

PETITIONER:
UMED SINGH RAO

Vs.

RESPONDENT:
MANI RAM GODARA & ORS

DATE OF JUDGMENT 08/05/1985

BENCH:
MISRA RANGNATH
BENCH:
MISRA RANGNATH
FAZALALI, SYED MURTAZA
VARADARAJAN, A. (J)

CITATION:
1985 AIR 1079 1985 SCR Supl. (1) 614
1985 SCC Supl. 111 1985 SCALE (1) 934

ACT:
Representation of the People Act, 1951, ss. 98, 99 and 116A.

Assembly election-Discrepancy in particulars in nomination papers of two candidates-Rejection by Returning Officer-Election challenged-Evidence of Returning Officer-High Court-Stricture against Returning Officer with direction to share costs-Appeal by Returning Officer-Whether maintainable-High Court's order-Whether legal and valid.

HEADNOTE:

The appellant, a Returning Officer in the by-election to Fatehabad Assembly Constituency of Haryana State, rejected the nomination papers of two candidates. The election of the successful candidate was challenged on the ground that the nomination papers were improperly rejected. At the trial the successful candidate examined the appellant as R.W.3. While analysing the evidence of the appellant the High Court observed that the two nomination papers were in order when they were filed and subsequently they were tampered with when they were in the custody of the appellant and, therefore, his conduct in either tampering with the nomination papers himself or manipulating the tampering was guided by ill-motives. Consequently, the petition was accepted with costs and election of the successful candidate was declared void. As the conduct of the appellant was found to be motivated, half of the costs was ordered to be shared by him.

The appellant appealed to this Court under s.116A of the Representation of the People Act, 1951 seeking expunction of the observations as also the direction in regard to the costs.

Allowing the Appeal,

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HELD: 1. The appellant had acted appropriately in performance of his duty as Returning Officer and did not over-step the same; he was not responsible either directly or indirectly for making any alteration in the two nomination papers. The observations made by the High Court are, therefore vacated. The directions for sharing of costs stand also vacated being unwarranted. [621 A-B]

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2. There was no justification at all for the High Court to come to the conclusion that the conduct of the Returning Officer was most depreciable. Until justifiable grounds are made out no evidence should be condemned. [620 G]

3. The High Court has lost sight of the position that there is a presumption that official acts have been regularly performed and the burden was on the person who pleaded to the contrary and sought a different conclusion to be reached. [620 H]

4. In the connected appeal against the decision of the High Court by which the election of the returned candidate was vacated, the judgment of the High Court has been reversed by taking a different view in the matter of appreciation of the evidence of Returning Officer, the appellant. [619C]

5. At the trial the election petitioners have failed to establish the alleged motivation for the rejection of the nomination papers. On a reference to the demeanour of the appellant as a witness, the alleged contradiction or variation between the orders of rejection and deposition in Court, the conclusion that appellant was responsible for the alteration of the proposer's serial number in the respective nomination papers has been reached. The Court by holding to the contrary has concluded that the Returning Officer was not a party to any alteration in the nomination papers and he had passed legitimate orders of rejection of nomination papers. It has been held that the inconsistent statements made by the Returning Officer when he was in the witness box were the outcome of confusion. A categorical finding has been recorded that the reason indicated for rejection of the nomination papers fits in with the defects appearing in the documents and the oral evidence given by the appellant. [620 C-E]

6. Under s.116A of the Act an appeal shall lie to the Supreme Court on any question whether of law or fact from every order made by the High Court under s. 98 or 99. The appellant though not a party to the election petition can maintain the appeal on account of the direction for sharing the costs and the strictures to justify that direction. [619 D; E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4263 of 1984.

From the Judgment and Order dated 28.8.1984 of the Pb. & Haryana High Court in E.P. No. 1 of 1984.

K.P. Bhandari and S.C. Patel for the Appellant No. 1.

S.N. Kacker, Mahabir Singh, N.S. Bishnoi, P.K. Sandhir, L.K. Pandey for the Respondents.

D.K. Garg for the Respondents Nos. 2 and 3.

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The Judgment of the Court was delivered by

RANGANATH MISRA, J. The appellant was the Returning Officer in the by-election to Constituency No. 78 Fatehabad Assembly Constituency of Haryana State for which the election schedule was published on November 23, 1983. The last date for filing of nomination papers was November 30, 1983, and date of poll was scheduled for December 23, 1983.

Nomination papers were to be scrutinised on December 1, 1983. During scrutiny the appellant rejected nomination papers of two candidates being Mani Ram Chhapola and Raj Tilak. After the election Lila Krishan was declared elected

and thereupon an election petition was filed under the Representation of the People Act, 1951 ('Act' for short) before the High Court of Punjab & Haryana at Chandigarh being Election Petition No. 1 of 1984 challenging the election of Lila Krishna.

In the election petition it was alleged that the rejection of the two nomination papers was without any justifying ground and on account of improper rejection of those nomination papers, the election was liable to be set aside under Section 100(1)(c) of the Act. At the trial of the election petition the successful candidate who was a respondent in the High Court examined the appellant as RW.3. The appellant had rejected the nomination papers on account of wrong indication of the proposer's serial number in the electoral roll of the respective nomination papers. The evidence of the appellant was analysed by the High Court and the learned Judge came to hold:

"In Ex. P.1 (nomination paper of Mani Ram Chapole), the name of the proposer is tick-marked. Similarly, in Ex. P.6 (nomination paper of Raj Tilak) the name of the proposer is again tick-marked. In view of the express stand taken by Shri Umed Singh Rao, RW.3 (appellant), the name could not be tick-marked unless found correct in accordance with the entries in the electoral rolls. After the name of the proposer was located in the electoral roll, there was no question of not finding serial numbers of the votes of both these proposers in the electoral rolls. The order of rejection passed in the case of Shri Raj Tilak has been produced in para-

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graph 3 above. The copy of order of rejection of the nomination paper of Shri Mani Ram Chapole is Ex. P.3 and reads as:-

'S.No. of the vote of proposer does not tally with S.No. mentioned in voter list. Hence rejected'.

This also goes in line with the process of tick-marking as stated by Shri Umed Singh Rao RW.3 and also admitted by the respondent (returned candidate). When this was the situation, that the name was found but it did not tally with the electoral roll number mentioned in the nomination paper-the nomination paper could not be rejected as the Returning Officer could find the particular of the proposer with the help of the election staff assisting him. During the course of the statement, Shri Umed Singh Rao tried to change the position about the order by saying: 'I rejected the nomination paper of Shri Mani Ram Chapola as the serial number of the electoral roll of his proposer Shri Brij Bhushan when compared with the relevant electoral roll did not contain his name. Similarly, the nomination paper of Shri Raj Tilak was rejected because he vote number of his proposer Shri Upender Kumar as mentioned in the nomination paper when compared with the electoral roll did not contain his name there. 'There is a marked change in the orders passed as recorded on the nomination papers on 1st of December, 1983 and what Shri Umed Singh Rao, Returning Officer, tried to say in his statement reproduced above. When the orders dated 1st of December, 1983 are read in the light of the practice of tick-marked adopted by Shri Umed Singh Rao, these convey to mean that the name which was tick-marked was found, but serial number of the vote of the proposer did not tally with the voters list. The

statement conveys the meaning that the serial number of the vote of the proposer mentioned in the nomination paper, his name could not be found in the electoral roll. This apparently contains a different meaning altogether. Shri Umed Singh Rao cannot be permitted to add twist to the original orders recorded on the 1st of December, 1983 to change their sense and meaning

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"Shri Umed Singh Rao RW.3 cannot be permitted to add an explanation to the orders which he passed on 1st of December, 1983 to change the sense of the orders passed by him to reject the nomination papers exhibits P.1 and P.6 at the stage of the trial of the petition.

When once Shri Umed Singh Rao, Returning Officer RW.3 had found the name of the proposer of the electoral roll and had tick-marked it, then the defect, if any, remains of unsubstantial character, because against the name he could find a correct electoral roll number, which have tallied with the original nomination paper, without tampering. The nomination papers Exhibits P.1 and P.6 were therefore, improperly rejected.

The nomination papers of Sarvshri Mani Ram Chapola and Raj Tilak Exhibits P.1 and P.6 respectively could not be rejected, as there was no non-compliance with Section 33(4) of the Act. As a matter of fact Section 33(4) of the Act had been complied with and these two nomination papers were in order when these were filed by Shri R.C. Sharma, Assistant Returning Officer. These were tampered with after the examination of the nomination papers by the candidates or their agents on 1st of December, 1983, when those were with Shri Umed Singh Rao, Returning Officer, RW.3. His conduct in either tampering with the nomination papers himself or manipulating the tampering in these nomination papers was guided by ill-motives. I say so because Shri Umed Singh Rao was not a new man in election matters. He had acted as Assistant or Returning Officer in elections five or six times prior to that. This conduct of such a responsible person entrusted with the duties of a returning officer in the election system, which is very foundation of democracy is most depreciable.

From whatever angle it is viewed, the conclusion, which I arrive at, is that the nomination papers Exhibits P. 1 and P. 6 of Shri Mani Ram Chapola and Shri Raj Tilak were improperly rejected. In view of this the election petition is accepted with costs and the election of

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Shri Lila Krishan respondent from the 78-Fatehabad Assembly constituency to the Haryana Legislative Assembly held on 23rd of December, 1983 is declared void. As the conduct of Shri Umed Singh Rao, Returning Officer, was not straight forward but was motivated, half of the costs shall be shared by him."

The appeal has been filed seeking expunction of the observations as also the direction in regard to costs and the memorandum of appeal shows that the appeal is one under Section 116A of the Act. Section 116A(1) makes provision for appeals to this Court and provides:

"116A(1). Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie to the Supreme Court on any question (whether of law or fact) from every order made by a High Court

under Section 98 or 99."

Section 99(1) (b) authorises the High Court also to make an order at the time of making an order under Section 98 in the matter of the total amount of costs payable and specify the persons by whom such costs shall be paid. The appellant was not a party to the election petition nor has he any cause of action connected with the result of the election petition except the direction for sharing the costs to the extent of a moiety and the reasons indicated by the High Court by way of strictures to justify that direction in the matter of costs.

In the connected appeal against the decision of the High Court by which the election of the returned candidate was vacated (C.A. 4123 of 1984 disposed of today), we have reversed the judgment of the High Court and have differed from it in the matter of appreciation of the evidence of the Returning Officer, the appellant herein. We have already extracted the comments of the High Court for the purpose of showing how unjustified the criticism is. In the election petition before the High Court the election petitioners had alleged in paragraph 16:

"The order of rejection of the nomination paper has been passed by the Returning Officer at the instance of Chief Minister, Bhajan Lal for the reason that he considered Raj Tilak popular and a renowned able candidate or

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likely to cause damage to the voters of the Congress nominee. It was known to the Returning Officer that proposer is duly registered elector of the 78 Fatehabad Assembly Constituency at Sr. No. 77 in part 39. That the petitioners apprehends the tampering with nomination paper by the Returning Officer or at his instance after the scrutiny."

At the trial the election petitioners led to establish the alleged motivation for the rejection of the nomination papers. On a reference to the demeanour of the appellant as a witness, the alleged contradiction or variation between the orders of rejection and deposition in court, the conclusion that the appellant was responsible for the alteration of the proposer's serial number in the respective nomination papers has been reached. We have by holding to the contrary come to the conclusion that the Returning Officer was not a party to any alteration in the nomination papers and he had passed legitimate orders of rejection of nomination papers. We have also held that the inconsistent statements made by the Returning Officer when he was in the witness box were the outcome of confusion. We have recorded a categorical finding that the reason indicated for rejection of the nomination papers fits in with the defects appearing in the documents and the oral evidence given by the appellant.

We have read the whole evidence of the appellant and have examined the other materials on record and have also analysed the judgment of the High Court. We are of the view that there was no justification at all for the High Court to come to the conclusion that the conduct of the Returning Officer was most depreciable. Every Original Court is entitled-nay, duty bound-to assess or make a proper appraisal of the evidence placed before it for the purpose of disposing of the lis in connection with which such evidence is received. It is elementary to indicate that such assessment has to be fair and reasonable and every witness participating in the judicial proceeding must be assured of the position that he would be entitled to a

square deal. Until justifiable grounds are made out no evidence should be condemned. The High Court seems to have lost sight of the position that there is a presumption that official acts have been regularly performed and the burden was on the person who pleaded to the contrary and sought a different conclusion to be reached.

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We allow the appeal, vacate the observations of the High Court against the appellant by holding that he had acted appropriately in performance of his duty as Returning Officer and did not over-step the same; he was not responsible either directly or indirectly for making any alteration in the two nomination papers P-1 and P-6 and the directions for sharing of the cost to the extent of a moiety stands vacated being unwarranted. We think it appropriate to point out that even Mr. Kacker, learned senior counsel appearing for the election petitioners before us did not want to support the conclusions of the High Court against the appellant. There would be no order as to costs.

A.P.J. Appeal allowed.

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