
(1965) 03 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 135 of 1965

Amar Nath Gupta

APPELLANT

Vs

Sub-Divisional Officer (Civil)

RESPONDENT

Date of Decision : 11-03-1965

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Agricultural Produce Markets (Election to Market Committee) Rules, 1963 —
Rule 7, 7(2), 8, 9, 9(1)
Punjab Agricultural Produce Markets Act, 1961 — Section 1, 10, 2, 23

Citation : (1965) 2 ILR (P&H) 270

Hon'ble Judges : Prem Chand Pandit, J

Bench : Single Bench

Advocate : G.C. Mittal, for the Appellant; M.R. Agnihotri and B.S. Dhillon, for the Respondent

Final Decision : Allowed

Judgement

Prem Chand Pandit, J.—This is a petition under Article 226 of the Constitution filed by Amar Nath Gupta, challenging the order, dated 14th of August, 1964, passed by the Sub-divisional Officer (Civil), Faridkot, Respondent, who was acting as the Returning Officer, for the election to the Market Committee Kot Kapura, district Bhatinda, rejecting his nomination paper.

2. The Petitioner is a partner of firm, Des Raj-Sohan Lal, situate at Kot Kapura. This firm is a licensee u/s 10, of the Punjab Agricultural Produce Markets Act, 1961, (Punjab Act, No. 23 of 1961). Since the term of the members of the Market Committee, Kot Kapura, had expired, fresh elections to the said Committee had to be held. According to Section 1, 2 of the Act, four members from persons licensed u/s 10, for the notified market are concerned had to be elected by persons licensed under that section. Accordingly, the Petitioner filed his nomination paper, duly completed in all respects, on form "E" under Rule 7(2) of the Punjab Agricultural Produce Markets (Election to Market Committee) Rules, 1961, on 11th of "August, 1964, before the prescribed, date (12th of

August, 1884); Before filing the nomination paper, he also deposited in the office of the notified market area Committee the election security, as required by Rule 8, on that very day. The receipt for the same was not, however, attached by him along with the nomination paper. According to the Petitioner, at the time of the filing of the nomination paper, he produced the said receipt before the Respondent who, however, asked him to keep the same with him and told him not to attach it with the nomination papers. The Returning Officer, however, in his return has stated that he had no knowledge whether the election security was deposited by the Petitioner before the filing of the nomination paper and he never asked the Petitioner to keep the security deposit receipt with him. At the time of the scrutiny of the nomination papers on 14th of August, 1964, at Faridkot, the Respondent rejected the nomination paper of the Petitioner on the ground that there was no receipt indicating the deposit of the security. According to the Petitioner, he reminded the Returning Officer of his having produced the original receipt on 11th of August, 1964, when the latter had told him that it was not necessary to attach it with the nomination paper. The Petitioner further asked for time to bring the said receipt from Kot Kapura, as he had not brought the same with him. The Respondent, however, refused to allow any time for that purpose. According to the Petitioner, he produced an affidavit before him giving the details of the deposit of the security, but the Respondent refusal to accept the same. These allegations of the Petitioner are, however, denied by the Respondent. According to him, it was the duty of the Petitioner to produce the receipt, as without the same, he would have no basis to come to the conclusion that the deposit had actually been made.

3. It is common ground that the Petitioner had as a matter of fact deposited the security of Rs. 20 on 11th of August, 1964, as alleged by him. So the sole question for decision is whether his failure to attach the deposit receipt along with the nomination paper would necessarily result in its rejection. This will depend on the interpretation of Rule 8, the relevant part of which runs thus--

Each candidate nominated under the provisions of Rule 7, shall, at or before the time of delivery of his nomination paper, deposit or cause to be deposited a sum of twenty rupees, with the Returning Officer or in the office of the Committee of the notified market area and produce a receipt from the Returning Officer or the Committee, as the case may be, along with the nomination paper. No candidate shall be deemed to be duly nominated unless such deposit has been made.

4. A plain reading of this rule would show that every candidate at or before the time of the delivery of his nomination paper is required to deposit a sum of Rs. 20 either with the Returning Officer or in the office of the Committee of the notified market area. A further duty is cast upon him to produce a receipt for the said deposit along with the nomination paper. The rule also states that no candidate shall be deemed to be duly nominated unless such deposit has been made. In other words, the actual deposit of the security and not the attaching of the receipt, therefor is the condition precedent for the proper nomination of a

candidate. As I read the rule, the essential condition for a valid nomination is the actual deposit of the security before the: filing of the nomination paper. The production of the receipt therefor is only to prove that such deposit has been made. By its mere non-production, therefore, a nomination paper cannot be rejected. There is a substantial compliance with this rule, if the said deposit has actually been made, though the receipt therefor has not been attached along with the nomination paper. In this respect the rule is merely directory and not mandatory. If there was any doubt in his mind, the Returning Officer should have given the Petitioner reasonable time to produce the said receipt. An enquiry into this" matter could have been made by. him, as envisaged in Rule 9, which inter alia states that "The Returning Officer shall examine the nomination papers at the time appointed in this behalf, hear objections, if any, presented by the objectors in person, to the eligibility of any candidate and take decision on these objections after such enquiry as he may consider necessary."

5. The view that I have taken above finds support from a decision of the Supreme Court in Thakur Pratap Singh Vs. Shri Krishna Gupta and Others, Their Lordships were dealing with certain provisions of the C.P. and Berar Municipalities Act and the rules made thereunder, according to which candidates for the office of President of the Municipal Committee were required to give their caste. This rule was, however, changed and instead of "caste" their "occupation" had to be entered. An objection was raised by one of the candidates that the nomination papers of those candidates who had not entered their "occupation" but had given their caste" should be rejected. The trial Judge held that the defect was not substantial and was curable. This decision was, however, reversed by the High Court on revision and it was held that the failure to comply with any of the provision set out in the various rules was (sic) that in such cases the nomination paper must be rejected.

6. While accepting the appeal against this decision their Lordships of the Supreme Court held thus--

Tendency of the Courts towards technicality is to be deprecated; it is the substance that counts and must take precedence over mere form. Some rules are vital and go to the root of the matter they cannot be broken; others are only directory and a breach of them can be overlooked provided there is substantial compliance with the rules read as a whole and provided no prejudice ensues and when the legislature does not itself state which is which, judges must determine the matter and, exercising a nice discrimination, sort out one class from the other along broad-based, commonsense lines.

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Reading Rule 9(1)(iii)(c) in the light of Section 23, an omission to set out a candidate"s Occupation cannot be said to affect "the merits of the case. This part of the form to be filled in by the candidate is Only directory and is part of the

description of the candidate; it does not go to the root of the matter so long as there is enough material in the paper to enable him to be identified beyond doubt.

7. In view of what I have said" above, this petition succeeds and the impugned order is quashed. There will, however, be no order as to costs.