

CASE NO.:
Appeal (civil) 7193 of 2004

PETITIONER:
Ram Bhual

RESPONDENT:
Ambika Singh

DATE OF JUDGMENT: 29/09/2005

BENCH:
CJI R.C. LAHOTI, G.P. MATHUR & P.K. BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T

P.K. BALASUBRAMANYAN, J.

1. In the elections to the Uttar Pradesh Legislative Assembly held on 21.02.2002, the appellant herein was declared elected from 166, Kauriram Assembly Constituency (General). The election of the appellant was challenged by the respondent, the defeated candidate, by Election Petition No. 5 of 2002 filed in the High Court of Allahabad under Section 80 read with Section 81 of the Representation of the People Act, 1951. The challenge to the election was rested on Section 100 (1) (c) of the Act. The plea was that the Returning Officer, while scrutinizing the nominations, had wrongly rejected the nomination of an independent candidate Sita Ram examined as P.W. 2. The appellant resisted the election petition by questioning the right of the election petitioner to file the election petition based on the rejection of the nomination of another candidate, who had not come forward to challenge that rejection. The High Court, based on the decision of this Court in Somnath Rath Vs. Bikram K. Arukh & ors. [(1999) Supp. 2 S.C.R. 410], took the view that the wrongful rejection of the nomination of any candidate can be taken as a ground for challenging an election in an election petition by the defeated candidate and hence the election petition was maintainable. It then proceeded to consider whether the nomination paper of Sita Ram, P.W. 2 was improperly rejected. Having come to the conclusion, on the pleadings and the evidence in the case, that the nomination of Sita Ram was improperly rejected by the Returning Officer by Ex. A-2 order, it held that the election of the appellant was liable to be declared void in terms of Section 100 (1) (c) of the Act. Thus the election petition was allowed and the election of the appellant was declared void. Feeling aggrieved, the appellant has filed this appeal under Section 116-A of the Act.

2. P.W. 2 Sita Ram, being an independent candidate, had to be proposed by at least ten (10) qualified persons. While furnishing the details of the qualified persons, Sant Lal, the ninth proposer, was shown as Serial No. 392 in Part 91 in the Voters' list. The Returning Officer on finding that Serial No. 392 in the Voters' list was not Sant Lal, straightaway rejected the nomination of Sita Ram. Sita Ram did not agitate the matter further, though he claimed in his evidence that he had given a complaint in writing to the Returning Officer, the same day, and on his having failed to receive it, had taken it to the District Collector who told him that his grievance will be looked into after the elections. But nothing was produced to show that a complaint in writing was made by Sita Ram.

3. The election petitioner pleaded that the name of Sant Lal, the ninth proposer of Sita Ram, was at Serial No. 352 of the same page of the Voters' list as Serial No. 392 and when the nomination of Sita Ram was taken up for scrutiny and the Returning Officer while verifying the

nomination, took the stand that there was no voter by name Sant Lal at Serial No.392, Sita Ram pointed out to the Returning Officer that serial number shown was only an error and that Sant Lal was the voter whose name was shown at Serial No.352 which was on the same page of the Voters' list; that this was a minor error which was liable to be overlooked and his nomination accepted. It was further pleaded that the Returning Officer without following the mandate of Section 36 of the Act and especially sub-Section (4) thereof and the proviso to Section 33(4) of the Act had wrongly rejected the nomination and the rejection was clearly bad in law. We must say that these facts so pleaded are material particulars within the meaning of Section 83(1) of the Act. *Udhav Singh Vs. Madhav Rao Scindia* (AIR 1976 SC 744) can be referred to in this connection. In his written statement, the appellant, the returned candidate, did not deny the allegation that Sita Ram was present at the scrutiny of the nomination papers and had pleaded with the Returning Officer to accept his nomination, since the ninth proposer, Sant Lal was in the Voters' list and the small clerical error in showing the serial number was liable to be ignored. In the light of this position emerging from the non-traverse in the written statement, the judge assigned for trying the election petition, appreciated the evidence in the case and accepting the evidence of the election petitioner as P.W. 1 and that of Sita Ram examined as P.W. 2, in the light of the evidence led by the appellant as R.W. 1, held that the election petitioner had proved that when the Returning Officer took the nomination paper of Sita Ram for scrutiny, Sita Ram had pointed out that there was no defect except in showing the serial number of Sant Lal in the Voters' list as 392, whereas it was really Serial No.352 in Part 91 on the same page of the list. The error in terms of Sections 33(4) and 36(4) of the Act was only a minor error or an error that should have been permitted to be cured by Sita Ram and in that situation, it had to be held that the rejection of the nomination of P.W. 2 Sita Ram, was improper and in the light of Section 100 (1) (c) of the Act, the election of the appellant had to be declared void. Thus, the election petition was allowed by the High Court.

4. Learned counsel for the appellant submitted that the appellant had been declared elected at the hustings and the court should be slow to upset the popular mandate given to the appellant. He contended that the evidence of P.Ws. 1 and 2 and that of R.W. 1 was not properly appreciated by the High Court. The burden was on the election petitioner to establish his case that the nomination of P.W. 2 was improperly rejected and no independent evidence had been adduced by the election petitioner to substantiate his case on that aspect even though the presence of another at the relevant time was specifically pleaded. Learned counsel pointed out that P.W. 2 Sita Ram though had stated that he had pointed out orally to the Returning Officer that there was only a minor error in showing the serial number of Sant Lal, the ninth proposer, in his nomination, had not produced the copy of the written complaint he claims to have made to the Returning Officer immediately after the rejection of his nomination paper and on his refusal to receive it, to the District Collector. Learned counsel submitted that the parties had joined issue on the question whether the nomination of Sita Ram had been improperly rejected and the absence of pleadings in the written statement disputing the facts and the events as unfolded before the Returning Officer, was not a ground to upset the election of the appellant. Learned counsel relied on the decisions in *Bhagwati Prasad Vs. Shri Chandramaul* [(1966) 2 SCR 286], *Ram Sarup Gupta (Dead) by LRs. Vs. Bishun Narain Inter College & Ors.* [(1987) 2 SCC 555], *Brij Mohan Vs. Sat Pal* [(1985) 2 SCC 652], *Lila Krishan Vs. Mani Ram Godara & ors.* [(1985) Suppl. SCC 179], *Rafiq Khan & Anr. Vs. Laxmi Narayan Sharma* [(1997) 2 SCC 228], *Bhogendra Jha Vs. Manoj Kumar Jha* [(1997) 2 SCC 236] in support of his contention. He brought to our notice the decision in *Narender Singh Vs. Mala Ram & Anr.* [(1999) 8 SCC 198] to point out how evidence in an election trial has to be appreciated. He also went back to the decisions of the Privy Council in *Mohummud Zahoor Ali Khan Vs. Mussumat Thakooraanee Rutta Koer, & Ors.* (11 Moores Indian Appeals 468) and *Secretary of State for India in Council Vs. Laxmibai & Anr.* (50 Indian Appeals 49), and the

observations of the Patna High Court in Rudra Pratap Singh & Ors. Vs. Jagdish Maharaj & Ors. (AIR 1956 Patna 116) to submit that defect in pleadings in the Mofussil should not be made much of and the fact that the written statement filed on behalf of the appellant was deficient and the relevant allegations were not even denied, should not be allowed to stand in the way of the appellant arguing that his election should not have been set aside on the materials available. He, thus, submitted that the approach made by the High Court was erroneous and the election petition was liable to be dismissed. He prayed that the appeal may be allowed.

5. Learned counsel for the respondent, on the other hand, relied on Sections 33 and 36 of the Act and the decision in Hira Singh Pal Vs. Madan Lal (AIR 1968 SC 1179) to point out that the improper rejection of the nomination of even a dummy candidate vitiated the election in terms of Section 100 (1) (c) of the Act. He also relied on the very decisions referred to by learned counsel for the appellant, to point out that the appreciation of evidence by the High Court in the light of the pleadings available in the case and the circumstances made out, was fully justified and there was no ground made out for interfering with the decision of the High Court.

6. It is clear that the rejection of the nomination of P.W. 2 by the Returning Officer was only on the ground that out of the ten proposers, the ninth proposer Sant Lal, was described as the voter at Serial No.392 in Part 91 of the Voters' list. It is also clear and it is not disputed, that the name of Sant Lal is actually included in the Voters' list, but as Serial No.352 in Part 91 of the Voters' list. It is also clear that both Serial No.352 and Serial No.392 of Part 91, are printed on the same page of the Voters' list. Therefore, it required no detailed search by the Returning Officer to find out or to satisfy himself that Sant Lal, the proposer, was a voter in that constituency. The order Ex. A-2 passed by the Returning Officer rejecting the nomination of P.W. 2 does not say that the name of Sant Lal was not in the Voters' list. It only says that Serial No.392 shown in the nomination as the serial number of Sant Lal as a voter, was found to be not correct. Therefore, the only dispute, that remained to be decided, was whether P.W. 2 Sita Ram had pointed out this fact to the Returning Officer when the Returning Officer took up his nomination paper for scrutiny.

7. In the pleadings, the election petitioner had in paragraphs 7 and 16 very clearly set out what, according to him, transpired before the Returning Officer at the time of the scrutiny of nominations. It was specifically pleaded that P.W. 2 had pointed out to the Returning Officer that even though there was an error in showing the serial number in the Voters' list of Sant Lal, he was really the voter, shown at Serial No.352 and in spite of it being so shown, the Returning Officer had rejected the nomination of P.W. 2. This pleading has not been denied by the appellant in his written statement either while answering paragraph 7 or while answering paragraph 16. Of course, if one applies the doctrine of non-traverse, it can be said that on the pleadings, the case of the election petitioner on this aspect stands established. The election petitioner examined himself and spoke to the fact that Sita Ram at the time of scrutiny had pointed out that there was only a clerical error while describing the serial number of Sant Lal who was one of his proposers in the Voters' list and that there was no substantive defect in the nomination. As far as we have been able to see, nothing is elicited in the cross-examination which would justify our disagreeing with the appreciation of evidence of the election petitioner as P.W. 1 on this aspect. We may say that the evidence of the witnesses were read out to us twice. The evidence of P.W. 1 was supported by P.W. 2 Sita Ram whose nomination had been rejected. Sita Ram described, what according to him, happened at the time of the scrutiny. In the cross-examination, that part of the story was not even challenged. The challenge was only about the claim of Sita Ram that he had tried to submit a written complaint after the event to the Returning Officer and when the Returning Officer refused to receive it, he had taken that complaint, written in his own hand-writing, to the District Collector. The challenge was whether he had that complaint with him and if so why it was

not produced. It was brought out in cross-examination of Sita Ram that Sita Ram did not have the complaint he had allegedly written on that occasion. When examined as R.W. 1, the appellant in chief-examination did not even say that Sita Ram was not present at the time of scrutiny. Be it noted that he had not pleaded that Sita Ram was not present when the nomination of Sita Ram was taken up for scrutiny by the Returning Officer. He also did not say anything about Sant Lal not being a voter in the constituency or even try to put forward a case that the name occurring at Serial No.352 was not of the proposer Sant Lal. In cross-examination when he was confronted with his written statement and the absence of any plea on these relevant aspects, he tried to say that he had signed the written statement without reading or understanding it and that he had full faith in his counsel and he had signed it as instructed by his counsel. It may also be noted that even in spite of the absence of proper pleadings in the written statement on these aspects, the appellant made no attempt at least to examine the Returning Officer to contradict the assertion of Sita Ram and the election petitioner that Sita Ram had pointed out the relevant facts to the Returning Officer at the time of the scrutiny of the nomination of Sita Ram. We have no doubt in our minds that in the circumstances of the case and in the absence of proper pleadings on the side of the appellant, the least he should have done, was to examine the Returning Officer at least in an attempt to contradict the position adopted by P.W. 2 Sita Ram and the election petitioner. Thus, even if we overlook the rule that 'no amount of evidence can be looked into on a plea never put forward', we have to say that no defence was put up to the case set forth by the election petitioner even in the oral evidence of the appellant.

8. The decisions relied on by the learned counsel in Mohummud Zahoor Ali Khan Vs. Mussumat Thakooranee Rutta Koer, & Ors. (11 Moores Indian Appeals 468) and Secretary of State for India in Council Vs. Laxmibai & Anr. (50 Indian Appeals 49) that the pleadings in Mufassil Courts in our country are loosely drafted and a liberal construction has always to be given to such pleadings, cannot help the appellant. Here is a case of no pleading at all. How far the principles of those decisions can be applied to a High Court like the High Court of Allahabad, one of the chartered High Courts of this Country and that too, more than 50 years after independence, need not be answered in this case. This Court in Badat & Co. Vs. East India Trading Co. [(1964) 4 SCR 19] after referring to Order VIII Rules 3 and 4 of the Code of Civil Procedure, 1908, held that this construction of pleadings would not apply to the Original Side of the High Court of Bombay. But in any election petition, it is well settled by the decisions of this Court, that pleadings are very important and they, in fact, play a large part in adjudications arising under the Representation of the People Act, 1951. In Sushil Kumar Vs. Rakesh Kumar [(2003) 8 SCC 673], this Court stated, "The pleadings in an election petition must likewise be construed strictly." Therefore, the attempt of learned counsel for the appellant to gloss over the failure of the appellant to deny the relevant and crucial allegations in the election petition, cannot succeed. The fact is that the pleadings as regards what transpired before the Returning Officer at the time of scrutiny of nominations remain un-rebutted in the pleadings of the appellant. The pleadings in the election petition also stand supported by the oral evidence of P.W. 1 and P.W. 2, in the light of the oral evidence of the appellant as R.W. 1 in which not even an attempt is made to deny the facts spoken to by P.W. 1 and P.W. 2. It is clear from Section 36(4) of the Act that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. Section 33 (4) of the Act provides that on the presentation of a nomination paper, the Returning Officer has 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. The proviso thereto clearly provides that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the

electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place and in a case where there was an error in the nomination paper in regard to the description, he shall direct that the same be corrected and he could even overlook such errors. It is in the context of the proviso to Section 33(4), that the case set up by the appellant, of Sita Ram drawing the attention of the Returning Officer to the defect being only an error in the serial number and that Sant Lal, the ninth proposer, was actually at Serial No.352 on the same page of the Voters' list assumes great significance. It is a minor defect which obviously should have been got corrected by the Returning Officer even while accepting the nomination and certainly he could not have rejected the nomination on that ground in the light of Section 36(4) of the Act. At the risk of repetition, we may mention that there is no case for the appellant that Sant Lal was not the voter shown at Serial No.352 in Part 91 of the Voters' list.

9. In our view, the High Court has approached the question falling for decision properly and it has appreciated the pleadings and the evidence in the proper manner. No defect could be found either in the approach made by the High Court or in its appreciation of the pleadings and the evidence in the case. The finding of fact recorded by the High Court is the only finding that a court trained in law could have come to, in the circumstances of the case. Therefore, even while exercising our wide jurisdiction under Section 116-A of the Representation of the People Act, 1951, we find no ground to interfere with the decision of the High Court. We, therefore, confirm the decision of the High Court declaring the election of the appellant void. In the result, we dismiss this appeal with costs.