
(1992) 01 P&H CK 0187
In the Punjab And Haryana At Chandigarh
Case No : Election Petition No. 17 of 1991

Ch. Katar Singh, Ex. Finance Minister	APPELLANT
Vs	
Shri Hari Singh Nalwa, M.L.A.	RESPONDENT

Date of Decision : 07-01-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 16, Order 7 Rule 11, 151
Representation of the People Act, 1951 — Section 100, 100(1), 117, 36, 36(1)

Citation : (1995) 2 ILR (P&H) 1

Hon'ble Judges : B.S. Nehra, J

Bench : Single Bench

Advocate : R.L. Batta, G.C. Tangri and S.K. Pabbi, for the Appellant; J.K. Sibal Sanjeev Sharma, Swarnjit Kohli and Naresh Joshi, for the Respondent

Judgement

B.S. Nehra, J.—Whether an election petition, filed under the Representation of the People Act, 1951 (hereinafter referred to as "the Act"), which does not disclose any cause of action, is liable to be dismissed at the threshold, is the crucial point for determination in this case. Before proceeding to analyse the point under consideration, it is necessary to set out the relevant facts of this case.

2. The election petition has been filed by Ch. Katar Singh, Ex. Finance Minister, Haryana (hereinafter referred to as "the Petitioner") u/s 80-A and 81 read with Section 100 of the Act with the prayer that the election of Shri Hari Singh Nalwa, Respondent (hereinafter referred to as "the Respondent") as Member of the Haryana Legislative Assembly from 18-Samalkha Constituency (the result of which was declared on 17th June, 1991) be declared void under Sections 100(1) (c) and 100(1)(d)(iii) & (iv) of the Act. The Petitioner is a citizen of India and is enrolled as voter in village Patti Kalyana district Karnal. This village falls in 18-Samalkha Assembly Constituency of Haryana. The election to the Haryana Legislative Assembly was held on 20th May, 1991. The Petitioner and the Respondent besides others had filed nomination papers for the 18-Samalkha Assembly Constituency, the polling of which took place on 20th May, 1991. The

election result was declared on 17th June. 1991. The Respondent secured the highest number of votes and was declared elected. The votes polled by the Petitioner and other candidates were as under:

- (i) Total votes polled 74,586
- (ii) Votes rejected 3,961
- (iii) Votes tendered 14
- (iv) Ch. Katar Singh Congress (I) 22,479
- (v) Phool Wati SJP 19,927
- (vi) Om Parkash BJP 2,559
- (vii) Jai Lal S/o Devi Ram 869
- (viii) Ram Phal 116
- (ix) Sat Pal 112
- (x) Surinder 176
- (xi) Hari Singh Nalwa 24,225

One Shri Chuhan Singh had also filed his nomination papers on 26th April, 1991. In the first nomination paper No. 72, copy Annexure P-1, the name of the proposer of the said Shri Chuhan-Singh, was Liakat. Similarly Annexure P-2 copy, of nomination paper No. 73, was the second nomination filed by the same Liakat for Shri Chuhan Singh. Annexures P-3 and P-4 are copies of two more nomination papers filed by Shri Parma Nand for the said Shri Chuhan Singh. The candidate and the proposer had signed the above nomination papers. Their translations are Annexures P-1-A to P-4-A. The Returning Officer had issued receipts for Rs. 250 on account of cash security deposited by Shri Chuhan Singh. The oath was also administered to him by the Returning Officer. He (Chuhan Singh) along with his two proposers, viz, Liakat and Parma Nand was present before the Returning Officer on the date of the filing of the nomination paper. He being an Ex. M.L.A. was a known public figure and was also known to the Returning Officer personally. The scrutiny of the nomination papers was held on 27th April, 1991 by the Returning Officer but he rejected all the four nomination papers of Shri Chuhan Singh without recording any reason therefor. On the same date, viz. 27th April, 1991, the nomination papers of one Shri Chandgi Ram another candidate for this constituency, were rejected in which reasons were recorded by the Returning Officer. The Petitioner's allegations is that there was no defect of substantial character in terms of Sub-section (4) of Section 36 of the Act in the said nomination papers. Shri Chuhan Singh had fully complied with the requirements of Section 36(1) of the Act. The Returning Officer had fully satisfied himself regarding the particulars of Shri Chuhan Singh in the light of the relevant entries in the electoral rolls and also their correctness.

3. It has further been alleged that the Returning Officer had improperly and illegally rejected 568 votes of villages Karkoli and Basera falling in 18-Samalakha Constituency during the course of counting. He has rejected in all 3.961 votes improperly on the date of counting of votes. About 3.000 votes were rejected by the Returning Officer on the ground that the signatures of the Presiding Officer were not found on the ballot papers. The Petitioner had filed objections before the Returning Officer on 17th June, 1991. But he has illegally rejected the objections of the Petitioner.--vide order dated 17th June, 1991. The majority of the valid ballot papers were polled in favour of the Petitioner which were improperly rejected and this rejection has materially affected the result of the election of the successful candidate. Shri Hari Singh Nalwa. His election is, therefore, liable to be declared void under Sections 100 (1)(d)(iii) and (iv) of the Act.

4. On notice of this petition being issued to the Respondent, he filed an application C.M. No. 11-E of 1991 under Order 6 Rule 16 and under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure. The averments in the application are that the allegations of the Petitioner are based on the improper rejection of nomination papers and also alleged irregularities in the counting of votes in violation of the Act. However, paragraphs 5, 6, 7, 8, 10, 11 and 12 of the election petition are vague, unnecessary, scandalous, frivolous and vexatious. These will tend to delay the fair trial of the petition. These paragraphs are, therefore, liable to be struck off from the pleadings in accordance with the provisions of Order 6 Rule 16 of the Code of Civil Procedure. The contents of paragraphs 6, 7, 10, 11 and 12 have not been properly verified. For lack of proper verification, the petition is not maintainable. The petition is also not maintainable because it does not disclose any cause of action in as much as material facts prescribed u/s 83 of the Act have not been spelled out in the petition to constitute a cause of action. The Respondent, has therefore, prayed (a) that the paragraphs 5, 6, 7, 8, 10, 11 and 12 of the election petition be struck off and (b) the election petition be dismissed at the threshold before it goes on trial as it does not disclose any cause of action.

5. In his reply to the said objection petition of the Respondent, the Petitioner has denied that the contents of paragraphs 5, 6, 7, 8, 10, 11 and 12 of the petition are vague etc. and asserted that these paragraphs concern with the improper rejection of nomination papers of Chuhar Singh by the Returning Officer without stating any reason. According to the Petitioner, paragraphs 6, 7, 10, 11 and 12 have been properly verified and further that the Respondent has filed the present application to delay the trial of the election petition and therefore, the Petitioner has sought its dismissal.

6. The perusal of the election petition, thus, shows that two points have been raised by the Petitioner, assailing the election of the Respondent to the 18-Samalakha Assembly Constituency. It has, first, been alleged that the Returning Officer had improperly rejected the nomination papers of Shri Chuhar Singh

without recording any reasons as required by law and despite the fact that he knew Shri Chuhan Singh being a former M.L.A. and second that the Returning Officer had improperly rejected 3961 votes, According to the Petitioner, if these votes had not been so rejected, the majority of 3.000 votes would have gone in his favour and he would have thus been declared elected to the 18-Samalakhya Assembly Constituency. On the other hand, the Respondent's case is that even if the averments in the election petition are accepted, the petition is liable to be dismissed because no cause of action is shown to exist in favour of the Petitioner. The Respondent has added that the nomination papers of Chuhan Singh were rightly rejected and that the averments in the petition with respect to the wrongful rejection of votes are too vague to be tried in an election petition. Having heard the learned Counsel for the parties at a considerable length, I find that the objections raised by the Respondent in his application under Order 6 Rule 16 and under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure, which have been set out above, are well founded and hence his application is liable to be allowed and Election Petition dismissed at the threshold as will be observed for the reasons discussed hereinafter.

7. Section 83(1) of the Act deals with the contents of an election petition. Sub-section (1) of this Section provides that an election petition shall contain a concise statement of the material facts on which the Petitioner relies. Section 86 of the Act deals with the trial of an election petition and Sub-section (1) thereof provides that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117. It is true that this Section does not specifically provide that an election petition is also liable to be dismissed on the ground of the Petitioner's failure to comply with the provisions of Clause (a) of Section 83 of the Act but on careful analysis of the facts of this case in the light of the relevant provisions of the Act it leaves no manner of doubt for coming to the conclusion that an election petition is also liable to be dismissed, if the Petitioner, as in this case, fails to comply with the provisions of Section 83(a) of the Act.

8. In dealing with the first objection of the Petitioner, which relates to the alleged wrongful rejection of the nomination papers filed in respect of Chuhan Singh, it is necessary to reproduce and examine the said four nomination papers, the translations of which are Annexure P-1-A to P-4-A:

Annexure P-1-A Form 2B (See Rule 4)

Reject

NOMINATION PAPER

Sd/-Chuhan Singh

Election to the Legislative Assembly of Haryana.

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

Candidate's name Chuhan Singh. Fathers Name Shri Soran.

His postal address Village Post Narayana Sub Tehsil Samalakha Distt. Panipat.

His name is entered at S. No. 603 in Part No. 66 electoral roll for the Samalakha assembly constituency.

My name is Liakat and it is entered at S. No. 397 in part No. 4 of the electoral roll for the Samalakha assembly constituency.

Dated: 26th April, 1991.

Sd/- Chuhan Singh (Signature of Prosper)

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

(a) that I have completed 65 years of age;

(b) that I am (set up) at this election by the Janta Party;

(c) that the symbols I have chosen are in order of preference (i) Haldhar chakar
(ii)____ (iii)____

(d) My and My father's names have been properly mentioned in Hindi.

(e) According to the best of my personal knowledge and belief I am (qualified) and not (disqualified) in filling up Haryana Vidhan Sabha by the process of election.

Score out this paragraph, if not applicable. I further declare that I am a member of_____caste/tribe which is a Score out the word not applicable scheduled caste/tribe of the State of Haryana in relation to_____(area) in that State.

Dated : 26th April, 1991.

(Signature of Candidate) Liakat

(To be filled by the Returning Officer)

Serial No. of nomination paper 72.

9. This nomination was delivered to me at my office at 1.30 (hour) on 26th April, 1991 (date) by the candidate/prosper.

Date: 26th April, 1991.

Sd/- Returning Officer. 26-4-91 18 Samalakha Vidhan Sabha Constituency and Distt. Revenue Officer Panipat.

Decision of Returning Officer Accepting or Rejecting the Nomination Paper.

I have examined this nomination paper in accordance with Section 36 of the Representation of the People Act. 1951 and decide as follows:

Rejected Sd/- Returning Officer 18 Samalakha Vidhan Sabha Constitutency and

Distt. Revenue Officer. Panipat.

Date:

Annexure P-2-A Form 28 (See Rule 4)

NOMINATION PAPER

Election to the Legislative Assembly of Haryana.

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

Candidate's name Chuhar Singh,

Father's Name Shri Soran

His postal address Village Post Office Narayana Sub Tehsil Samalakha Distt. Panipat.

His name is entered at S. No. 603 in part No. 66 electoral roll for the Samalakha assembly constituency.

My name is Liakat and it is entered at, S. No. 397 in part No. 4 of the electoral role for the Samalakha assembly constituency.

Date : 26th April, 1991.

Sd/- Chuhar Singh (Signature of Prosper)

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

(a) that I have completed 65 years of age;

(b) that I am (set up) at this election by the Janta Party;

(c) that the symbols I have chosen are in order of preference (i) Haldar Chakar (ii)_____ (iii)_____.

(d) My and My father's name have been properly mentioned in Hindi;

(e) According to the best of my personal knowledge and belief I am (qualified) and not (disqualified) filing up Haryana Vidhan Sabha by the process of election.

Score out this paragraph, if not applicable. I further declare that I am a member of_____caste/tribe which is a Score out the word not applicable scheduled case/tribe of the State of Haryana in relation to_____(area) in that State.

Date : 26th April 1991.

(Signature of Candidate) Liakat

(To be filled by the Returning Officer).

Serial No. of nomination paper 73.

This nomination was delivered to me at my office at 1.32 (hour) on 26th April, 1991 (date) by the candidate/prosper.

Date : 26th April, 1991.

Sd/- (Sd.) Returning Officer 18 Samalakha Vidhan Sabha Constitutency and Distt. Revenue Officer, Panipat.

Decision of Returning Officer Accepting or Rejecting the Nomination paper.

10. I have examined this nomination paper in accordance with Section 36 of the Representation of the Peoples Act, 1951 and decide as follows:

Rejected Returning Officer 18 Samalakha Vidhan Sabha Constitutency and Distt. Revenue Officer, Panipat.

Date:

Annexure P-3-A

74 26th April, 1991

Form 2B (See Rule 4) NOMINATION PAPER

Election to the Legislative Assembly of Haryana

I nominate as a candidate for election to Legislative Assembly from the Samalakha assembly Constitutency.

Candidate's name Chuhar Singh

Father's Name Shri Soran.

His postal address Village Post Office Naryana, Sub Tehsil Samalakha Distt. Panipat.

His name is entered at Serial No. 603 in part No. 66 electoral roll for the Samalakha constituency.

My name is Parmanand and it is entered at Serial. No. 133 in Part No. 63 of the electoral roll for the Samalakha assembly constituency.

Date : 26th April, 1991.

Sd/- Chuhar Singh (Signature of Prosper)

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

(a) that I have completed 65 years of age;

(b) that I am (set up) at this election by the Janta Party;

(c) that the symbols I have chosen are, in order of preference (i) Haldhar Chakar (ii)_____ and (iii)_____.

(d) My and my father's names have been properly mentioned in Hindi;

(e) According to the best of my personal knowledge and belief I am (qualified) and not (disqualified) in filling up Haryana Vidhan Sabha by the process of election.

Score out this paragraph, if not applicable. I further declare that I am a member of _____ caste/tribe which is a Score out the word not applicable schedule caste/tribe of the State Haryana in relation to _____ (area) in that State.

Date : 26th April, 1991.

Signature of Candidate Parmanand

(To be filled by the Returning Officer)

Serial No. of nomination paper is 74.

This nomination was delivered to me at my office at 1.34 (Hour) on 26th April, 1991 (date) by the Candidate/prosper.

Date : 26th April, 1991.

Sd/- Returning Officer 18 Samalakha Vidhan Sabha Constituency and Distt. Revenue Officer, Panipat.

Decision of Returning Officer Accepting or Rejecting the Nomination Paper.

I have examined this nomination paper in accordance with Section 36 of the Representation of the People Act, 1951 and decide as follow:

Rejected Sd/- Returning Officer 18 Samalakha Vidhan Sabha Constituency and Distt. Revenue Officer, Panipat.

Date :

Annexure P-4-A

75 26-4-1991.

Reject Form 2B (See Rule 4) NOMINATION PAPER

Sd/- Chuhar Singh

Election to the Legislative Assembly of Haryana

I nominate as a candidate for election to Legislative Assembly from the Samalakha assembly constituency. Candidate's name Chuhar Singh Father's Name Shri Soran.

His postal address Village Post Office Naryana, Sub Tehsil Samalakha Distt. Panipat.

His name is entered at Serial No. 603 in part No. 66 electoral roll for the Samalakha assembly constituency.

My name is Parmanand and it is entered at Serial No. 133 in part No. 63 of the

electoral roll for the Samalakha assembly constituency.

Date : 26th April, 1991,

Sd/- Chuhar Singh (Signature of Prosper)

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

(a) that I have completed 65 years of age;

(b) that I am (set up) at this election by the Janta Party;

(c) that the symbols I have chosen are in order of preference (i) Haldar Chakar (ii)_____ and (iii)_____.

(d) My and my father's names have been properly mentioned in Hindi.

(e) According to the best of my personal knowledge and belief I am (Qualified) and not (disqualified) in filling up Haryana Sabha by the process of election.

Score out this paragraph, if not applicable. I further declare the I am a member of the_____cast/tribe which is a Score out the word not applicable schedule caste/tribe of the State of Haryana in relation to_____(area) in that State.

Date : 26th April, 1991.

(Signature of Candidate) Parmanand

(To be filled by the Returning Officer)

Serial No. of nomination paper is 75.

This nomination was delivered to me at my office at 1.36 (Hour) on 26th April, 1991 (date) by the candidate/prosper.

Date : 26th April, 1991.

Sd/- Returning Officer 26-4-1991. 18 Samalakha Vidhan Sabha Constituency and Distt. Revenue Officer, Panipat.

Decision of Returning Officer Accepting or Rejecting the Nomination paper.

I have examined this nomination paper in accordance with Section 36 of the Representation of the People Act, 1951 and decide as follows:

Rejected Sd/- Returning Officer, 18 Samalakha Vidhan Sabha Constituency and Distt. Revenue Officer, Panipat.

Date :

11. As already noticed, nomination papers Annexures P-1 A and P-2-A were intended to have been filed by one Shri Liakat in respect of Chuhar Singh while nomination papers Annexures P-3-A and P-4-A were Pled by one Shri Parma Nand in respect of the said Shri Chuhar Singh. A bare look at these nomination papers shows that these are in two parts, viz. the first part which is required to

be signed by the proposer and the second part which is required to be signed by the candidate. Contrary to the requirement of law, the first part in all the four nomination papers, instead of being signed by the proposer, has in fact been signed by Chuhar Singh candidate while the second part in all these nomination papers, which was required to be signed by the candidate, has been signed by the proposer. To put it differently, the only inference that can be drawn from these nomination papers is that it is Shri Chuhar Singh who has proposed Liakat in the first two nomination papers and in

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