

PETITIONER:
BRIJ MOHAN

Vs.

RESPONDENT:
SAT PAL

DATE OF JUDGMENT 13/03/1985

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

CITATION:
1985 AIR 847 1985 SCR (3) 321
1985 SCC (2) 652 1985 SCALE (1) 427
CITATOR INFO :
F 1985 SC1073 (16)

ACT:

The Representation of People Act 1951, Section 33 Assembly Election-Nomination Paper of Candidate-Mistakes-Regarding serial number, part number, house number-nomination paper rejected on scrutiny by Returning Officer-Rejection whether valid-Mistakes whether of a substantial character.

HEADNOTE:

The respondent in the appeal an election, filed an election petition challenging the election of the appellant to the Assembly. He contended in the petition that in the election to the Haryana Legislative Assembly from Jind constituency one Dog Ram filed nomination paper. His name was proposed by Ram Pratap, an elector of the constituency. Dog Ram Candidate was registered as an elector at serial No. 177 and house No. 57 in part 39 of the electoral roll of the constituency whereas the proposer was registered as elector at serial No. 313 and house No. 6 in part 39 of the same constituency. The name and postal address of Dog Ram were correctly given in the nomination paper but the part of the electoral roll was mentioned as 57 instead of 39 by an inadvertent mistake committed by the person who filed the nomination paper. Similarly, in the case of the proposer, the serial number of the elector and the number of the constituency were given correctly but the number of his house was wrongly entered in the column meant for the part of the electoral roll. At the time of scrutiny no other candidate or proposer objected to the acceptance of the nomination paper of Dog Ram but the Returning Officer on his own rejected the nomination paper on the ground that particulars of the candidate and the proposer have been wrongly entered in the nomination paper.

The appellant contested the election petition contending that the Returning Officer had compared the admittedly inaccurate particulars given in the nomination paper with those entered in the part of the voters' list mentioned in the nomination paper and found them to be incorrect and asked candidate Dog Ram-to show the names of himself and his proposer in the electoral roll and that as

the candidate was unable to do so he rejected the nomination paper and was right in doing so.

In the nomination paper the serial numbers in the voters' list of the candidate and his proposer have been correctly given as 177 and 313 respectively but the part numbers have been given wrongly as 57 and 6 respectively which are their respective house numbers instead of the correct part No. 39.

In the appeal to the High Court the question was as to whether the nomination paper of Dog Ram was improperly rejected. On the evidence led by the parties the Single Judge found that the candidate Dog Ram and his proposer were registered as voters in the constituency and were qualified to contest the election and propose the candidate respectively. It was further found that errors in regard to electoral roll numbers of the candidate and the proposer in the electoral roll and the nomination paper do not constitute defects of a substantial character as mentioned in the proviso to Section 33(4) of the Act. The Single Judge accepted the evidence of P.W. 2 that when he and the candidate presented the nomination paper the Returning Officer told them that it was in order and held that the Returning Officer had thus tripped them into an error and 'observed that had he told them that there were some discrepancies in the nomination paper they would have either made the corrections then and there and would have gone more fully prepared to meet objections at the time of the scrutiny. Accordingly the election petition was allowed and appellant's election was declared as void. On the ground that the nomination paper of Dog Ram was improperly rejected.

The elected candidate appealed to this Court, Allowing the Appeal,

^

HELD: 1. The Returning Officer in the instant case could not be said to have improperly rejected the nomination paper of Dog Ram. [340G]

2. It is not possible to say generally and in the abstract that all errors in regard to electoral roll numbers of the candidate and the proposer in the electoral rolls or nomination papers do not constitute defects of a substantial character. They would not be defects of a substantial character only if at the time of the scrutiny the Returning Officer either by himself with the materials placed before him during the scrutiny or with the assistance of the candidate For his proposer or any other person is able to find out the correct serial number of the candidate and the proposer in the electoral roll. If that is not the case, he would be committing a grave error by accepting the nomination paper without verifying whether the candidate is a voter in that or any other constituency of the State and whether the proposer is a voter in that constituency

[334G-H: 335A]

3. No amount of evidence can be looked into upon a plea which was never put forward in the pleadings. In the instant case, there is no allegation in the election petition that there was any assurance by the Returning Officer at the time of receipt of the nomination paper that there was nothing wrong in it. In the absence of any such allegation in the election petition, the evidence of proposer P.W. 2, which is not even corroborated by the evidence of any other witness that he and the candidate presented the nomination paper to the Returning Officer and showed him the voters' list and that he told them

323

then that the nomination paper was in order, is not acceptable. In the circumstances the Single Judge was not justified in accepting the evidence of P.W. 2 and holding that the Returning Officer was guilty of tripping the candidate and the proposer by any assertion on his part into any one believing that there was nothing wrong in the nomination paper. [335B; C-E]

4. The candidate and the proposer are always expected to go fully pre- pared to meet any objection that may be raised by any candidate or even by Returning Officer himself suo moto at the time of the scrutiny and they cannot be expected to go any the less prepared merely because the Returning Officer had received the nomination paper without raising any objection. It is at the time of scrutiny which is done in the presence of all concerned that the nomination papers come up for more detailed consideration at the hands of the Returning Officer against whom there is no estoppel in regard to the statutory duty of scrutiny. [335F-G]

5(i) The evidence of P.W. 1 is largely corroborated by the Returning Officer's order. R.W. 1 is an advocate and was himself a candidate but retired at a later stage. He stated that the electoral rolls were lying on the table of the Returning Officer at the time of the scrutiny. There is no reason for not accepting this evidence of R.W. 1. [336D-E]

5(ii) The electoral rolls were lying on the Returning Officer's table at the time of the scrutiny and therefore, there would have been no necessity for Dog Ram and P.W. 2 to ask the Returning Officer to give them the electoral roll relating to their village for clearing his doubt. The evidence of P.W. 2 is therefore not acceptable. [336F]

5(iii). The evidence of P.W.3 that the Returning Officer did not ask Dog Ram to show the names of himself and his proposer in the electoral roll is inconsistent with the allegations in the election petition as also the evidence of P.W. 2 that the Returning Officer said so. Therefore, the evidence of P.W. 3 is not acceptable. The evidence of R.W. 1 is accepted. The Returning Officer found discrepancy in the names, serial number and part number mentioned in the nomination paper on the one hand and those found in the electoral roll with reference to those numbers on the other and that on account of his inability to ascertain with the particulars made available before him whether the candidate Dog Ram and his proposer P.W. 2 were electors in the constituency he asked the candidate Dog Ram to point out the names of himself and his proposer in the electoral roll to satisfy him that they are electors in the constituency and that as he was unable to do so, he rejected the nomination paper by his order Ex. P.W. 1/B. [337G-H; 338A]

Hira Singh Pal v. Madan Lal [1968] 2 SCR 778, Ram Awadesh Singh v Sumitra Devi & Ors [1972] 2 S.C.R. 674 and Viveka Nand Giri v. Nawal Kishore Sahi A.I.R. 1984 S.C. 856; not applicable.

324

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2650 of 1984

Appeal U/s 116 A of the R.P. Act 1951 from the Judgment and Order dt. 30.5.84 of the Punjab & Haryana High Court at Chandigarh in E.P. No. 7 of 1982.

H.L. Sibal, Kapil Sibal. Mrs. Madhu Tewatia Singh and N.M. Popli for the Appellant.

S.N. Kacker and Ravinder Bana for the Respondent.

The Judgment of the Court was delivered by

VARADARJAN. J. This appeal by the respondent in Election petition No. 7 of 1982 of the file of the Punjab and Haryana High Court is directed against the judgment of a learned Single Judge declaring the appellant's election from the Jind constituency of the Haryana Legislative Assembly as void on the ground that the nomination paper of a candidate Dog Ram was improperly rejected. The last date for filing nomination papers was 24.4.1982, and in the scrutiny made on 26.4.1982 nomination papers of two candidates including Dog Ram were rejected by the Returning Officer. The principal contest was between one Mange Ram, a Congress (I) candidate and the appellant, an independent candidate who had been set up by the Lok Dal party. The polling was on 19.5.1982 and after the counting was made on 20.5.1982 the appellant was declared elected from the Jind constituency.

The election petition was filed by the respondent Sat Pal, an elector in the Jind constituency. His case in the election was that Dog Ram was registered as an elector at Serial No. 177 and house No. 57 in part 39 of the electoral roll of the Jind constituency. Ram Partap who proposed Dog Ram as a candidate, was registered as elector at Serial No. 313 and house No. 6 in part 39 of the same constituency. The name of Dog Ram and his postal address were correctly given in the nomination paper. But the part of the electoral roll was mentioned as 57 instead of 39 by an inadvertant mistake committed by the person who filled the nomination paper. Similarly, in the case of the proposer Ram Partap, the serial number of the elector and the number of the constituency were given correctly but the number of his house was wrongly entered

325
in the column meant for the part of the electoral roll. These inaccuracies in the nomination paper were technical in nature and should have been rectified by the Returning Officer at the time of scrutiny. No other candidate or proposer objected to the acceptance of the nomination paper of Dog Ram but the Returning Officer on his own rejected the nomination paper by the following order:

"Particulars of the candidate and the proposer have been wrongly entered in the nomination paper. The candidate who is present in person failed to show me the voters' list where his and the proposer's names are entered. Hence rejected."

The appellant contested the election petition contending that the Returning Officer compared the admittedly inaccurate particulars given in the nomination paper with those entered in the para of the voters' list mentioned in the nomination paper and found them to be incorrect and asked Dog Ram to show the names of himself and his proposer Ram Partap in the electoral rolls and that as the candidate was unable to do so he rejected the nomination paper and was right in doing so.

In the first part of the nomination paper, Annexure R-6 Ram Partap, P.W. 2 has stated thus under his signature: E

"I nominate as a candidate for election to the Legislative Assembly from the 48 Jind constituent assembly:

Candidate's name : Dog Ram s/o Mohan Lal

Postal Address : Village Amar Heri, Post Office
Ahirka (Jind)

His name is entered at Sl. No. 177 in Part No. 57 of the electoral roll for the 48 Jind Assembly Constituency.

My name is Ram Partap and it is entered at Sl. No. 313

in part No. 6 of the electoral roll for the 48 Jind assembly Constituency."

In Part No. 39 of the voters' list relating to Amar Heri village, Dog Ram is entered at Sl. No. 177 and House No. 57 and Ram

326

Partap, P.W. 2 is entered at Sl. No. 313 and house number 6. Thus it is seen that in the nomination paper, Serial Nos of Dog Ram and Ram Partap, P.W. 2 have been correctly given as 177 and 313 respectively, but the part numbers have been given wrongly as 51 and 6 respectively which are their respective house numbers instead of the correct part No. 39.

The learned Single Judge who tried the election petition framed the issue as to whether the nomination paper of Dog Ram was improperly rejected. On the side of the respondent three witnesses were examined and they are: the election Kanungo Jai Singh, P.W. 1 the proposer Ram Pratap P.W. 2 and the Congress (I) candidate Mange Ram, P.W. 3. The appellant relied upon the evidence of his sole witness Gulab Singh, R.W.1.

P.W. 1 has stated in his evidence that Dog Ram son of Mohan Lal was registered as voter at Sl. No. 177 in house No. 57 and that the proposer Ram Partap, P.W. 2 was registered as voter at Sl. No. 313 in part 39 of the electoral roll of Amar Heri village. In his cross examination, P.W. 1 has admitted that in Jind constituency there were 77000 voters entered in 97 parts of the electoral roll and that the voter at Sl. No. 177 in part No. 57 is one Krishan son of Ami Lal of Jalalpura Khurd village while the voter at Sl. No. 313 in Part No. 6 is one Premo wife of Satbir of Barsana village. P.W. 2 has stated in his evidence that he and Dog Ram presented the nomination paper to the Returning Officer on 24.4.1982 and he told them that it was in order and that at the time of the scrutiny he told them it that there were some mistakes in the nomination paper. He has further stated that he and Dog Ram volunteered to show the actual voters' list but he declined to have a look at the voters' list relating into Amar Heri village and insisted that the particulars mentioned in the nomination paper alone could be seen by him. P.W. 3 has stated in his evidence that nobody raised any objection to the nomination paper filed by Dog Ram but the Returning Officer himself raised an objection saying that the particulars are not properly filled in. He has further stated that Dog Ram and P.W. 2 were present at that time and they told the Returning Officer that if the voters' list was supplied to them they would be in a position to show the correct particulars and he did not comply with their request. On the other hand, R.W. 1 who had filed a recrimination petition

327

against Mange Ram in Election Petition No. 8 of 1982, has stated in his evidence that the Returning Officer asked Dog Ram to show the relevant part and the serial number in the voters' list where his name is entered and Dog Ram failed to do so though the voters' list was lying on the Returning Officer's table at that time and an opportunity was given to Dog Ram for seeing the same and that the Returning Officer, therefore, rejected the nomination paper of Dog Ram after raising an objection suo moto.

The learned Single Judge found that the candidate Dog Ram and the proposer Ram Partap were registered as voters in the Jind constituency and were qualified to contest in the election and propose the candidate respectively. This fact was not disputed before the learned Judge. He found that errors in regard to electoral roll numbers of the candidate

and the proposer in the electoral rolls and the nomination paper do not constitute defects of a substantial character as mentioned in the proviso to s. 33(4) of the Representation of People Act, 1951 (hereinafter referred to as the 'Act') which reads:

"33(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: E

Provided that on 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, 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 over-looked",

328

Though there is no allegation in the election petition that the Returning Officer assured the candidate Dog Ram and the proposer Ram Partap, P.W. 2 that the nomination paper was in order, the learned Single Judge accepted evidence of P.W. 2 that when he and the candidate Dog Ram presented the nomination paper on 24.4.1982, the Returning Officer told them that it was in order, and he held that the Returning Officer had thus tripped them into an error and observed that had he told them that there were some discrepancies in the nomination paper they would have either made the corrections then and there or would have gone more fully prepared to meet objections at the time of scrutiny. In that view he has observed in his judgment:

"If an act or omission on his part is shown to have tripped into an error an otherwise competent person to offer himself as a candidate, who in spite of being desirous of fighting election is unable to do so because of the error committed by the Returning Officer then such a candidate will be allowed to urge that because of the non compliance by the Returning Officer with the provisions of the Act the people of the constituency have not been able to make a choice in accordance with law. In my considered opinion it would be a fit case to hold that the result of the election has been materially affected. This in effect is the law and spirit of s. 100(1) (d) (iv) of the Act. The scrutiny was held in Jind which is a district town and the Returning Officer is normally expected to have the assistance of the election staff including the Election Kanungo at the time of the scrutiny. If he had put a few questions to Dog Ram and Ram Partap, P.W. 2 about their residence and numbers of their house, the Kanungo would have at once brought out the relevant electoral rolls containing the names of these two persons. For reasons aforementioned I am of the opinion that the

nomination paper of Dog Ram candidate had been wrongly rejected",

He accordingly allowed the election petition with costs assessed at Rs. 2500 and declared the appellant's election as void.

The only issue framed by the learned Single Judge as stated earlier is: "Whether the nomination paper of Shri Dog Ram contesting candidate has been improperly rejected", From this it does not

329

follow as Mr. Sibal, learned counsel appearing for the appellant contends, that the first respondent had not challenged the rejection of the particulars in the nomination paper so far as they relate to the proposer Ram Partap, P.W.2 for they too form an integral part of the nomination paper and the consequence would be the same, namely, rejection of the nomination paper of the candidate even if it be for the defect in the particulars relating to the proposer.

According to r. 4 of the Conduct of Election Rules, 1961 (hereinafter referred to as the 'Rules') every nomination paper presented under sub-s. (I) of s. 33 of the Act may be completed in such one of the forms 2A to 2E as may be appropriate. Section 33(i) relating to representation of nomination papers and requirements for a valid nomination says that the nomination paper shall be completed in the prescribed form and signed by the candidate and an elector of the constituency. It is clear from this sub-section that the proposer of the candidate must be elector of the constituency. Section 32 of the Act relating to nomination of a candidate for election says that any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat under the provisions of the Constitution and the Act or under the provisions of the Government of Union Territories Act, 1963, as the case may be. Section 5 of the Act relating to qualifications for membership of a Legislative Assembly says that "a person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless-

- (a) in the case of a seat reserved for the Scheduled Castes or for the Scheduled Tribes of that State, he is a member of any of those castes or of those tribes, as the case may be, and is an elector for any Assembly Constituency in that State;
- (b) in the case of a seat reserved for an autonomous district of Assam, he is a member of a Scheduled Tribe of any autonomous district and is an elector for the Assembly Constituency in which such seat or any other seat is reserved for that district; and
- (c) in the case of any other seat, he is an elector for any Assembly Constituency in the State".

We are concerned in the present case with clause (c) of s. 5 of the Act. Therefore, the candidate nominated must be an elector for

330

any Assembly Constituency in the State concerned. Form 2B is the appropriate form in the present case. It is found at page 239 of the Manual of Election Law corrected upto December 1982. It consists of four parts, the first relating to the candidate and the proposer, the second relating to delivery of the nomination paper to the Returning Officer, the third relating to the decision of the Returning Officer accepting or rejecting the nomination paper and the fourth relating to the receipt of the nomination paper and notice

of scrutiny. The first part has to be signed by the candidate and the proposer and the other three parts have to be signed by the Returning Officer. The first part is extracted for easy reference:

"Election to the Legislative Assembly of---- State

I nominate as a candidate for election to the -----
Legislative Assembly from the -assembly constituency.

Candidate's name--

His postal address--

His name is entered at S. No.-in part No.-of the
electoral roll for the- assembly constituency.

My name is---and it is entered at S. No.-in Part No.-
of the electoral roll for the-z -assembly constituency.

Date- (Signature of proposer)

I, the above-mentioned candidate assent to this
nomination and hereby declare--

(a) that I have completed---years of age;

(b) that I am set up at this election by the-party;

(c) that the symbols I have chosen are, in order of
reference (i) (ii) and (iii)

331

I further declare that I am a member of the-
caste/tribe which is a scheduled caste/tribe of the State
of-in relation to -(area) in that State.

Date- (Signature of candidate)

In the first part the proposer must mention the name of
the candidate and his own name and the serial numbers and
part numbers of the electoral roll of the Assembly
Constituency concerned where the name of the candidate and
his own name are entered and he is also required to furnish
the postal address of the candidate. It may be stated that
there is no specific provision in the Rules for furnishing
the postal address of the candidate in the nomination paper
though in Form 2B it is required to be given by the
proposer. It is obvious that the serial number and the part
number of the electoral rolls of the constituency concerned
relating to a candidate and the proposer are required to be
given in the nomination form in order to enable the
Returning Officer to verify whether the candidate and the
proposer are registered as electors and qualified to be
nominated as a candidate and to propose the candidate as a
candidate for filling a seat in the Legislative Assembly.
Rule 2(f) of the Rules says that the "Electoral roll number
of a person means; (i) the serial number of the entry in the
electoral roll in respect of that person; (ii) the serial
number of the part of the electoral roll in which such entry
occurs and (iii) the name of the constituency to which the
electoral roll relates." These particulars have to be
furnished in the nomination paper.

Section 33(4) of the Act says; "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

332

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."

The Hand Book for Returning Officer, issued by the Election Commission of India, says what the Returning Officer and the Specified Assistant Returning Officer should do as each nomination paper is filed. It says that the Returning Officer or Specified Assistant Returning Officer is not to hold a formal scrutiny of any nomination paper at this stage. If the candidate is an elector in the constituency concerned, the Returning Officer or the Specified Assistant Returning Officer should compare the entries in the nomination papers with the entries in the electoral roll relating to the serial number and the name of the candidate and the proposer. If he comes from any other constituency, the officer should compare the entries in the nomination paper with the entries relating to the candidate's name in the electoral roll of that constituency or of the relevant part thereof or a certified copy of such entry. The candidate is required by law to produce before the officer such electoral roll or relevant part thereof or a certified copy of the relevant entries thereof as per s. 33(5) of the Act. Legally, the responsibility for producing documentary evidence of registration as elector in a different constituency rests entirely on the candidate. The instruction reiterates what is contained in the proviso to s. 33(4) of the Act and further states that the points which the Returning Officer or Specified Assistant Returning Officer are required by s. 33(4) to be disposed of should be invariably disposed of at time of the receipt of the nomination paper and that it will be improper for the officer at the time of scrutiny to reject the nomination paper for defects which could have been cured at the earlier stage of presentation of the nomination paper. It was conceded by Mr. Kacker, learned Senior Advocate appearing for the respondent, that the enquiry at the stage of receipt of nomination paper is what he called a peripheral one and that no legal consequence flow from the omission on the part of the Returning Officer or specified Assistant Returning Officer to carry out his responsibility at the stage of receipt of the nomination paper.

333

Section 36 of the Act relating to scrutiny of nomination paper reads:

"36(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 or is disqualified 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 section 4 and 17 of the Government of Union Territories Act, 1963;
- (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 nomination paper is not genuine.

Sub-section 6 of s. 36 requires that the Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same and says that if the nomination paper is rejected he shall record in writing a brief statement of his reasons for such rejection.

334

In the present case the proposer P.W.2 had mentioned the names of himself and the candidate Dog Ram correctly in the nomination paper. He had also mentioned their serial numbers as 177 and 313 which would tally with their names if the correct part No. 39 of the electoral roll had been mentioned in the nomination paper. But, unfortunately instead of entering that correct part No. 39 in the nomination paper, P.W.2, who claims to have got the nomination paper filled in by an Advocate of Jind whose name he does not know, had mentioned the part No. as 57 in regard to the candidate Dog Ram and as 6 in regard to himself which are really their house numbers. The Returning Officer has, therefore, passed the order, Ex. P.W.1/B, extracted earlier in this judgment, rejecting the nomination paper. What happened before he passed that order is established by the evidence which would be considered hereafter.

Before we proceed to consider the evidence we wish to state that the learned Single judge has been stayed by two things in reaching the conclusion that the rejection of the nomination paper of Dog Ram was improper. They are: (1) that errors in regard to electoral roll numbers of the candidate and the proposer in the electoral rolls or the nomination papers do not constitute defects of a substantial character as noted in the proviso to s. 33 (4) of the Act and (2) that the Returning Officer had told the candidate Dog Ram and the proposer P.W.2 when the nomination paper was presented, that it was alright and thus tripped them into an error, for had he told them at that time that there were some discrepancies in the nomination paper in regard to electoral roll numbers they would have either made the corrections then and there or would have gone more fully prepared to meet objections at the time of scrutiny. The serial numbers and part numbers mentioned in the nomination paper relate to Amit Lal of Jalalpura Khurd and Premo wife of Satbir of Barsana village and not to the candidate Dog Ram and the proposer P.W.2. It is not possible to say generally and in the abstract that all errors in regard to electoral roll numbers of the candidate and the proposer in the electoral rolls or nomination paper do not constitute defects of a substantial character. They would not be defects of a substantial character only if at the time of the scrutiny the Returning Officer either by himself with the materials placed before him during the scrutiny or with the assistance of the candidate or his proposer or any other person is able to find out the correct serial number of the candidate and the proposer by reference to the correct part number of the

electoral roll. If that is

335

not the case, he would be committing a grave error by accepting the nomination paper without verifying whether the candidate is a voter in that or any other constituency of the State and whether the proposer is a voter in that constituency. As regards the tripping by the Returning Officer we find that there is no allegation in the election petition that there was any assurance by the Returning Officer at the time of receipt of the nomination paper that there was nothing wrong in it. Even according to Mr. Kacker the enquiry by the Returning Officer at the time of delivery of the nomination paper is only a peripheral enquiry in which the Returning Officer in the present case seems to have been satisfied by finding two numbers each given in regard to the candidate and the proposer that they were the serial number and part number of the electoral roll which the proposer was bound to give correctly in regard to the candidate and himself in the nomination paper. In the absence of any such allegation of tripping in the election petition we think that the evidence of the proposer P.W.2 which is not even corroborated by the evidence of any other witness that he and the candidate presented the nomination paper to the Returning Officer and showed him the voters' list and that he told them then that the nomination paper was in order. This Court has held over and over again that no amount of evidence can be looked into upon a plea which was never put forward in the pleadings. In these circumstances we think that the learned Single Judge was not justified in accepting the evidence of P.W.2 and holding that the Returning Officer was guilty of tripping the candidate and the 'proposer by any assertion on his part into any believing that there was nothing wrong in the nomination paper. The candidate and the proposer are always expected to go fully prepared to meet any objection that may be raised by any candidate or even by the Returning Officer himself suo moto at the time of the scrutiny and they cannot be expected to go any the less prepared merely because the Returning Officer had received the nomination paper without raising any objection. It is at the time of scrutiny which is done in the presence of all concerned that the nomination papers come up for more detailed consideration at the hands of the Returning Officer against whom there is no estoppel in regard to the statutory duty of scrutiny.

P.W. 1 has deposed merely about the concerned serial numbers 177 and 313 and part numbers 6, 39 and 57 of the electoral roll. The proposer P.W.2 has stated in his evidence that when the Returning Officer told him and his candidate Dog Ram at the time

336

of the scrutiny that there was some mistake in filling the nomination paper, both of them volunteered to show the actual entry in the electoral roll of Amar Heri village but he declined to have a look at it and insisted that the particulars mentioned in the nomination paper alone could be seen by him. The Returning Officer who had to verify the serial numbers and part numbers etc. given in the nomination paper with reference to the entries in the electoral roll could have said that there were mistakes in the nomination paper only after having looked into the electoral roll and he would not have stated that he would see only the numbers mentioned in the nomination paper. In his cross-examination P.W.2 has admitted that the Returning Officer told them at the time of the scrutiny that they should show him their names in the electoral roll. But he has denied that Dog Ram

replied that he was not in a position to point out his name or his own name in the electoral roll. He has stated that on the other hand they asked the Returning Officer to give them the electoral roll relating to Amar Heri village and he declined to do so and that they did not protest against that highhandedness of the Returning Officer. The Returning Officer must have had the electoral rolls before him at the time of the scrutiny which could not be done without the electoral rolls before him. R.W.1, an Advocate who was himself a candidate and had retired at a later stage, has stated in his evidence that the electoral rolls were lying on the table of the Returning Officer at the time of the scrutiny. There is no reason for not accepting this evidence of R.W.1. The electoral rolls were lying on the Returning Officer's table at the time of the scrutiny and, therefore, there would have been no necessity for the candidate Dog Ram and P.W. 2 to ask the Returning Officer to give them the electoral roll relating to Amar Heri village for clearing his doubt. Therefore, we are unable to accept this evidence of P.W.2. P.W. 3. also has stated in his evidence that both Dog Ram and P.W.2 told the Returning Officer when he raised objection sue moto at the time of the scrutiny that they filled in the nomination papers after looking at the particulars in the electoral rolls relating to Amar Heri village and that if the electoral roll of that village was given to them they would be in a position to show him the correct particulars, but he declined to oblige them and insisted that they should show that the serial number and part number mentioned in the nomination paper tally. He has stated that he too told the Returning Officer that he should give them the facility of showing the particulars in the electoral roll of Amar Heri village but he declined to comply with his

337

request and stated that he would see only the serial number and the part mentioned in the nomination paper. He has stated that he was interested in the acceptance of the nomination paper of Dog Ram because he belongs to rural part and was the Lambardar of his village. However, he has admittedly not made any report to anyone about the alleged high-handedness of the Returning Officer though he was a Minister of the State Government at that time and Dog Ram is stated to have told him that the Returning Officer was not acting fairly. What is more he has not made this alleged improper rejection of the nomination paper of Dog Ram as a ground in Election Petition No. 8 of 1982 which he had filed for setting aside the election of the appellant on the ground of corrupt practice etc. and claiming the seat for himself. P.Ws. 2 and 3 have, no doubt, denied that P.W. 2 was not present during the scrutiny on 26.4. 1982 whereas R.W. 1 has stated that Dog Ram alone was present and P.W. 2 was not present at that time. R.W. 1 has stated in his evidence that though nobody objected to the nomination paper of Dog Ram, the Returning Officer asked Dog Ram during the scrutiny in his presence to show the serial number and part number where his name is entered in the electoral roll, that Dog Ram could not do so though the electoral roll was lying on the table of the Returning Officer and Dog Ram was given the opportunity of seeing the same and that thereupon the Returning Officer wrote out his order Ex. P.W.1/B rejecting the nomination paper of Dog Ram then and there and read it out. The evidence of R.W. 1 is largely corroborated by the Returning Officer's order Ex P.W.1/B which has been set out in the earlier part of this judgment. There is no reference to the presence of P.W.2 during the scrutiny in that order.

Therefore, it is probable that P.W.2 was not present during the scrutiny as stated by R.W.1. The evidence of P.W.3 that the Returning Officer did not ask Dog Ram to show the names of himself and his proposer in the electoral roll is inconsistent with the allegation in the election petition as also the evidence of P.W. 2 that the Returning Officer said so. Therefore, we are unable to accept the evidence of P.W.3. But we accept the evidence of R.W. 1 and find that that the Returning Officer found the discrepancy in the names serial number and part number mentioned in the nomination paper on the one hand and those found in the electoral roll with reference to those numbers on the other and that on account of his inability to ascertain with the particulars made available before him whether the candidate Dog Ram and his proposer P.W. 2 were electors is

338

the constituency he asked the candidate Dog Ram to point out the names of himself and his proposer in the electoral roll to satisfy him that they are electors in the constituency and that as he was unable to do so he rejected the nomination paper by his order Ex.P.W. 1/B.

Learned counsel for the parties invited our attention to certain decisions. We think it necessary to refer to only three of them. In Hira Singh Pal v. Madan Lal(1) a candidate had filed two nomination papers and both of them were rejected by the Returning Officer. In rejecting the nomination papers the Returning Officer observed as follows;

"Shri Madan Lal, resident of village Parchech, P.O. Ghanahatti, District Mahasu filed two nomination papers before me on 20th January, 1967 which bear serial Nos. 5 & 6. According to the entry in the nomination paper serial No. 5 Shri Anant Ram proposer has been shown to be entered at serial No. 383 of part 13 of the electoral rolls for 9-Arki Assembly Constituency. From the comparison with the final copy of electoral roll for this constituency, at serial No. 383 of part 13 the name of Shrimati Phullu wife of Shri Nirjal Singh has been entered. As such this entry in this nomination paper is wrong.

As regards nomination paper bearing serial No 6 the candidate has shown his name to be entered at serial No. 504 of part 2 of the electoral rolls for 9-Arki Assembly Constituency. From the comparison with the aforesaid entry in the final copy of the electoral rolls of the aforesaid serial No. Of the aforesaid part one Shrimati Darshnoo wife of Shri Ghanaya Ram has been entered. Hence this entry in the nomination paper bearing serial No. 6 is incorrect.

At the time of scrutiny neither Shri Madan Lal nor his proposer or election agent nor any one authorised on his behalf was present so that he could be given an opportunity for correcting these entries. This candidate while presenting his nomination papers claimed to be the substitute

(1) [1968] 2 S.C.R. 778.

339

candidate of the Indian National Congress who have put up Shri Hari Dass as their only candidate.

In view of the aforesaid circumstances it cannot be ascertained whether Shri Madan Lal is an elector in any Assembly Constituency of Himachal Pradesh or that his proposer Shri Anand Ram is an elector in the 9-Arki Assembly Constituency. Shri M.R. Gupta, Advocate the person authorised on behalf of Shri Hari Dass was informed to convey to Shri Madan Lal that he can

approach me any time upto 3.00 p m. today for correcting these entries. Shri Madan Lal has not turned up as yet. It is now 15 minutes past 3.00 p.m.

In these circumstances there is no alternative but to reject both these nomination papers as the candidate does not seem to be interested in correcting these entries and filing proper and valid nomination papers. These orders are passed ex-parte since Shri Madan Lal has not cared to turn up."

This Court has observed in that decision:

".... As mentioned earlier, the errors found in the nomination papers are purely clerical errors. The Returning Officer had the duty to scrutinize the nomination papers when they were presented for finding out whether there were any clerical mistakes in the same. Under that provision he was required to find out whether the names of the candidates as well as their proposers and seconders were correctly mentioned in the nomination papers. He was also required to see whether their place in the electoral roll was correctly mentioned in the nomination papers. Evidently the Returning Officer failed in his duty. Further, when he scrutinised the nomination papers on January 21, 1967, he had before him all the required information. It may be that while scrutinising the first nomination paper (marked as No. S) he had no material before him to find out whether the proposer of the candidate was really an elector in the constituency or not; but when he came to the second nomination paper where the proposer's name as well as his place in the electoral roll is correctly mentioned, it was improper on his part to have rejected that nomina-

340

tion paper. It is true that in that nomination paper, it had been mentioned that the candidate's name is found at serial No. 504 of part 2 of 9-Arki Assembly Constituency, though in fact is found at serial No. 504 in part 12 of that constituency; but from the first nomination paper, the Returning Officer could have easily found out the correct part of the electoral roll. All the required information was before him. Obviously he rejected the nomination papers for the reason that the respondent was only a dummy candidate but that was not a matter for him to decide. If he was a dummy candidature there was occasion for him to withdraw his candidate after the scrutiny of the nomination papers. Therefore, it is quite clear that the respondent's nomination papers were improperly rejected. Such a rejection was impermissible under s. 36 and the same is a ground for setting aside the election under s. 100 of the Representation of the People Act."

That was a case where from a mere look at the two nomination papers and the electoral rolls the Returning Officer could have found out the correct part of the electoral roll and all the required materials were before him and, therefore, it has been held that the rejection of the nomination papers was improper. But that is not the case here. There was no such prima facie material before the Returning Officer in the present case to find out the correct part number of the electoral roll in which the candidate Dog Ram and the proposer P.W. 2 were registered as electors. There were as many as 77,000 voters in the 97 parts of the electoral roll in Jind constituency and even Amar Heri village had two part numbers in the electoral

roll. The postal address of the candidate Dog Ram given in the nomination paper was not a sure guide for the Returning Officer to trace the correct part number of the electoral roll in regard to the candidate Dog Ram and his proposer P.W. 2. The Returning Officer who is expected to hold only such summary enquiry as he thinks fit is not expected to himself find out the correct part number of the electoral roll by making a roving enquiry and questioning the candidate or his proposer. In the circumstances, he asked the candidate, who was present before him, to point out the entries in the electoral roll where the names of himself and his proposer are found as electors and as he was not in a position to do so he rejected the nomination paper. Therefore, the observations made in that decision do not help the respondent.

341

In Ram Awadesh Singh v. sumitra Devi & Ors (1) the High Court set aside the election of the appellant before this Court on the ground that his nomination paper had been improperly accepted and the election had been materially affected thereby. It was proved that the Returning Officer did look into the nomination paper, but unfortunately he did not notice that the appellant's name had been removed from the Arrah constituency. The appellant had with him a certified copy of the electoral roll of Sandesh constituency where his name was enrolled and he showed it to the Returning Officers. The mistake complained of occurred because both the appellant as well as the Returning Officer looked into the main voters' list of the Arrah constituency but overlooked the deletion noted in a separate list. In these circumstances, it has been held by this Court that the High Court was not justified in allowing the election petition on the ground that the nomination paper of the appellant was improperly accepted. This decision will not apply to the facts of the present case where with the serial numbers and the numbers given as part numbers of the candidate and the proposer in the nomination paper D their names could not be traced in the concerned parts as registered voters. The Returning Officer, therefore, felt helpless and asked the candidate to point out the names of himself and his proposer in the electoral roll which he did not do.

The decision in Viveka Nand Giri v. Nawal Kishore Sahi(2) also would not apply to the facts of the present case as the defect in the nomination paper in that case was only the difference in the age in the electoral roll and the nomination paper. It has been held by this Court that it was a case of inaccurate description mentioned in s. 33(4) of the Act which ought to have been got corrected or overlooked by the Returning Officer having regard to the language of the proviso to that sub-section.

For the reasons mentioned above we are of the opinion that the Returning Officer in the present case could not be said to have improperly rejected the nomination paper Dog Ram. The appeal is accordingly allowed with costs here as well as in the High Court.

A.P.J

Appeal allowed .

(1) [1972] 2 S.C.R. 674.

(2) A.I.R. 1984 S.C. 856.

342