

PETITIONER:
SHRI BHOGENDRA JHA

Vs.

RESPONDENT:
SHRI MANOJ KUMAR JHA

DATE OF JUDGMENT: 23/04/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)
MAJMUDAR S.B. (J)

CITATION:
1996 AIR 2099 JT 1996 (5) 658
1996 SCALE (4)542

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

The appellant is a returned candidate to the 10th Lok Sabha from 13, Madhubani Parliamentary Constituency in Bihar. The last date for filling nominations for the Lok Sabha Elections was April 26, 1991. The date of scrutiny was April 27, 1991. Out of 61 candidates who filed nominations, three nomination papers of Pawan Kumar Pathak, PW-4, Lal Bahadur Singh, PW-6 and another came to be rejected by the Returning officer during scrutiny. Poll was held on May 23, 1991. Out of 49 candidates who remained in the contest, the appellant had secured 3,30,111 votes, i.e., 51.91 per cent as against the nearest candidate Dr. Jagannath Mishra who secured 2,50,020, i.e., 39.31%. Rest of the candidates could not even protect their deposits. The respondent Manoj Kumar Jha, an elector filed the election petition impugning rejection of the nominations of PW-4 and PW-6 as bad in law. The High Court in the impugned judgment has upheld his contention and declared the election of the appellant as void in E.P.A. No.7/1991 dated August 25, 1995 by Patna High Court.

In this appeal, the only question is: whether the view of the High court that the Returning Officer had not conducted summary enquiry under section 36 of the Representation of People Act, 1951 (for short, the 'Act') is correct in law? It is seen that even Pawan Kumar Pathak (PW-4) and Lal Bahadur Singh, PW-6 did not feel aggrieved against the rejection of the nominations as they did not file election petitions though they were examined on behalf of the respondent as witnesses. The appellant, admittedly, was not and could not present himself at the time of scrutiny of nomination papers and rejection of the nominations. He did not know what had transpired at the time of scrutiny and rejection of the nomination. As regards PW-4, Pawan Kumar Pathak, the orders of rejection read thus:

"the proposer name does not tally with the name as entered in the electoral roll hence rejected."

As regards PW-6, it was rejected for the reason given thus:

"The name of the proposer does not tally with the name as entered in the electoral roll hence rejected."

It is not in dispute that PW-4's proposer's electoral roll number with S. No. 413, Part 190 while in his nomination paper he mentioned S. No.113 part 190. Lal Bahadur Singh's proposer mentioned his name was in the Part 75 of electoral roll; in fact, it is in Part 74. The question, therefore, is: whether it was necessary for the Returning Officer to make a roving enquiry as regards the correct number of the proposers in the nomination papers and the electoral roll. Section 33 of the Act prescribes procedure for presentation of the nomination on the appointed date by each candidate either in person or by his proposer, between the specified time under sub-section (1) thereof. The nomination thereof is to be completed in the prescribed form and signed by the candidate and by an elector of the constituency as mandated under Section 31. Under sub-section (4), on the presentation of the nomination paper, the Returning Officer has to satisfy himself that the names and numbers of the candidate and his proposer as entered in the nomination paper are the same as entered in the electoral roll. The proviso reads as under:

"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."

Section 36 prescribe the procedure for the scrutiny of nomination paper. Sub-section (1) emphasizes that on the date of the scrutiny of nomination paper, the candidates, their election agents, one proposer of each candidate, and one other person duly authorised in writing by each candidate and by 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 the candidates which might have been delivered under Section 33. Under sub-section (2) thereof the nomination paper shall be examined by the Returning Officer thereafter and he shall decide all objections which may be made to any nomination and may, either on such objection or after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the grounds enumerated in clause (a), namely, whether the candidate is not qualified or is disqualified for being chosen to fill the seat or there has been a failure to comply with any of the provisions of Section 33 or Section 34 or the signature of the candidate or the proposer on the nomination paper is not genuine. Under sub-section (4), the returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. Even though no objection is raised by any other candidate, if the Returning Officer on his own motion finds that the defect is of substantial character, he is empowered to reject the nomination. If any objection is raised, 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 are adjourned as envisaged in proviso to sub-section (5). The Returning Officer shall hold, under sub-section (1), the scrutiny on the date in that behalf and shall not allow any adjournment of the proceedings except when such proceeding are interrupted or obstructed by riot or open, violence or causes beyond his control. Under sub-section (6), the Returning Officer shall endorse on such 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. Under sub-section (8), immediately after all the nomination papers have been scrutinised and decisions, accepting or rejecting the same, have been recorded, the Returning Officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it on his notice board. What would be a defect of substantial character is always a question of fact based on factual matrix on record. Each case is required to be considered on its own backdrop.

This Court in a recent judgment dated 14.3.1996 in C.A. No.6478/95 (Rafiq Khan & Anr. v. Lazmi Narayan Sharma) reviewed the entire case law and held that:

"Unless the defect is one which can be per se noticed and corrected at the stage of section 33(4) or later at the stage of section 36(4) without the need to refer to various other documents the same cannot be said to be of a non-substantial character. In the instant case also the defect as to the number could have been said to be not of a substantial character if the appellant had shown that the name of the proposer appeared on the very same sheet at serial number 138 instead of 136 i.e. Only two steps away. In that case one can say that the Returning Officer could have verified the same if he had exercised due diligence. In

such a situation even if the appellant had his proposer absent the court could have taken the view that the defect was not of a substantial nature. But the defect cannot be noticed unless the Returning Officer is required to sift through various other documents or the voters list or is required to undertake an enquiry as to whether the proposer's name appears anywhere else in the voters list. The defect may not be one capable of being cured without the assistance of the candidate or his proposer and in such a situation he would be justified in rejecting the nomination paper. In the instant case since there is no evidence to suggest that the name of the proposer appeared on that very sheet at serial number 138 instead of 136 in the electoral roll, we find it difficult to find fault with the rejection of the nomination paper by the Returning Officer."

Under Section 36(4) of the Act, the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. Under Section 36(1), the Returning Officer has the power to conduct an enquiry. It is settled law that it is a summary enquiry. When the Returning Officer scrutinize the nomination paper, the parties or the nominees are required to be present and if they seek liberty to place the necessary material, the Returning Officer is enjoined to adjourn the case to the next day. In case they are able to place the necessary material and satisfy the Returning Officer of the correctness of the enrollment as a candidate or the address of the nominee, the Returning Officer would consider the same. But he is not expected to sift the evidence and find the placement in the electoral roll, the name and particular of the nominee.

In this case, PWs 4 and 6 who were the candidates and had filed their nominations, though admittedly were present, did not ask for an opportunity nor attempted to satisfy the Returning Officer as to the correctness of the particulars furnished by them in the nomination papers of their proposers. Therefore, the Returning Officer was not expected to make a roving enquiry to find out whether the names of the proposers found place in the electoral roll. It is the duty of the candidate/proposer to satisfy the Returning officer. It was suggested to the witnesses, PWs 4 and 6, that they were only dummy candidates and had no interest in the election and that in the event Dr. Misra was unsuccessful at the election, they would be used as a means to unsettle the election of the appellant.

We find force in the suggestion. It was suggested that Dr. Misra had borne their travel expenses to attend the Court for giving evidence. It is an admitted position that they did not even know the result of the election and the person who succeeded in the election. In other words, they did not even make any attempt to know the result of the election, apart from the fact that they did not file even the election petition. Under these circumstances, it would

appear that PWs 4 and 6 were only dummy candidates to be used as reserve material to impugn the election of the returned candidate in the event the election result went against any unsuccessful candidate.

Accordingly, we hold that the High Court was not right in declaring the election of the appellant as void on the ground that the nominations of PWs 4 and 6 were not valid in law.

The appeal is accordingly allowed with costs quantified at Rs.15,000/-. The judgment of the High Court is set aside. The election petition stands dismissed.

JUDIS