had a claim of more than Rs. 4,000. It is not denied that the petitioner did say that he was a claimant whose claim had to be settled. Therefore, it is merely not stating a fact fully, but the relevant fact has been stated, and I have held that it will still be open to the department to determine whether the claim of the petitioner is of the requisite value so as to give him a right to the property under rule 25. This disposes of all the contentions of Mr. Sarhadi.

(13) For the reasons recorded above, I allow this petition, quash the orders of the Chief Settlement Commissioner, the Settlement Commissioner and the Managing Officer, and direct them to decide the claim of the petitioner on merits. In the circumstances of the case there will be no order as to costs.

PREM CHAND JAIN, J.—I agree.

R.N.M.

LETTER PATENT APPEAL

Before Mehar Singh, C.J. and Bal Raj Tuli, J.

BIHARI LAL,—*Appellant.*

versus

DEPUTY COMMISSIONER, AMRITSAR AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 237 of 1968.

July 24, 1968.

Punjab Municipal Election Rules (1952)—Rule 11—Nomination papers containing declaration of a candidate that he belongs to Scheduled Caste—Such

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declaration not verified by prescribed authority—Certificate of a Magistrate about the candidate being of Schedule Caste, on the verification of another person, accompanying the nomination paper—Such nomination paper—Whether valid.

Held, that the declaration of a candidate, contained in the nomination paper filed under the Punjab Municipal Election Rules, 1952, to the effect that he belongs to a Scheduled Caste recognised by the Punjab Government but not verified by any of the prescribed authorities, cannot be considered to be a duly verified declaration of the candidate in accordance with rule 11(2) of the Rules, even if it is accompanied by a certificate of a magistrate to the effect that, on verification from another person, the candidate is certified to be a Scheduled Caste. What the Magistrate or any other prescribed authority has to verify is the declaration of the candidate himself made before him on solemn affirmation to the effect that he is a member of a caste which is a Scheduled Caste of the State of Punjab. The certificate of the Magistrate or any other prescribed authority should be on candidate's own testimony and not on the verification of somebody else.

[Paras 9 and 12].

Letters Patent Appeal under Clause 10 of the Letters Patent against the judgment of the Hon'ble Mr. Justice R. S. Sarkaria dated 20th February, passed in Civil Writ No. 1988 of 1967.

BALBIR SINGH BINDRA WITH B. S. KHOJI AND MRS. SURJIT BINDRA ADVOCATES,
for the Appellant.

R. N. NARULA, ADVOCATE, for Respondent No. 1.

J. S. REKHI ADVOCATE, for Respondents 3 and 4.

NEMO, for Respondents 2 and 5.

JUDGMENT.

TULI, J.—This Letters Patent Appeal has been directed against the order of R. S. Sarkaria, J., dated 20th February, 1968, accepting the writ petition of Nanak Singh and Harbans Lal (petitioners in the writ petition) who had questioned the election of Bihari Lal, from the reserved seat of double-member ward No. 38 of the Municipal Committee, Amritsar.

(2) Under rule 3 of the Municipal Election Rules, 1952, the Deputy Commissioner, Amritsar, framed and published a programme

for election to the Municipal Committee, Amritsar, specifying August 25, 1967, as the last date for filing nomination papers, September 2, 1967 as the date for holding scrutiny of the nomination papers and October 2, 1967, as the date of the poll. The revisions, if any, against the orders of scrutiny of the nomination papers were decided by the Deputy Commissioner, on 8th September, 1967, and the last date for withdrawal of the nominations was 11th September, 1967.

(3) Nanak Singh Harbans Lal and Bihari Lal filed nomination papers for election from the Reserved seat of ward No. 38 before the Returning Officer, Shri P. L. Kapur, on 25th August, 1967. The nomination papers of Nanak Singh and Harbans Lal (petitioners in the writ petition) were not accompanied by the requisite declaration verified by the competent authority that the candidates were members of the Scheduled Castes. The nomination paper of Nanak Singh was accompanied by a certificate of the Sub-Divisional Officer (Civil), Amritsar, reading as under :—

“Scheduled Caste Certificate

Certified on the verification of Shri Mohinder Singh, District Welfare Officer, Amritsar, that Shri Nanak Singh, son of Shri Daya Singh, resident of Mohalla Haripura, Amritsar, belongs to Megh community which has been recognised as a Scheduled Caste by the Punjab Government.”

(4) A similar certificate accompanied the nomination paper of Shri Harbans Lal. The nomination paper of Bihari Lal contained the declaration that he belonged to the Megh community which has been recognised by the Punjab Government as a Scheduled Caste but this declaration of his was not verified by any of the prescribed authorities. His nomination paper was accompanied by a certificate of Sub-Divisional Officer (Civil), Amritsar, reading as under :—

“Scheduled Caste Certificate

Certified on the verification of Shri Karnail Singh, M.L.A. and Shri Gurdeep Singh Wadala, Member, Verka Block.

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Samiti that Shri Behari Lall, son of Shri Kirpa Ram, resident of Niwin Abadi, Haripura, Amritsar, belongs to Megh community which has been recognised by the Punjab Government as a Scheduled Caste."

(5) On 2nd September, 1967, the Returning Officer, rejected the nomination papers of all the three candidates for the reserved seat of ward No. 38 on the ground that they were not accompanied by their declarations, duly verified by any of the competent authorities, as is required by rule 11(2) of the Municipal Election Rules, 1952. The Returning Officer while rejecting the nomination papers of Bihari Lal and Harbans Lal for the reserved seat, accepted their nomination papers for the general seat of the aforesaid ward No. 38. On 4th September, 1967, all the three candidates filed revisions against the order of the Returning Officer to the Deputy Commissioner who accepted the revision of Bihari Lal holding "that the non-existence of the verification on the nomination paper itself cannot be deemed to be non-compliance of the law as a separate certificate to the same effect (Scheduled Caste) has been attached". As a result of this order of the Deputy Commissioner, Bihari Lal, appellant, was declared elected unopposed on 8th September, 1967, to the reserved seat of the ward No. 38 under rule 20 of the Municipal Election Rules, 1952.

(6) On 15th September, 1967, Nanak Singh and Harbans Lal filed a writ petition under Article 226 and 227 of the Constitution praying for the issuance of a writ of **quo warranto** removing respondent No. 3 from his office as elected Member of the Municipal Committee, Amritsar, on the ground that the nomination paper of respondent No. 3 had been accepted by the Deputy Commissioner in a most arbitrary and unauthorised manner by employing double standards, i.e., he accepted the revision of Bihari Lal while rejecting the revisions of Nanak Singh and Harbans Lal although they also obtained similar certificates from the Sub-Divisional Officer (Civil), Amritsar. In para 10(f) of the petition, it is further pleaded that the impugned order is not only contrary to law but is also **mala fide** and is actuated by motives and considerations totally extraneous to the principles of election law; the revision of Bihari Lal has been allowed by the Deputy Commissioner positively under **pulls and pressures** of the ruling United Front of Punjab, of which the Communist Party of India constitutes a very powerful constituent; and the Deputy Commissioner went out of his way to

accommodate and facilitate the unopposed return of Bihari Lal as desired and directed by Sarvshri Sat Pal Dang and Krishan Lal, Ministers of the Punjab Government, with whom the Deputy Commissioner was reported to be in constant touch in this connection.

(7) The only point argued before us is that it is not necessary that the declaration of the candidate to the effect that he belongs to a certain community which has been recognised as a Scheduled Caste by the Punjab Government and its verification by one of the prescribed authorities should be on the nomination form itself as has been prescribed under rule 11 of the Municipal Election Rules and is appended as Form I to the said rules. According to the learned counsel for the appellant, this form has been prescribed under rule 11(1) of the Municipal Election Rules, whereas the requirement of filing of declaration, duly verified by a Magistrate, is prescribed in rule 11(2), according to which the nomination paper of a candidate for a seat reserved for the Scheduled Castes is to be accompanied by a declaration verified by any of the authorities mentioned in sub-rule (1) that the candidate is a member of Scheduled Castes for which the seat has been so reserved and the declaration specifies the particular caste of which the candidate is a member. The emphasis has been laid on the words "accompanied by" for the argument that if the nomination paper has the declaration, duly verified, on a separate paper attached to it, the requirement of sub-rule (2) of rule 11 is duly complied with and it is not necessary that the declaration should be on the nomination form itself. In support of this argument, the learned counsel has relied upon the judgment of Shamsher Bahadur, J., in **Kartar Singh v. The State of Punjab and others (1)**, in which the learned Judge in reference to rule 11(2) of the Municipal Election Rules held :—

"As I read these rules, the nomination paper of a candidate for a reserved seat has to be accompanied by a declaration verified by a Magistrate, Sub-Registrar of the Registration Department, Zaildar, Lambardar or member of a local authority to the effect that he is a member of the Scheduled Caste. The only ground on which the nomination paper has been rejected appears to be that the verification has not been properly sworn in and is not on the back of the nomination form in the space provided

(1) C.W. 1401 of 1964 decided on 12th November, 1964.

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for this purpose. It is to be observed that sub-rule (2) makes mention of the fact that the nomination paper has to be 'accompanied' by a declaration duly verified and it is, therefore, a substantial compliance if the requisite verification is not made on the nomination form itself where space is provided for this purpose. What has been done in this case is that Ram Chand, President of the Municipal Committee, Dhariwal, who is undoubtedly a member of the local authority under sub-rule (1) has verified that the petitioner is a Mazhabi Sikh belonging to a Scheduled Caste. It is specifically stated that the signatories who are District Welfare Officer and Ram Chand, have both verified this declaration. In my opinion, nothing more was required to fulfil the requirements of sub-rule (2) and the order of the Returning Officer cannot be said to be in harmony with the statutory rules."

(8) The learned counsel for the appellant has also invited our attention to the judgment of their Lordships of the Supreme Court in *S. Harcharan Singh v. S. Mokinder Singh and others* (2), for the proposition that where substantial compliance is made with a provision in the Act or the Rules and the defect is not of a substantial character, the nomination paper should not be rejected. Their Lordships observed as under :—

"The statutory requirements of election law must be strictly observed. An election dispute is a statutory proceeding unknown to the common law, it is not an action at law or in equity. As a copy of the relevant entries from the electoral roll relating to the appellant, it was indisputably defective. But under section 35(4), the Returning Officer is entitled to accept the nomination paper even if it be defective, if the defect is not of a substantial character; indeed he is enjoined not to reject the nomination paper unless the defect is of a substantial character. The details for identifying the appellant as an elector were duly furnished. His age was mentioned in the nomination

(2) C.A. 1554 of 1967 decided on 1st May, 1968.

paper, though it was not to be found in the certified copy produced by the appellant. No objection was raised to the acceptance of the nomination paper on behalf of the contesting candidate and his agents present at the scrutiny. The Returning Officer satisfied himself by personal inquiry that the appellant was above the age of twenty-five and, therefore, competent to stand for election. It is true that he did not apply his mind to the absence of house number entered in the electoral register. But he did not come to the conclusion that even though the copy produced was defective, the defect was of a substantial character. The decision of the Returning Officer in the matter is not final and in appropriate cases, it is open to the Court to reach a different conclusion in an election petition. But on a careful review of the proceedings of the Returning Officer, we are of the opinion that the Returning Officer did not err in not rejecting the nomination paper; the defects in Exhibit P.W. 1/4 were not of substantial character."

(9) On the basis of this judgment, the learned counsel has submitted that the declaration of Bihari Lal, appellant, was contained in the nomination paper to the effect that he belonged to Megh community which had been recognised by the Punjab Government as a Scheduled Caste and although this declaration of his was not verified by any of the prescribed authorities, the certificate of the Sub-Divisional Officer (Civil), Amritsar, which accompanied the nomination paper should be considered as the verification of the declaration of Bihari Lal in accordance with rule 11(2) of the Municipal Election Rules. I regret I cannot agree with this submission of the learned counsel, Rule 11(2) is in these terms :—

"In a constituency where a seat is reserved for the Scheduled Castes, no candidate shall be deemed to be qualified to be chosen to fill that seat unless his nomination paper is accompanied by a declaration verified by any of the authorities mentioned in sub-rule (1) that the candidate is a member of Scheduled Castes for which the seat has been so reserved and the declaration specifies the particular caste of which the candidate is a member."

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(10) The prescribed Form I provides the declaration to be made by a Scheduled Caste candidate as under :—

“I hereby declare that I am a member of the _____caste
which is a Scheduled Caste of the State of Punjab.
Date_____ Signature of candidate.”

Below this is the following form of verification :—
“Verification by Magistrate.

The above declaration is solemnly affirmed before me
by_____who is personally known to me or
who has been identified to my satisfaction by_____.

Place_____ Signature of verifying
Date_____ authority with full
designation.”

(11) The prescribed verification as set out above shows that what has to be verified is the declaration of the candidate that he is a member of a certain caste which is a Scheduled Caste of the State of Punjab. The learned counsel for the appellant, however, says that the person verifying has to certify that the candidate is a member of one of the Scheduled Castes for whom the seat has been so reserved. He has then referred to the meaning of the word “verify” in various dictionaries. The meanings given to the word “verify” in Webster’s Third New International Dictionary are ‘to confirm or substantiate in law by oath or proof’, ‘add the legal verification to (a pleading or petition)’, ‘to swear to or affirm the truth of’, ‘to second the testimony of’, ‘affirm the truthfulness of’, etc. The Oxford English Dictionary gives the following meanings among others to the word “verify” :

“ ‘To prove by good evidence or valid testimony’, ‘to testify or affirm formally or upon oath’, ‘to testify to’, ‘to assert’, ‘to affirm or confirm, as true or certain’, ‘to support or back up by testimony’ etc., etc.”

(12) From these meanings, the learned counsel argues that the word “verify” as used in rule 11(2) means that the prescribed authority should add to the declaration of the candidate by way of

testimony that the candidate belongs to a caste which is a Scheduled Caste of the State of Punjab and since the certificate given by the Sub-Divisional Officer (Civil), Amritsar, satisfies that requirement, it should be treated as verification of the declaration of the appellant contained in his nomination paper. The argument is not sound for two reasons : Firstly, according to the prescribed form what the Magistrate or any other prescribed authority has to verify is the declaration of the candidate made before him on solemn affirmation to the effect that he is a member of a certain caste which is a Scheduled Caste of the State of Punjab. The declaration of Bihari Lal has admittedly not been verified by any authority in the present case. Secondly, even if the interpretation of the learned counsel is accepted, the certificate of the Magistrate or any other prescribed authority should be on his own testimony and not on the verification of somebody else. The certificate produced by Bihari Lal which has been reproduced above clearly shows that the Sub-Divisional Officer (Civil) was certifying that Bihari Lal belonged to Megh community which is a Scheduled Caste of the State of Punjab on the testimony or verification of Karnail Singh, M.L.A. and Gurdeep Singh. He was not making this declaration from his own personal knowledge nor did he say that Bihari Lal had made such a declaration before him. The certificate is also not signed by Karnail Singh or Gurdeep Singh as was the case before Shamsheer Bahadur, J., in *Kartar Singh v. The State of Punjab and others* (1).

(13) For the reasons given above, I have come to the conclusion that the nomination paper of Bihari Lal was defective in the sense that it did not contain nor was accompanied by a declaration, duly verified by prescribed authority as required by rule 11(2) of the Municipal Election Rules and this defect was of a substantial character. The Returning Officer, therefore, rightly rejected his nomination paper and the Deputy Commissioner committed a grave error in law in accepting his nomination paper and declaring him as elected. The result is that this appeal fails and is dismissed but in the circumstances of the case, the parties are left to bear their own costs.

MEHAR SINGH, C.J.—I agree.

R. N. M.