

PETITIONER:
KONAPPA RUDRAPPA NADGOUDA

Vs.

RESPONDENT:
VISHWANATH REDDY & ANR.

DATE OF JUDGMENT:
13/09/1968

BENCH:
HIDAYATULLAH, M. (CJ)
BENCH:
HIDAYATULLAH, M. (CJ)
MITTER, G.K.

CITATION:
1969 AIR 447 1969 SCR (1) 395
CITATOR INFO :
AFR 1969 SC 604 (12,14)
D 1981 SC1177 (14,17)

ACT:
Representation of the People Act (43 of 1951), ss. 53, 84 and 101-Two candidates contesting for one seat-Court finds successful candidate to be under statutory disqualification-Whether the other can be declared elected.

HEADNOTE:

The appellant and respondent were the contesting candidates for a seat in the State Legislative Assembly. The appellant challenged the respondent's nomination before the Returning Officer on the ground that the respondent was disqualified under s. 9A of the Representation of the People Act, 1951. No general notice was given to the electorate about the disqualification. The Returning Officer overruled the objection and accepted the respondent's nomination. After the respondent was elected, the appellant filed an election petition in the High Court, on the same ground, but the petition was rejected.

In appeal, this Court declared the election of the respondent void, and on the question whether the appellant could, under law, be declared elected,

HELD: The decision in Keshav Laxman Borkar v. Dr. Devrao Laxman Anande, [1960] 1 S.C.R. 902 that votes cast in favour of the disqualified candidate would be deemed to be thrown away only when the voters had notice of the disqualification, and that in the absence of such notice, there can only be fresh election is wrong. That rule was adopted from English decisions but it is not consistent with the Indian statute. law and is inappropriate for Indian conditions. [95 A-B; 96 E]

(a) Section 53 of the Act renders a poll necessary only if there are more candidates contesting the election than the number of seats contested. If the number of candidates is equal to the number of seats to be filled, the Returning Officer shall forthwith declare all such candidate's to be duly elected to fill those seats. [92 D]

(b) In cases falling under s. 101(b), the Act requires merely proof of corrupt practice and obtaining votes by the corrupt practice: it does not require proof that voters

had notice of the corrupt practice. Therefore, in cases falling under cl. (a) when there are only two candidates for one seat and the returned candidate is found to be under a statutory disqualification the other may be declared elected under s. 84 read with s. 101 ('a), even though the voters had no notice of the disqualification of the successful candidate. [96 BE]

(c) It would be almost impossible to give notice of the disqualification to the electorate in view of the immense cost involved and the general illiteracy of a large section of voters. [95 E-F]

(d) There is no logic in the assumption that votes, cast in favour of

person whose nomination was accepted by the Returning Officer but who was really disqualified, could still be treated as valid votes for deter-

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mining whether a fresh election should be held. While notice to voters may have significance when there are more than two candidates in the field for a single seat, where there are only two contesting candidates and one of them is under a statutory disqualification, votes cast in his favour may be regarded as thrown away irrespective of whether the voters were aware of the disqualification. [95 F-H]

Therefore, where by an erroneous order of the Returning Officer poll is held which, but for that order, was not necessary, the Court would be justified in declaring the contesting candidate elected, who, but for the order of the Returning Officer would have been declared elected.

[19 C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Review Petition No. 54 of 1968. (For the review of this Court's judgment dated July 19, 1968 in Civil Appeal No. 1705 of 1967).

B.S. Patil, M. K. Ramamurthi, Vineet Kumar and Shyamala Pappu, for the petitioner.

S.V. Gupta, S.S. Javali and B. Datta, for respondent No. 2. The Judgment of the Court was delivered by

Shah, J. Vishwanath Reddy was declared elected to the Mysore Legislative Assembly from the Yadgiri constituency at the poll held in February 1967. Nadgouda who was a contesting candidate filed a petition before the High Court of Mysore for an order setting aside the election of Reddy on the ground that Reddy was disqualified from standing as a candidate for election and for an order declaring that he--Nadgouda--be declared elected. The High Court rejected the petition. In appeal, this Court held that at the date of nomination Reddy was disqualified from standing as a candidate and passed an order on July 19, 1968 that--

" the appeal is therefore allowed, the election of the first respondent is declared void. In this view of the matter the votes cast in favour of the first respondent be treated as thrown away. As there was no other contesting candidate we declare the appellant (election petitioner) elected to the seat from the Yadgiri constituency."

Reddy then applied for review of judgment and claimed, relying upon the decision of this Court in Keshav Laxman Borkar v. Dr. Devrao Laxman Anande(1), that in the

circumstances of the case no order declaring Nadgouda could be made by this Court. This Court granted review of judgment by order dated August 27, 1968, and the appeal is now before us for consideration of the question whether it is open to this Court on the finding recorded' about the disqualification of Reddy to declare Nadgouda as duly elected to the Mysore Legislative Assembly.

(1) [1960] 1 S.C.R. 902

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Out of seven candidates who. filed their nomination papers for election, five candidates withdrew their candidature, and Nadgouda and Reddy were the only two candidates remaining in the field. Nomination of Reddy was challenged before the Returning Officer on the plea that Reddy was disqualified by virtue of s. 9A of the Representation of the People Act from standing as a candidate for election to the Mysore State Legislative Assembly, but that objection was overruled and his nomination was accepted. Reddy secured at the poll 4000 more votes than Nadgouda and was declared elected.

This Court has declared the election of Reddy void on the ground disqualification under s. 9A of the Representation of the People Act, and the question is no longer in issue at this stage. The only question which remains to be determined is whether in the events which have transpired, Nadgouda could under the law be declared elected.

Section 53 of the Representation of the People Act provides that if the number of contesting candidates is more than the number of seats to be filled, a poll shall be taken, and if the number of such candidates is equal to the number of seats to be filled, the Returning Officer shall forthwith declare all such candidates to be duly elected to fill those seats. "Disqualified" means "disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State": s. 7(b). Section 9A of the Act provides:

"A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken, by that Government.

Explanation.--

Reddy was on the finding recorded by this Court incompetent to be chosen as a member of the Legislative Assembly. Objection was raised before the Returning Officer that Reddy was disqualified, but no general notice was given to the electorate about the disqualification. On the view that Reddy was not disqualified, the Returning Officer accepted his nomination and at the poll Reddy was declared duly elected.

Section 84 of the Representation of the People Act provides that--

petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected."

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Nadgouda by his election petition did make a claim that the election of Reddy be declared void and that he--Nadgouda--be declared duly elected. Section 100 sets out the grounds on

which an election may be declared void, and s. 101 sets out the grounds on which a candidate other than the returned candidate may be declared to have been elected. That section provides:

"If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the High Court is of opinion-

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes, the High Court shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate as the case may be, to have been duly elected."

The expression "valid votes" used in s. 101 has not been defined in the Act. But this Court has held in Keshav Laxman Borkar's case⁽¹⁾ that a candidate whose nomination paper is accepted after scrutiny, is a validly nominated candidate "at least for the purpose of receiving votes at the election", and that the candidate must be treated as a person for whom votes could be given. The Court on that view held that where there are only two candidates. for a seat and the election of the candidate declared elected is set aside on the ground that he was disqualified the defeated candidate cannot be declared elected, and there must be a fresh election. In the opinion of the Court the votes cast in favour of the disqualified candidate cannot be said to be thrown away unless there is a "special pleading" that certain voters had cast their votes with the knowledge or notice that the candidate for whom they had voted was not eligible for election, and they had deliberately thrown away their votes in favour of the disqualified person: in the absence of such a plea it cannot be said that the votes cast in favour of a person who was by law disqualified from being nominated, but who was in fact nominated, were thrown away. In the Court's view a defeated candidate out of the two who contested the election may be declared elected under s. 84 read with s. 101 of the Act, if he proves that the voters had notice of the disqualification of the successful candidate. Correctness of this view is challenged before us.

[1960] 1 S.C.R. 902.

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The rule enunciated by this Court was apparently adopted from certain cases decided by the Courts in the United Kingdom. In Drinkwater v. Deakin⁽¹⁾ it was held that bribing by a candidate at an election, though it renders his election void if he be found guilty of it on petition, does not incapacitate the candidate at that election in the sense that the votes given for him by voters with knowledge of it will be thrown away, and that no disqualification arises in that sense of the term until after the candidate has been found guilty of bribery on petition, and consequently, the petitioner was not entitled to the seat.

In Hobbs v. Morey⁽²⁾ at a municipal election a person who had an outstanding contract with a municipality was nominated as a candidate and was declared duly elected. The

defeated candidate then claimed the seat on the plea that the successful candidate was disqualified.. It was held that the nomination of the successful candidate was invalid, and as the defeated candidate did not allege any notice to the electorate of the disqualification of the successful candidate, the votes given for him could not be treated as thrown away, and the defeated candidate was not entitled to claim the seat.

In *Beresford Hope v. Lady Sandhurst*(3) it was held by the Court of Appeal that an 'election of a woman candidate to a county council under the Local Government Act, 1888, being void, the defeated candidate could be declared elected, because it was common knowledge that women are incapacitated from being elected members of a county council and the votes given to the woman candidate were thrown away.

In a recent judgment of the Court of Appeal in *Re. Bristol South East Parliamentary Election*(4) at the parliamentary election Wedgwood Benn was declared duly elected member of the Parliament. Prior to that date St. Clair a contesting candidate had sent out notices to all persons entitled to vote stating that by reason of his status as a peer of the United Kingdom Wedgwood Benn was disqualified from being elected a member of Parliament and that all votes given for him would be thrown away and, be null and void. Similar notices were published in the newspapers circulating in the constituency and were posted at the entrance to. polling stations. The Court of Queen's Bench held in that case that the facts which in law created the incapacity of Wedgwood Benn to be elected a member of Parliament were known to the electors before they cast their votes, and the Court was bound to declare that the votes cast for the successful candidate had been thrown away. The petitioner (defeated candidate) was accordingly declared duly elected.

(1) [1874] L.R. 9 Court of Common Pleas 626. (2)
[1904] 1 K.B. 74.

(3) [1889] 23 Q.B.D. 79. (4) [1961] 3 All
E.R. 354.

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The cases decided by the Courts in the United Kingdom appear to have proceeded upon some general rule of election law that the votes. cast in favour of a person who is found disqualified for election may be regarded as thrown away only if the voters had notice before the poll of the disqualification of the candidate.

But in our judgment the rule which has prevailed in the British Courts for a long time has no application in our country. Section 53 of the Representation of the People Act renders a poll necessary only if there are more candidates contesting the election than the number of seats contested. If the number of candidates validly nominated is equal to the number of seats to be filled, no poll is necessary. Where by an erroneous order of the Returning Officer poll is held which, but for that order, was not necessary, the Court would be justified in declaring those contesting candidates elected, who, but for the order, would have been declared elected. The rule enunciated by the Courts in the United Kingdom has only the merit of antiquity. But the rule cannot be extended to the trial of disputes under our election law, for it is not consistent with our statute law, and in any case the conditions prevailing in our country do not justify the application of that rule. If the rule is applied in our country, the provisions of s. 84 read with s. 101 (a) would practically be nugatory. Apart from the immense cost of intimating each voter in the vast

electorate in the constituencies the rule that a defeated candidate may be declared elected only if he pleads and proves that the voters had notice of the disqualification would render the exception in the context of prevailing illiteracy and ignorance of large sections of the electorate in our country, a dead letter. A very large percentage of the electorate in our country is, unfortunately illiterate and sections thereof not infrequently speak a language different from the language of the majority. It would be well nigh impossible to give information of the disqualification of a candidate in a medium which the illiterate electors understand. We are again unable to see any logic in the assumption that votes cast in favour of a person who is regarded by the Returning Officer as validly nominated, but who is in truth disqualified, could still be treated as valid votes, for the purpose of determining whether a fresh election should be held. When there are only two contesting candidates, and one of them is under a statutory disqualification, votes cast in favour of the disqualified candidate may be regarded as thrown away, irrespective of whether the voters who voted for him were aware of the disqualification. This is not to say that where there are more than two candidates in the field for a single seat, and one alone is disqualified, on proof of disqualification all the votes cast in his favour will be discarded and the candidate securing the next highest number of votes will be declared elected. In such a case, question of notice to the

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voters may assume significance, for the voters may not, if aware of the disqualification have voted for the disqualified candidate.

The view that we are taking is consistent with the implication of d. (b) of s. 101. When in an election petition which complies with s. 84 of the Act it is found at the hearing that some votes were obtained by the returned candidate by corrupt practices, the Court is bound to declare the petitioner or another candidate elected if, but for the votes obtained by the returned candidate by corrupt practice, such candidate would have obtained a majority of votes. In cases falling under cl. (b) of s. 101 the Act requires merely proof of corrupt practice, and obtaining votes by corrupt practice: it does not require proof that the voters whose votes are secured by corrupt practice had notice of the corrupt practice. If for the application of the rule contained in cl. (b) notice to, the voters is not a condition precedent, we see no reason why it should be insisted upon in all cases under cl. (a). The votes obtained by corrupt practice by the returned candidate, proved to be guilty of corrupt practice, are expressly excluded in the computation of total votes for ascertaining whether a majority of votes had been obtained by the defeated candidate, and no fresh poll is necessary. The same rule should, in our judgment, apply when at an election there are only two candidates and the returned candidate is found to be under a statutory disqualification existing at the date of the filling of the nomination paper.

We are of the view that Keshav Laxamn Borkar's case(1) was not correctly decided. We therefore, restore the order passed by this Court by judgment dated July 19, 1968. Reddy will pay the costs of the review petition as well as of the appeal.

V.P.S.

Review petition

dismissed.

(1) [1960] 1 S.C.R. 902

JUDIS