

CASE NO.:
Appeal (civil) 5841 of 2002

PETITIONER:
Harikrishna Lal

RESPONDENT:

Babu Lal Marandi

DATE OF JUDGMENT: 30/10/2003

BENCH:
R.C. LAHOTI & ASHOK BHAN

JUDGMENT:
J U D G M E N T
R.C. Lahoti, J.

An election, to choose one member to the Jharkhand Legislative Assembly from 23-Ramgarh Assembly Constituency, was held in the month of January-February 2001 to fill up the vacancy caused by the death of the then sitting member. Though there were more than two candidates in the election fray, the legal battle in the Court arena has continued only between the appellant and the respondent, the two out of the several candidates, in the backdrop of the controversy arising for decision. The nomination paper filed by the appellant was rejected by the returning officer. He could not participate in the elections. The respondent was declared elected on 23.2.2001. An election petition, laying challenge to the election of the respondent and seeking setting aside of his election, was filed in the High Court of Jharkhand at Ranchi. The facts relevant for the purpose of appreciating the issues arising for decision in this appeal, are briefly set out hereunder.

As per the election programme notified by the Election Commission of India, the nomination papers could be filed on January 25, 2001 through January 31, 2001 between 11 a.m. and 3 p.m. before the returning officer who was the Sub-Divisional Officer of Ramgarh. The scrutiny of the nominations took place on February 1, 2001. February 3, 2001 was the date for withdrawal of nomination, if any. The nomination paper filed by the appellant was rejected by reference to Section 8 of the Representation of the People Act, 1951 (hereinafter 'the Act', for short) for failure of the appellant to furnish certain information in a prescribed proforma supported by an affidavit, stating as to whether the petitioner was not disqualified to contest the election due to any conviction for committing any offence as required under Section 8 of the Act. The prescribed proforma for furnishing the information and the form of affidavit, though supplied to the petitioner by the returning officer, were not filed up to the date and time appointed for scrutiny of nominations. So far as this aspect of the case is concerned, the controversy stands resolved by a recent decision of this Court in Shaligram Shrivastava Vs. Naresh Singh Patel, (2003) 2 SCC 176. The appellant appearing in-person has very fairly stated that he does not want to pursue any further this plea, disputing the rejection of his nomination paper, in view of the abovesaid decision of this Court.

The next controversy, and now the only one surviving for decision, is as to whether the nomination paper filed by the respondent suffered from any defect of a substantial character. Inasmuch as this issue has been highlighted by the appellant from very many angles, it would be useful to reproduce and set out from the averments made in the election petition itself as to what the

appellant's case is. According to the appellant —
"The returning officer ought to have rejected the nomination papers of the respondent on the following grounds:-

(a) That the respondent's name is 'Babulal'. His surname is Marandi. He is known, recognized, addressed and identified every where by this name 'Babulal Marandi' alone and not by any other name or surname whatsoever.

The name of the respondent Babu Lal Marandi has not been enrolled as an elector in the electoral roll of any Assembly constituency of Legislative Assembly of Jharkhand State.

He has not filed certified copy of any Assembly constituency of Jharkhand Legislature to the Returning Officer either at the time of filing his nomination papers or at the time of scrutiny showing therein that his name 'Babu Lal Marandi' has been registered as an elector in that Assembly Constituency. Thus, the respondent is not competent to contest the said election. His nomination papers filed to the returning officer suffer from a defect of substantial character under Section 36(4) of the R.P. Act, 1951 and they ought to have been rejected by the Returning Officer."

The respondent has in his written statement denied the averment made by the election petitioner and submitted —
"that the name printed in the Electoral Roll is Babu Marandi instead of Babu Lal Marandi and his father's name is correct, village is correct and in between 'Babu' and 'Marandi', 'Lal' is not printed. In this regard, it is submitted that answering respondent filed an application before the Returning Officer, Ramgarh on 29.1.2001 mentioning there that the correct name of the respondent is Babu Lal Marandi son of Sri Chhotu Marandi, Village Kodaibank, P.O. Chandauri, P.S. Tisri, District Giridih but by mistake in the Voter List, his name is printed as Babu Marandi son of Sri Chhotu Marandi and requested him to correct his name."

It is further submitted in the written statement that the respondent is known as Babu Marandi and also as Babu Lal Marandi. Apparently, in the Voters List, the word 'Lal' in between 'Babu' and 'Marandi' has been left out due to mistake. It is clear from the fact that below the respondent's name, the name of his wife Shanti Marandi, wife of Babu Lal Marandi (the respondent) is mentioned. In continuity the name of the respondent's son Sanstan Marandi, son of Babu Lal Marandi (the respondent) is mentioned. A photocopy of the Voters List supporting the above said plea was annexed with the written statement. The respondent had also moved an application duly supported by an affidavit seeking rectification of the above said error in the Voters List. Copies of the application, the affidavit, and the receipt showing the deposit of fee for correction were also filed with the written statement. The respondent has then submitted that such a printing mistake in the Voters List did not affect the identity of the respondent and is certainly

not a ground on which his nomination paper could have been rejected. The electoral roll of the constituency was seen by the returning officer at the time of scrutiny and the nomination paper, having been found in order, was accepted. There was no objection raised by anyone or the election petitioner at the time of the scrutiny. The returning officer rightly accepted the nomination paper of the respondent.

On the pleadings of the parties, one of the issues framed by the learned designated Election Judge was:-

"Whether the real name of the respondent Babulal Marandi is not registered in the electoral roll of any of the Assembly Constituencies of the Jharkhand Legislative Assembly and, as such, he is not qualified to contest the election from 23-Ramgarh Assembly Constituency?"

The case was posted for trial. The election petitioner declared that he was not adducing any evidence. The respondent too chose not to adduce any evidence. The arguments were heard. The High Court has found the averment made in the election petition not substantiated. In the opinion of the High Court the returning officer has not erred in accepting the nomination paper of the respondent. The election petition has been directed to be dismissed.

The election petitioner has filed this appeal under Section 116A of the Act.

We have heard the appellant, appearing in-person, who argued the case from all possible angles and Shri Sanyal, the learned senior counsel for the respondent. We are satisfied that no fault can be found with the view taken by the High Court in dismissing the election petition and consequently this appeal too is liable to be dismissed.

The relevant statutory provisions which would clinch the singular issue surviving for decision in this appeal are extracted from the Act and reproduced hereunder:

33. Presentation of nomination paper and requirements for a valid nomination. â\200\223

(1) to (3) xxx xxx

xxx

(4) 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: [Provided 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 in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the returning officer shall

permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked.]

(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.

36. Scrutiny of nominations. (1) On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer of each candidate, and one other person duly authorized in writing by each candidate but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.

(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds :-

[(a) [that on the date fixed for the scrutiny of nominations the candidate] either is not qualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:-

Articles 84, 102, 173 and 191,]

[Part II of this Act and sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that there has been a failure to comply with any of the provisions of section 33 or section 34; or

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine.]

(3) xxx xxx xxx

(4) The returning officer shall not reject

any nomination paper on the ground of any defect which is not of a substantial character.

(5) The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control :

Provided that in case [an objection is raised by the returning officer or is made by any other person] the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.

(6) The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.
[emphasis supplied]

It is pertinent to point out that the proviso to sub-section (4) of Section 33 was not to be found in the Act as originally enacted; the same was inserted by Amending Act 47 of 1966 with effect from 14.12.1966. Notes on Clauses of the Bill proposing the amendments speak of the abovesaid proviso as under:

" The new proviso to sub-section (4) is comprehensive in nature and it is on the lines of sub-section (5) of section 39 of the U.K. Representation of the People Act, 1949. This has been done to remove all possible doubts about the power of the returning officer to correct any misnomer or inaccurate description in regard to the name of a candidate or his proposer or any other person or in regard to any place mentioned in the electoral roll or in the nomination paper."

(See Gazette of India, Extraordinary, dated August 29, 1966, Part 2 Section 2 page 667, 699).

A bare reading of the provisions shows that so far as sub-section (4) of Section 33 is concerned the effect of non-compliance may be merely an irregularity which would not necessarily entail the rejection of nomination paper. Acceptance or rejection of the nomination paper by the returning officer shall depend on his forming an opinion as to whether the defect is of a non-substantial character or of a substantial character. A statutory duty is cast on the returning officer to scrutinize the nomination papers on the appointed date without adjourning the proceedings. If the returning officer finds any irregularity or defect in the nomination paper he may hold an enquiry suo motu affording the candidate, whose nomination is under scrutiny, an opportunity to satisfy the returning officer that no such defect or irregularity exists. An objection may be raised by any other person and in that case also the candidate concerned may be allowed time to rebut the objection. Within the meaning of proviso to sub-section (5)

of Section 36 the returning officer has to record his decision by way of acceptance or rejection of the nomination paper. If the nomination paper is rejected a brief statement of his reasons for such rejection has to be recorded in writing.

In the present case, the appellant did not raise any objection to the validity of the nomination filed by the respondent. He never submitted that the name of the respondent as appearing in the nomination did not agree with the name as appearing in the voters' list and therefore the nomination was not valid. Nor did he object that the respondent was not an elector registered in the voters' list of that constituency. The identity of the respondent was never called in question. It seems from the plea taken in the written statement and the annexures filed with the written statement that the returning officer suo motu asked the respondent to satisfy him on the minor discrepancy which appeared in the voters' list and the nomination paper, i.e., while the voters' list of the constituency contained the entry "Babu Marandi, father's name - Chotu Marandi, sex - Male, age - 37 years, resident of village Kodaibank, P.S. Tisri, Distt. Giridih", the nomination paper mentioned the name of the respondent as 'Babulal Marandi', with all other particulars remaining the same as entered in the voters' list. Thus, the only variation in the name of the respondent was that of 'Babu Marandi' and 'Babulal Marandi'. The respondent contended before the returning officer by filing an affidavit that he was known both as 'Babu Marandi' and 'Babulal Marandi', and that the omission of 'Lal' in the voters' list was inadvertent, erroneous and in any case technical. It is well-known that in Indian society the name of a person consists of the first name, the second name and the surname or the family name. The first name and the family name of the respondent tallied; the second name was mentioned in the nomination paper but was not found to be mentioned in the voters' list. According to the plea taken in the written statement all other descriptions such as father's name, age, sex and residence etc. of the respondent as given in the voters' list and as appearing in the nomination paper tallied. There was thus no defect in the nomination paper. The respondent being a candidate from that very constituency wherein he was enrolled as an elector, it was not necessary for him to file a certified copy of the relevant entries in electoral roll or to produce the same at the time of scrutiny.

In Harcharan Singh Vs. S. Mohinder Singh and Ors. - AIR 1968 SC 1500 the purpose of the provisions contained in Sections 33 and 36 of the Act was stated by their Lordships in these words "The primary purpose of the diverse provisions of the election law which may appear to be technical is to safeguard the purity of the election process and the Courts will not ordinarily minimize their operation." Their Lordships further observed that "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. But under S.36(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. He is enjoined not to reject the nomination paper unless the defect is of a substantial character." Harcharan Singh's case (supra) was one where the details for identifying the appellant as an elector were duly furnished and his age though mentioned in the nomination paper was not to be found in the certified copy produced by him and no objection was raised to the acceptance of the nomination paper on behalf of the contesting candidate. The returning officer satisfied himself by personal enquiry that the appellant was above the age of 25 and therefore competent to stand for election. It was held that even though the copy produced was defective because of the absence therefrom of the house number entered in the electoral register, yet the defect was not of a substantial character and hence the returning officer was justified in not rejecting the nomination paper. In Viveka Nand Giri Vs. Nawal

Kishore Sahi & 200\223 (1984) 3 SCC 10 there was a difference in the age as recorded in the electoral roll and as stated in the nomination paper. It was held that the nomination paper would fall in the category of an inaccurate description and the returning officer could not have rejected the nomination. In Karnail Singh Vs. Election Tribunal, Hissar and Ors. - 10 ELR 189 the name of the Sub-Division was not stated in the nomination paper. However, it was quite clear that there was no difficulty in identifying the candidate. The defect was held to be a technical one and not of substantial character.

A reference may usefully be made to the maxim "*Falsa demonstratio non nocet cum de corrore constat*" which means mere false description does not vitiate, if there be sufficient certainty as to the object. '*Falsa demonstratio*' means an erroneous description of a person or a thing in a written instrument; and the above rule respecting it signifies that where the description is made up of more than one part, and one part is true, but the other false, there, if the part which is true describes the subject with sufficient legal certainty, the untrue part will be rejected and will not vitiate the devise: the characteristic of cases within the rule being that the description, so far as it is false, applies to no subject at all, and, so far as it is true, applies to one only. (See Broom's Legal Maxims, 10th Edition, pp. 426-427). Broom quotes (at page 438) an example that an error in the proper name or in the surname of the legatee should not make the legacy void, provided it could be understood from the will what person was intended to be benefited thereby.

There is no manner of doubt that the respondent is a duly enrolled elector in the voters list of No.23 Ramgarh Assembly Constituency. In the voters list as well as in the nomination paper the respondent was correctly described. The omission of his second name 'Lal' from the voters list is inadvertent or accidental and in any case merely technical. There is no doubt about the identity of the respondent. Apparently that is why none of the candidates including the writ petitioner and no one else raised any objection to the acceptance of the nomination paper by submitting that the respondent was not a registered elector of the constituency. The returning officer entered into suo moto enquiry for his own satisfaction, and felt satisfied by looking into the electoral list of the constituency available with him, that the respondent Babu Lal Marandi was the same person who was mentioned as Babu Marandi in the electoral list. Being an elector in the same constituency wherefrom he was contesting election it was not necessary for him to have filed a certified copy of the relevant entry from the voters list. Before the High Court, the writ petitioner has chosen not to adduce any evidence to demonstrate that the returning officer was not right in arriving at the satisfaction which he did or that the respondent was not enrolled in the electoral list of that constituency or was the one enrolled in some other constituency. The High Court has not erred in holding the election of the respondent not liable to be set aside.

In Durga Shankar Mehta Vs. Raghuraj Singh and Ors. & 200\223 AIR 1954 SC 250 the Constitution Bench has held that if the want of qualification does not appear on the face of the nomination paper or of the electoral roll but is a matter which could be established only by evidence, an enquiry at the stage of the scrutiny of the nomination papers is required under the Act only if there is any objection to the nomination. The Returning Officer is then bound to make such enquiry as he thinks proper on the result of which he can either accept or reject the nomination. But 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.

The law so laid down by the Constitution Bench squarely applies

to the present case. On the face of the nomination paper the respondent was not disqualified in any manner. The returning officer satisfied himself as to the identity of the respondent and, the electoral roll of the constituency, which was available with him to be seen, pointed out only an inconsequential technical variation in description, as already stated hereinabove. If the contention of the appellant is that the respondent was not an elector of the constituency and his nomination paper was therefore liable to be rejected for failure to file a certified copy of entries of the relevant electoral roll, then it was for the appellant to raise that objection so as to put the returning officer on notice, who in his turn could have afforded the respondent an opportunity of meeting the objection. Clearly there is no merit in the plea raised by the appellant.

It is true that mere failure of the appellant in raising objection to the validity of the nomination paper filed by the respondent before the returning officer does not stop or exclude the election petitioner from raising a plea before the High Court that the nomination paper filed by the respondent was liable to be rejected or could not have been accepted. The enquiry which the returning officer has to make under Section 36 of the Act is summary in character, which he may make as he thinks necessary either suo moto or on an objection being raised. Whether such an enquiry was held or not and if held whatever may have been the result, the propriety of rejection or acceptance of a nomination paper can always be raised by way of election petition. (See N.T. Veluswami Thevar Vs. G. Raja Nainar & Ors., AIR 1959 SC 422). But the fact remains that it will be for the election petitioner to raise necessary pleadings and, if traversed, to substantiate the same by adducing the necessary evidence. This the election petitioner has failed to do before the High Court. The inevitable consequence of the election petition being dismissed has rightly followed.

Even otherwise we find no substance in the plea raised by the election petitioner.

The appellant submitted that in the election petition it was specifically alleged that the respondent was not an elector belonging to the constituency and that it was further obligatory for the respondent to adduce evidence to show that he was qualified to be a candidate without the need of filing the certified copies of entries in the electoral roll before the returning officer. Such a submission runs counter to basics of election law. The success of a winning candidate is not to be lightly interfered with. The burden of proof lies on the one who challenges the election to raise necessary pleadings and adduce evidence to prove such averments as would enable the result of the election being set aside on any of the grounds available in the law. In an election petition if nobody adduces evidence it is the election-petitioner who fails. The High Court rightly framed the issue placing the burden of proof on the election- petitioner. As no evidence was adduced by the election-petitioner, the High Court rightly dismissed the election petition.

The appeal is devoid of any merit and liable to be dismissed. It is dismissed though without any order as to the costs.

JUDIS