

**(1978) 01 P&H CK 0026**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ No. 1913 of 1977**

Balbir Singh and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

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**Date of Decision :** 13-01-1978

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Representation of the People Act, 1951 — Section 36

**Citation :** AIR 1978 P&H 142 : (1979) CriLJ 102

**Hon'ble Judges :** C.S. Tiwana, J

**Bench :** Single Bench

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## Judgement

1. In this writ petition under Arts. 226 and 227 of the Constitution of India the five petitioners have prayed for the issue of a writ in the nature of certiorari or mandamus or any other writ for quashing an order dated 9th June, 1977, passed in revision by the Deputy Secretary to Government, Punjab, Co--operation Department. By that order election to the Managing Committee of Ghungrali Sewak Co--operative Agricultural Service Society had been set aside. The petitioners had been elected without a contest, as the nomination papers of respondents Nos. 3 to 15 had been rejected by the Returning Officer at the time of scrutiny. This defect was found common to all these respondents that the name of the Society to whose Managing committee election was sought was missing. The order about the rejection of nomination papers was upheld in appeal by the Deputy Registrar, Co--operative Societies, Ludhiana, through an order passed on 12th July, 1976. There was a further appeal under S. 62 of the Punjab Co--operative Societies Act, which was again dismissed by the Joint Registrar, Co--operative Societies, on 29th October, 1976. Petitioner No. 5 is Harnek Singh. It was found by the Joint Registrar that he had been convicted under S. 304A of the Indian Penal Code. It is provided by R. 25 (d) of the Punjab Co--operative Societies Rules that a person who has committed any offence involving dishonesty or moral turpitude during the period of 5 years prior to the date of scrutiny of nomination papers was not eligible for election as a member

of the Committee. Thus in appeal, election of petitioner No. 5 was quashed by the Joint Registrar but the appeal against the other petitioners was dismissed. There was then a revision on behalf of respondents Nos. 3 to 15 which was accepted by the Deputy Secretary to Government of Punjab on 9th June, 1977, who took this view that the defect in the nomination papers was such as could be got corrected by the Returning Officer. The nomination papers were held to have been rejected on a flimsy ground,

2. The State of Punjab and the Joint Registrar have been impleaded as respondents Nos. 1 and 2. In the written statements filed by them and the one filed by respondents 3 to 15 it has been canvassed that no material irregularity had been committed in the nomination papers by non-mention of the Society to whose Managing Committee the election was sought. It was urged before me that election was being held in relation to one Managing Committee and the Returning Officer could not have been in any doubt about the Society to which the nomination papers related.

3. There is no dispute about facts in this case. There are no prescribed forms unlike those relating to the elections to the Lok Sabha. Respondents 3 to 15 had omitted to mention the name of the Society to which they were seeking election. There is a provision contained in R. 6 of the Election Rules whereby the Returning Officer can permit the removal of any clerical error in the nomination papers in regard to names or numbers if the corrections are required to be made for bringing them in conformity with the corresponding entries in the list of voters. The only legal point for determination in this writ petition is whether the Returning Officer should have given a chance to the respondents for the correction of the mistake that they had made. Incidentally it has also to be decided whether without there being any correction the mistake was in any manner material for the rejection of the nomination papers.

4. In the impugned order reliance was placed on *Shopat Rai v. The Registrar Co-operative Societies*, Punjab 1973 PLJ 757 . This was a case under the Punjab Co-operative Societies Rules. It is laid down therein that if there is any mistake in filling nomination papers it is the duty of the Returning Officer to render help for the rectification of the mistake. The nomination papers had been rejected only on the ground that the member had not mentioned the zone from which he was seeking election in the relevant column. This finding was given that nomination papers could not have been rejected for failure to mention the zone. The learned counsel for the petitioners contended that there were two authorities of the Supreme Court to the contrary. One of those is *Dharam Singh Rathie Vs. Hari Singh, M.L.A. and Others*, . Nomination papers not giving full and proper postal address were rejected as the omission amounted to a defect which could not be rectified at the time of the scrutiny. It was, however, remarked that there could be some such defects which of necessity should be rectified. In the absence of a correction the nomination papers were liable to be rejected. In this ruling sub-s. (4) of S. 36 of the Representation of the People Act was being interpreted. It

says that the Returning Officer shall not reject any nomination papers on the ground of any defect which is not of a substantial character. The omission referred to above was held to be of a substantial character, and hence rejection of the nomination papers was said to be not improper. The main reliance of the learned counsel for the petitioners is, however, on the other ruling of the Supreme Court reported as *Prahladdas Khandelwal Vs. Narendra Kumar Salave*, . Rejection of nomination papers for omission to mention name of constituency was held to be of a substantial character and said to be not falling within those provisions where the Returning Officer was enjoined either to get that defect rectified or to ignore it. It was a case of mid--term election to the Lok Sabha from a constituency in the Madhya Pradesh. There was a prescribed form and the name of the Parliamentary constituency was required to be mentioned therein. In the absence of the name, the Returning Officer could not know from which constituency the election was being sought. From the side of the respondents *Rangilal Choudhury Vs. Dahu Sao and Others*, , was cited. In this case the non--mention of the name of constituency in the nomination papers for election to Bihar Assembly was held to be not a mistake of a substantial character. It was a case relating to by--election to one constituency. This ruling was considered in *Rajbali Singh and Others Vs. Shyamlal and Others*, . The observations made in para 5 of the judgment delivered by the Supreme Court in this case are very much relevant and they require to be quoted as follows:--

"The question whether the failure to mention the name of the constituency, in which the candidate wants to seek election in his nomination papers per se vitiates his nomination came up for consideration before this Court in *Rangilal Choudhury Vs. Dahu Sao and Others*, . That case related to a by--election for the Dhanbad Assembly constituency in the Bihar State. In his nomination paper the candidate had mentioned the constituency in which he was seeking election as "Bihar". That nomination paper was rejected by the Returning Officer on the ground that the candidate had not mentioned the name of the constituency in which he desires to seek election. This Court differing from the opinion taken by the Returning Officer held that the nomination paper was valid in law. The ground on which this court came to that conclusion was that the election in question was a by--election, it pertained to only one constituency i.e. Dhanbad. That being so there was no difficulty for the Returning Officer to identify the constituency in which the candidate wanted to seek election. The ratio of that decision is that so long as there is no difficulty in identifying the constituency in which the candidate wants to seek election any omission in filling the column relating to the constituency will be considered as unsubstantial."

I am of the opinion that this authority fully covers the point in issue in the present writ petition. There is also no way to distinguish the case of our own High Court reported as *Shopat Rai v. The Registrar Co--operative Societies*, Punjab 1973 PLJ 757. Election to only one Managing Committee was being held and the Returning Officer could not have at all been in doubt about the Society whose Managing Committee was to be formed. It was not at all a requirement of

the law that the name of the Society must be mentioned, there being no prescribed form. If the Returning Officer had any doubt about the Society in relation to which nomination papers were being filed before him he could get a clarification even orally. It seems that he wanted to avoid an election and therefore, summarily rejected the nomination papers of as many as 13 persons so as to enable the petitioners to become the members of the Managing Committee without any kind of election. I do not see any such grave defect in the impugned order as to remedy it by the issue of any writ.

5. I agree with the learned counsel for the petitioners on this point that the conviction of petitioner No. 5 did not involve any moral turpitude. Though the death by petitioner No. 5 had been caused in some incident either through some negligence or rash act, he had not acted intentionally in an immoral manner. There was no question of acting dishonestly. Despite this finding there can be no change in the ultimate result of this writ petition so far as petitioner No. 5 is concerned.

6. There is a mention of this fact in the appellate order of the Joint Registrar dated 29th October, 1976, that there were two appeals before him. One of them had been filed by the 13 respondents who are respondents Nos. 3 to 15 in this writ petition. Another separate appeal was filed on behalf of Surjit Singh respondent No. 9. Only that order was said to have been impugned by which the revision petition on behalf of respondents Nos. 3 to 15 had been accepted. There was said to be a separate revision filed by respondent No. 9 and the decision in that revision was said to have not been challenged in this writ petition. Respondent No. 9 had filed a separate appeal and then a separate revision under this impression that a joint appeal or revision might be held to be incompetent. There is no denial of the fact that the order passed in both the revisions was the same and when election was being quashed in the joint revision, this result cannot follow that the order of annulment passed on the revision petition of respondent No. 9 could stand even if the present petition had been accepted.

7. As a result of the view that I have taken, the writ petition stands dismissed with costs. Counsel fee Rs. 100/-.

8. Petition dismissed.