
(2005) 05 AP CK 0001
In the Andhra Pradesh High Court
Case No : EP No. 6 of 2004

Dadi Veerahadra Rao

APPELLANT

Vs

Returning Officer, Constituency No. 32, Anakapalli Legislative
Assembly Constituency and Others

RESPONDENT

Date of Decision : 17-05-2005

Acts Referred:

Constitution of India, 1950 — Article 173
Government of Union Territories Act, 1963 — Section 14, 4
Representation of the People Act, 1951 — Section 100(1), 30, 31, 32, 33(1)
Representation of the People Rules — Rule 22

Citation : AIR 2005 AP 428 : (2005) 4 ALD 485

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : P. Sri Raghuram, for the Appellant; Government Pleader, for GAD and HMA for Respondent No. 1, E.V. Bhagiratha Rao and Upendra Chakravarthy, for the Respondent

Final Decision : Dismissed

Judgement

V. Eswaraiah, J.—Heard Sri P. Sri Raghuram, learned Counsel appearing for the Petitioner, Government Pleader for GAD and HMA, Sri E.V. Bhagiratha Rao and Sri Upendra Chakravarthy, learned Counsel appearing for the respondents 1 to 3 respectively.

2. Petitioner and Respondents 2 and 3 contested in the elections held to a member of the Andhra Pradesh Legislative Assembly in the 32-Anakapalli Assembly Constituency. The Election notification was published on 24.3.2004 notifying the dates for filing nominations, scrutiny of the nominations, withdrawal of nominations, poll day for casting votes and the date of declaration of results. The last date for filing nominations was notified as 31.3.2004, the date of scrutiny of nominations was 2.4.2004, the date of withdrawal of nominations was 5.4.2004 and the poll date was scheduled on 20.4.2004.

3. Petitioner is the Telugu Desam Party candidate, the second respondent is the Congress Party candidate and the third respondent is an independent candidate. Petitioner, second respondent and other candidates filed nominations on 31.3.2004. Petitioner filed three nominations and the second respondent filed five nominations. It is alleged that on the day of scrutiny i.e. 2.4.2004, four out of five nominations filed by the second respondent were rejected and one was accepted and whereas all the three nominations filed by the petitioner were accepted.

4. The case of the petitioner is that the Returning Officer can accept only four nominations as per the Section 33(6) of the Representation of the People Act, 1951 (for short "the Act"). Since four nominations out of the five filed by the second respondent had been rejected the question of accepting the fifth nomination does not arise, in other words; neither the candidate can file five nominations nor the Returning Officer can accept the same. But the second respondent contrary to the statutory provisions of the Act filed five nominations and the Returning Officer received the same. Therefore, there is a statutory violation as contemplated under the proviso to subsection (6) of Section 33 of the Act. Thus, the election of the second respondent is liable to be declared as void u/s 100(1)(d)(iv) of the Act.

5. Petitioner secured 46,244 votes, third respondent secured 1,540 votes and the second respondent having secured 63,277 votes was declared as elected with a margin of 17,033 votes. The second respondent violated the statutory provisions by filing five nominations and the Returning Officer violated the statutory provisions in accepting the same. It is submitted that the Returning Officer improperly accepted the five nominations of the returned candidate/second respondent though there was statutory violation in filing five nominations. Had the nominations of the second respondent been rejected for violation of the statutory provisions petitioner would have been elected. Therefore, the petitioner is entitled to seek a declaration that the election of the second respondent to the 32-Anakapalli Assembly Constituency as void u/s 100(1)(d)(iv) of the Act.

6. First respondent-Returning Officer filed written statement after the settling the issues stating that, 31.3.2004 was the last date for filing nominations and he received the nominations filed by the candidates or their supporters during the hours and dates specified for filing nominations duly entering in a register. He submits that there would not be any option for scrutiny or to point out any defect or to refuse to receive any nominations filed till the date of scrutiny. The details of nominations received were exhibited in the notice board besides submitting reports to the District Election Officer. The scrutiny of the nominations took place on 2.4.2004 before the candidates who have attended on being summoned. Sub-section (6) of Section 33 of the Act provides for endorsing the decision of the Returning Officer accepting or rejecting the nomination by recording the reasons in writing. The second respondent filed five nominations, which were registered in the register of nominations at Sl. Nos. 8, 9, 10, 11 and 13. The second

respondent did not sign the nominations at Sl. Nos. 10 and 11, which were liable to be rejected. Since the nomination papers were to be received without scrutiny immediately on filing and the scrutiny of the nomination papers was fixed on 2.4.2004 and until such time the Returning Officer cannot go into the validity of the nominations. Sri B.V.A.S. Naidu filed the fifth nomination at Sl. No. 13 on behalf of the second respondent. The unsigned nomination papers need not be taken into cognizance and as such the rejection of those two nominations does not arise.

7. The first respondent denied the contention of the petitioner that five sets of nominations filed on behalf of the second respondent have been accepted. The fifth nomination paper was not scrutinized and it was rejected on the ground that it being the fifth nomination. It was categorically mentioned that two nominations were not signed and in one nomination the candidate has not mentioned the recognized political party and hence rejected. The first set of nomination was found to be valid and was accepted and the remaining sets were rejected and they need not be taken into account. He states that he exercised his discretionary power in rejecting the nomination papers and accepted only one set of nomination papers. Therefore, it cannot be said that there is improper acceptance of the nominations of the returned candidate/second respondent.

8. The second respondent filed written statement stating that there was no objection either oral or written, neither by the petitioner nor his agent, before the first respondent on 2.4.2004 regarding the acceptance of five nominations filed by him. First respondent accepted one nomination of the second respondent and rejected the other four nominations, hence it cannot be inferred that the first respondent rejected the first four nominations and accepted the fifth nomination. The first respondent accepted one out of first four nominations and there was no necessity to consider the fifth nomination. Proviso to Sub-section (6) of Section 33 of the Act is only directory and not mandatory and the object of substituting proviso to Sub-section (6) of Section 33 of the Act is published in S.O.R. Gazette of India 1961. Extra Pt.II Section 2, page 693 of the Gazette, reads as follows:

"The number of nomination papers which a candidate may present is not now restricted by law and this omission appears to have been taken undue advantage of by some candidates. A multiplicity of nomination papers filed by the same candidate unnecessarily increases the labour of the Returning Officer and the other candidate during scrutiny. The Election Commission accordingly recommended in Chapter XII of its report on the second general elections that the maximum number of nomination papers that may be presented by or on behalf of the same candidate in the same constituency should be restricted to four only."

The second respondent thus submits that, as there is no improper acceptance of the nominations by the Returning Officer, his election to the 32-Anakapalli Assembly Constituency is not liable to be declared as void for the alleged violation of the statutory provisions.

9. Third respondent adopted the written statement filed by the second respondent.

10. The following issues are settled for trial:

1. Whether there is valid acceptance of the nomination of the second respondent by the first respondent by accepting more than four nominations, nominating second respondent for the election in the same constituency?

2. Whether there is valid and legally sustainable scrutiny of five nominations filed by second respondent u/s 36(2) of the Representation of the People Act, 1951?

3. Whether the election of the second respondent is void for improper acceptance of the nomination materially affecting the result of the election?

4. Whether the election of the second respondent is void for non-compliance of proviso to Sub-section 36(2) and other provisions of the Representation of the People Act, 1951 ?

5. Whether the petitioner is entitled to be declared as elected, as prayed for?

6. Whether the petitioner is entitled for the costs?

7. To what relief?

11. Election petition was filed on 23.6.2004. Notice was issued to the respondents on 28.7.2004. Second respondent filed counter on 11.10.2004. Third respondent filed memo adopting the counter of the second respondent on 17.11.2004. Issues were framed on 20.12.2004. In spite of receipt of notice first respondent/Returning Officer has not filed any counter, therefore, by order dated 22.2.2005 the first respondent was directed to appear before this Court for the purpose of giving evidence on 1.3.2005. Pursuant to the said direction the first respondent filed the written statement on 25.2.2005.

12. To substantiate the case, the petitioner examined himself as P.W.1 and marked Exs.A.1 to A.5 and the first respondent/Returning Officer examined himself as R.W.1 and marked Exs.B.1 to B.14. On behalf of the respondents 2 and 3 no evidence was adduced.

13. Ex.A.1 is the notification dated 24.3.2004 for conducting election to the 32-Anakapalli Assembly Constituency. As per the said notification the last date to submit the nomination papers was before 3 p.m., on 31.3.2004, scrutiny of the nomination papers was on 2.4.2004, date of withdrawal of nomination papers was on 5.4.2004 and the election date was fixed on 20.4.2004. Ex.A.2 is the Return of Election under Form 21E showing that the second respondent secured 63,277 votes, election petitioner secured 46,244 votes and third respondent secured 1,540 votes and the second respondent has been duly declared elected. Ex.A.3 is the final result sheet of the number of valid votes cast in favour of the respective candidates. Ex.A.5 is the news item in Vaartha Daily Newspaper dated 3.4.2004.

14. P.W.1 stated that he has filed three sets of nominations whereas the second respondent filed five sets of nominations. Out of five nomination papers filed by the second respondent four were rejected and one was accepted. Section 33(6) of the Act provides for filing four nomination papers alone. Election of the second respondent/ returned candidate is materially affected due to improper acceptance of his nomination as he has violated the statutory provisions.

15. First respondent-Returning Officer is examined as R.W.1. He submits that the petitioner filed three nominations, which are marked as Exs.B.1 to B.3. Second respondent filed five nomination papers marked as Exs.B.4 to B.8. Ex.B.4 is the first nomination paper filed at 1.40 p.m., on 31.3.2004, Ex.B.5 is the second nomination paper filed at 1.50 p.m., on 31.3.2004, Ex.B.6 is the third nomination filed at 1.45 p.m., on 31.3.2004, Ex.B.7 is the fourth nomination filed at 1.50 p.m. on 31.3.2004 and Ex.B.8 is the fifth nomination filed at 2.10 p.m. on 31.3.2004. Exs.B.5, B.6 and B.7 are rejected on the ground that they do not contain signature of the candidate. Ex.B.8 was rejected without scrutiny. He further stated that he received all sets of nomination papers on 31.3.2004 on which he assigned and gave serial numbers to each and every nomination paper. The first respondent at the time of receiving nominations endorsed date, time and serial numbers on the top of the nomination forms apart from mentioning the same at PART IV of the nomination forms. Continuous numbers were given while assigning the serial numbers for all the candidates put together. No register is maintained for this purpose. Serial numbers endorsed on the nomination papers are displayed on the display board along with the xerox copies of the nomination forms. Out of five nomination papers filed by the second respondent four were scrutinized and the fifth nomination paper was not put to scrutiny. He rejected the fifth nomination paper without scrutinizing the same for the reason that it being the fifth nomination.

16. Perusal of Ex.B.4, the first nomination paper filed by the second respondent, goes to show that it was received at 1.40 p.m. on 31.3.2004 and was signed by the elector namely K. Jagannadha Naidu and also signed by the candidate/ second respondent. The said nomination form was assigned Sl.No. 8 and was scrutinized on 2.4.2004. The said nomination form was accepted stating that it is in order fulfilling all the requirements.

17. I have perused Ex.B.5, the second nomination form filed and received at 1.50 p.m. on 31.3.2004 to which Sl.No. 9 was assigned. The proposer, K. Sri Ramulu Ramji, of the second respondent filed the second nomination form, which was signed by the second respondent. Each nomination form contains FORM 2B, Part II (to be issued by the candidate not set up by the recognized political party), Part III, Part III A (to be filled by the candidate), Part IV (to be filled by the Returning Officer) and Part V - Decision of Returning Officer accepting or rejecting the nomination paper. The Returning Officer rejected the second nomination paper on the ground that the candidate omitted to sign the nomination paper, which is incorrect as the second set of nomination paper

contains the signature of the second respondent. Therefore, it cannot be said that the second respondent omitted to sign the second set of nomination papers and it has to be taken as valid nomination form.

18. Ex.B.6, the third set of nomination form filed and received at 1.45 p.m. on 31.4.2004, was rejected on the ground that the candidate/second respondent omitted to sign the nomination form. On perusal it is evident that Ex.B.6 is not at all signed by the candidate and therefore, it cannot be said that it is a valid nomination form.

19. Ex.B.7, the fourth set of nomination form filed at 1.50 p.m. on 31.4.2004, was also rightly rejected on the ground that the candidate omitted to sign the nomination form. Therefore, it cannot be treated as a valid nomination form.

20. Ex.B.8, the fifth set of nomination form was signed by the candidate and therefore, it has to be treated as a valid nomination form filed by the second respondent, but it was rejected on the ground that it being the fifth nomination.

21. Therefore, I am of the opinion that even if the fifth nomination form is taken into account as a valid nomination form, there would be only three nomination forms which have been validly presented containing the signatures of the second respondent. The third and fourth nomination forms do not contain the signatures of the second respondent. Therefore, they cannot be treated as valid nomination forms presented by or on behalf of the second respondent.

22. The contention of the Returning Officer that the fifth nomination form was not scrutinized cannot be accepted, as the fact remains that the first respondent has received the fifth nomination paper and scrutinized the same u/s 36(6) of the Act and rejected it on the ground that it is the fifth nomination form.

23. For the aforesaid reasons, I am of the opinion that the Returning Officer is entitled to receive four nomination papers and what is prohibited under proviso to Sub-section (6) of Section 33 is only the presentation and acceptance of more than four nomination papers. In the instant case, only three valid nomination forms are presented containing the signatures of the candidate and their proposers. Therefore, it cannot be said that the fifth nomination paper was accepted contrary to Section 33(6) of the Act.

24. I have heard the elaborate arguments of the learned Counsel appearing for the petitioner as well as the respondents.

25. The questions that arise for consideration:

1. Whether presentation of fifth nomination form by or on behalf of the second respondent and acceptance/ receipt of the said nomination paper by the Returning Officer/first respondent for election to the 32-Anakapalli Assembly Constituency is liable to be rejected on the ground that there has been a failure to comply with the provision of Section 33(6) of the Representation of the People Act, 1951?

2. Whether the receipt of the fifth nomination form on behalf of the second respondent by the Returning Officer is a defect of a substantial character?

3. Whether the Returning Officer accepted the first nomination paper or fifth nomination paper of the second respondent?

4. Whether the result of the returned candidate/second respondent has been materially affected by non-compliance with the proviso to Sub-section (6) of Section 33 of the Representation of the People Act, 1951 to declare the election of the second respondent as void u/s 100(1)(d)(iv) of the Act?

26. Insofar as the improper acceptance or rejection of the nominations forms is concerned, even without any objection, any elector is entitled to file an election petition questioning the action of the Returning Officer. To deal with the aforesaid questions it is relevant to take note of some of the provisions of the Act.

27. Part V of the Act deals with conduct of elections. It is divided into eight chapters. Chapter I relates to the nomination of candidates. u/s 30 of the Act, the Election Commission issues notification appointing the last date of making nominations, the date for scrutiny of nominations, the last date for withdrawal of candidatures, the date or dates on which a poll shall take place and the date before which the election shall be completed. On issue of such notification by the Election Commission, the Returning Officer shall give public notice u/s 31 of the Act inviting nominations of the candidates and specifying the dates and place at which the nomination papers are to be delivered. u/s 32 of the Act, any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat.

28. Section 33 of the Act deals with presentation of nomination paper and requirements for valid nomination. u/s 33(1) of the Act either the candidate or his proposer is entitled to file nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer. If a candidate is not set up by a recognized political party his nomination paper has to be subscribed by ten proposers being electors of the constituency. In the case of a nomination submitted by the candidate for a seat reserved for Sikkimese of Bhutia-Lepcha origin and in case of seat reserved for Sanghas, at least twenty electors of the constituency are required to subscribe his nomination as proposers and as seconders and in case of a seat reserved for Sikkimese of Nepali origin the candidates' nomination has to be subscribed by an elector of the constituency as proposer.

Under Section 33(2) of the Act in respect of the reserved seats the nomination papers of the candidates shall contain the declaration specifying the particular caste or tribe of which he is a member and the area in relation to which the caste or tribe is a Scheduled Caste or, as the case may be, a Scheduled Tribe of the State.

Under Part II of the Act, Chapter II deals with qualifications for membership of

State Legislatures and Chapter HI deals with disqualifications for membership of Parliament and State Legislatures on account of the conviction for certain cases as disqualification on ground of corrupt practices, for dismissal for corruption or disloyalty, disqualification for Government contracts and disqualification for failure to lodge account of the election expenses.

Under Section 33(3) of the Act where a candidate has been dismissed for corruption or disloyalty incurring a disqualification u/s 9 for a period of five years unless such candidate files a certificate issued by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the State he is not entitled to present a nomination as a valid nomination.

Under Section 33(4) of the Act on presentation of a nomination paper the Returning Officer shall satisfy himself the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls. But as per the proviso to Sub-section (4) of Section 33 of the Act clerical, technical or printing errors etc., have to be overlooked. If a person is an elector in one constituency he is entitled to contest in any other constituency. Similarly an elector in one constituency is entitled to propose a candidate in any other constituency.

Under Section 33(5) of the Act, if a candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the Returning Officer at the time of scrutiny.

Under Sub-section (6) of Section 33 of the Act, a candidate shall not be prevented from being nominated by more than one nomination paper. But under proviso to Sub-section (6) of Section 33 of the Act, not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the Returning Officer for election in the same constituency.

Under Sub-section (7) of Section 33 of the Act a candidate is entitled to be nominated for election only for two constituencies of the Parliament or Legislative Assembly.

29. Section 36 of the Act deals with scrutiny of nominations. Section 36(2) of the Act reads as follows:

The Returning Officer shall examine the nomination papers and shall decide all the objections which may be made to any nomination and may, either on objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:

(a) that on the date fixed for the scrutiny of nominations the candidate either is qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:

Articles 84, 102, 173 and 191.

Part II of this Act and Sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1962); or

(b) that there has been a failure to comply with any of the provisions of Section 33 or Section 34; or

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

Under Section 36(3) of the Act, the Returning Officer need not reject the nomination of a candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed. If there is a failure to comply with any of the provisions of the Act in respect of such nomination papers and if the signature of the candidate or the proposer on the nomination paper is not genuine in respect of such nomination papers and if there are no irregularities in respect of other nomination papers, the other nomination papers can be accepted.

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(6) of the Act the Returning Officer shall endorse on each 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.

30. A careful perusal of the above Sections goes to show that Section 33 deals with presentation of valid nomination papers and Section 36 deals as to whether a nomination is valid one or whether the candidate incurred any disqualification for filing a nomination or failed to comply with any of the statutory provisions and whether the signature of the candidate or the proposer on the nomination papers is genuine or not etc. If a candidate incurred any disqualification his nomination is liable to be rejected u/s 36(2)(a) of the Act and if the candidate fails to fulfill or comply with the provisions of Section 33 of the Act in presenting a valid nomination such as subscribing ten proposers if he is not a candidate set up by a recognized political party or if he is contesting to a reserved seat and if the caste certificate is not filed, such nomination cannot be treated as a valid nomination and therefore, it is liable to be rejected for failure to comply with the statutory provisions of Section 33 of the Act or if there is no requisite deposit made u/s 34 of the Act, then also such nominations are liable to be dismissed for failure to comply with the provisions of Section 34 of the Act. Therefore, whenever there is an improper acceptance or rejection of the nomination papers on the above grounds it shall be deemed that the election of a returned candidate is materially affected for non-compliance of the provisions of the

Constitution or the provisions of the Act or the Rules made thereunder. Cases where the candidates are not entitled to contest by reason of illegal acceptance of their nomination papers are liable to be equated to such of the cases where the nominations of candidates were improperly rejected for the purpose of declaring the election as void.

31. Therefore, the question that arises for consideration as to whether the respondents 1 and 2 failed to comply with proviso to Sub-section (6) of Section 33 of the Act for rejection of the nomination papers of the second respondent u/s 36(2) of the Act. u/s 33(6) of the Act a candidate is entitled to file four nominations only but not more than four nominations. Neither a candidate is entitled to present more than four nominations nor the Returning Officer is entitled to accept more than four nominations.

32. The other question that arises for consideration is as to whether the presentation of the nomination paper on behalf of the candidate, which is not signed by the candidate, is liable to be termed as valid nomination. Under Sub-section (1) of Section 33 of the Act a nomination form completed in the prescribed form and signed by the candidate and by an elector of the constituency, as proposer is required to be presented either in person or by his proposer. If four or five nomination papers not signed by the candidate are presented by his proposer or by an elector of the constituency, it cannot be said that the candidate is debarred or prevented from filing a valid nomination paper signed by him proposed by an elector of the constituency. "Nomination" means a valid nomination as contemplated u/s 33(1) of the Act containing signature of the candidate and the elector of the constituency as proposer. Proviso to Sub-section (6) of Section 33 of the Act clearly states that not more than four nomination papers shall be presented by or on behalf of the same candidate or accepted by the Returning Officer for election in the same constituency.

33. Learned Counsel for the petitioner submits that mere presentation of five nomination papers on behalf of the second respondent is enough to come to the conclusion that there is failure to comply with the statutory provisions of the Act. He further submits that whether the first nomination paper is accepted or the fifth nomination paper is rejected, is immaterial, as admittedly five nomination papers have been filed on behalf of the second respondent and therefore, there is a failure to comply with the proviso to Sub-section (6) of Section 33 of the Act and all the five nomination are liable to be rejected u/s 36(2)(b) of the Act.

34. I am unable to accept the said contention for the reasons that as per the evidence available on record the third and the fourth set of nomination papers were not at all signed by the second respondent/ returned candidate, and therefore, they cannot be termed as valid nomination papers. If the filing of five invalid nomination papers is termed as a defect of substantial character to reject the nomination papers then anybody can file nomination papers on behalf of the candidate to make the valid nomination paper filed by the candidate as an invalid nomination paper. Therefore, presentation of a nomination paper means

presentation of valid nomination paper alone. If there are five valid nomination papers, their presentation as well as their acceptance is prohibited u/s 33(6) of the Act and if there is failure to comply with proviso to Sub-section (6) of Section 33 of the Act then such nomination papers can be rejected u/s 36(2)(b) of the Act. The object of substituting proviso to Sub-section (6) of Section 33 of the Act is only to prohibit presentation or acceptance of more than four nomination papers and merely because five nomination papers are presented it cannot be said that the first four papers are liable to be rejected for failure to comply with proviso to Sub-section (6) of Section 33 of the Act.

35. Sri P. Sri Raghuram, learned Counsel for the petitioner, submits that though there was no oral or written objection at the time of presentation of the fifth nomination on behalf of the second respondent, which was accepted and received by the Returning Officer, and also at the time of scrutiny of the nomination papers, the election petition cannot be rejected for mere failure in raising objection to the validity of the nomination paper filed by the second respondent before the first respondent. The Apex Court in *Harikrishna Lal v. Babu Lal Marandi* 2004 (2) ALT 53 (SC), held that it is always open for the election petitioner to question the improper rejection or acceptance of nomination paper by way of election petition even without raising any objection before the Returning Officer.

36. Sri E.V. Bhagiratha Rao, learned Counsel appearing for the second respondent, submits that mere non-compliance of the statutory provisions does not necessarily or automatically render the election of the returned candidate void unless the election petitioner proves that such non-compliance in question materially affected the result of the returned candidate. In support of his contention he relied on the decision of the Supreme Court in *Mahadeo Vs. Babu Udai Pratap Singh and Others*, , wherein at Para 16 it is held as under:

"Therefore, we are left with one irregularity, and that has been introduced by the misprinting of the name of the respondent No. 1 on the ballot papers; and this irregularity can legitimately be treated as failing u/s 100(1)(d)(iv) of the Act. Misprinting of the name of respondent No. 1 on the ballot papers amounts to non-compliance with Rule 22 of the Rules; but the proof of such non-compliance does not necessarily or automatically rendered the election of the appellant void. To make the said election void, respondent No. 1 has to prove the non-compliance in question and its material effect of the election. This latter fact he has filed to prove, and so, his challenge to the validity of the appellant's election cannot be sustained."

37. On the other hand the learned Counsel appearing for the petitioner, relying on the decisions in *Sri Baru Ram Vs. Prasanni and Others*, ; *Ranjit Singh Vs. Pritam Singh and Others*, ; *Amrit Lal Ambalal Patel Vs. Himathbhai Gomanbhai Patel and Another*, ; *Chhedi Ram Vs. Jhilmit Ram and Others*, ; *Birad Mal Singhvi Vs. Anand Purohit*, ; *Rakesh Kumar Vs. Sunil Kumar*, and *Sushil Kumar Vs. Rakesh Kumar*, , contended that as per Section 33(6) of the Act there is a

prohibition either for presentation or for acceptance of more than four nomination papers. In the present case as five nomination papers are presented by or on behalf of the second respondent and acceptance of the same by the Returning Officer, it is a statutory violation of Section 33(6) of the Act, and therefore, the nominations of the second respondent are liable to be rejected for failure to comply with proviso to Sub-section (6) of Section 33 of the Act. The acceptance of the nomination forms of the second respondent by the Returning Officer is illegal and contrary to Section 36(2)(b) of the Act. u/s 36(2)(b) of the Act the Returning Officer is duty bound to reject the nominations on the ground that there is a failure to comply with Section 33(6) of the Act as five nomination papers were filed on behalf of the second respondent. Therefore, the acceptance of the nomination papers filed by or on behalf of the second respondent is improper.

38. In Shri Baru Ram's case (supra), the Supreme Court held that rejection of a nomination form of a candidate, who was an elector in another constituency, on the ground that the candidate failed to file a copy of the electoral roll of the constituency in which he was an elector; was justified on the ground that failure to comply with the statutory provisions of Section 33(5) of the Act is a substantial character. u/s 33(4) of the Act the Returning Officer shall not reject any nomination on the ground of any defect, which is not of a substantial character.

39. In Ranjeet Singh's case (supra), the Supreme Court held that a candidate is entitled to file four nominations u/s 33(6) of the Act and in the said case, the candidate filed three nominations being an elector in other constituency. A copy of the electoral roll of other constituency was filed only in one of the nomination papers and the Returning Officer without looking into that copy rejected the same on the ground that the copy of the electoral roll was not filed. After rejecting the said nomination paper, the Returning Officer also rejected the other two nomination papers in which a copy of the electoral roll had not been filed. Therefore, it was held that the Returning Officer ought to have taken note of the copy of the electoral roll filed in one of the nomination papers, as there is no need to file the copy in each nomination paper. Thus, it was held that the rejection of the nomination papers by the Returning Officer without taking into account the copy of the electoral roll filed along with one of the nomination papers is an error.

40. In Amrit Lal Ambalal Patel's case (supra), the Supreme Court held that nomination paper filed by a candidate is to be rejected if the candidate is not qualified under Article 173 of the Constitution of India on the date fixed for the scrutiny of the nominations and acceptance of the nominations though he is qualified to contest on the date of the election. Such election has to be declared void u/s 100(1)(d) of the Act on the ground that the nomination paper was improperly accepted. The Apex Court further held that the nomination of the candidate is liable to be rejected for not fulfilling the Constitutional requirements

under Article 173, as the candidate has not attained the age of 25 years on the date of scrutiny of the nomination papers. Since the nomination of the candidate was liable to be rejected on this ground it must be held that his nomination had been improperly accepted. On the face of it, the consequence of the improper acceptance of the nomination was that the result of the election was materially affected because he was declared as duly elected when he was not entitled to that right on the ground that his nomination paper should have been rejected by the Returning Officer u/s 36(2)(a) of the Act. The election of the candidate was, therefore, declared void.

41. In Chhedi Ram's case (supra), the returned candidate secured 17,822 votes and the next runner-up secured 17,449 votes. The difference between the successful candidate and the candidate who secured the next highest number of votes was 373 votes. There were four other candidates of whom one Moti Ram secured 6,710 votes. The nomination paper of Moti Ram was improperly accepted. The difference between the number of votes secured by the successful candidate and the candidate securing the next highest number of votes was almost 20 times the number of votes secured by the candidate whose nomination was improperly accepted. In the said case, the Apex Court held that the burden of establishing that the result of the election has been materially affected as a result of improper acceptance of a nomination is on the person impeaching the election and the burden is readily discharged if the nomination, which has been improperly accepted, was that of the successful candidate himself. On the other hand, the burden is wholly incapable of being discharged if the candidate whose nomination was improperly accepted, obtained less number of votes than the difference between the number of votes secured by the successful candidate and the number of votes secured by the candidate who got the next highest number of votes. In view of the margin being large and the number of votes earned by the remaining candidates also sufficiently huge, it must be held that the result of the election had been materially affected.

42. In Birad Mal Singhvi's case (supra), the nomination paper of a candidate was rejected on the ground that the said candidate, who was an elector in other constituency, has not filed a copy of the electoral roll of the other constituency or the relevant part thereof or the certified copy and the relevant entry of the roll either along with the nomination papers or at the time of scrutiny before the Returning Officer, and therefore, his nomination paper was rejected for non-compliance of Section 33(5) of the Act. The Supreme Court held that non-compliance of Section 33(5) of the Act is mandatory in nature and as such his nomination is liable to be rejected u/s 36(2)(b) of the Act. In the said case, it was also held that the candidate was not qualified to contest for not complying with the requirements of Article 173 of the Constitution of India, and therefore, the Returning Officer was justified in rejecting the nomination papers.

43. In Rakesh Kumar's case (supra), the candidature of the candidate was rejected on the ground that the recognized political party has authorized more

than one candidate, and therefore, the said candidate has to be treated as an independent candidate and as his candidature is not proposed by ten proposers, his nomination was rejected without giving any opportunity. The Supreme Court held that the rejection of the said nomination paper without giving reasonable opportunity to the candidate, though he is the rightful candidate set up by a recognized political party was improper and unsustainable. It was further held that the Returning Officer failed to exercise his jurisdiction u/s 36(5) of the Act properly and thereby fell into a grave error in rejecting the nomination paper of the said candidate. Therefore, for improper rejection of the nomination paper, the election of the returned candidate was declared void.

44. In Sushil Kumar's case (supra), as the returned candidate failed to rebut the allegation that he was underage which is a disqualification under Article 173 of the Constitution of India, the Apex Court held that the Returning Officer illegally accepted the nomination form of the returned candidate and therefore, declared his election as void. It was further held that a person who is disqualified under Article 173(b) of the Constitution of India could not be permitted to occupy an office for which he is disqualified under the Constitution.

45. Perusal of the aforesaid decisions and various other decisions of the Apex Court goes to show that wherever any nomination paper of a candidate is improperly rejected or accepted by reason of his incurring disqualification either on account of non-compliance of the provisions of the Constitution of India, Representation of the People Act, 1951 and the orders and the rules made thereunder or for the reason that he is not qualified to be chosen, in all those cases the Apex Court held that wherever any nomination paper is improperly rejected or accepted the election of the returned candidate must be construed that it is materially affected. u/s 100(1)(c) of the Act if any nomination has been improperly rejected the election of the elected candidate has to be declared void and similarly wherever the nomination of a candidate is improperly accepted and such improper acceptance is by reason of non-compliance of the provisions of the Constitution or the Act or the rules or the orders made under the Act, relevant to the qualifications and disqualifications or any defect of substantial character disentitling him to contest the election then it must be construed that the result of the candidate has been materially affected.

46. In the instant case, if the nomination of the returned candidate has been improperly accepted then there is no other go except to hold that his election has been materially affected. But perusal of the averments and the evidence available on record goes to show that the second respondent has not incurred any disqualification or has violated the provisions of the Act in the nature of substantial character for the rejection of his nomination papers. The contention of the learned Counsel for the petitioner that the presentation of more than four nomination papers itself is a non-compliance of Section 33(6) of the Act cannot be accepted for the reason that there is no provision to prohibit the presentation of four valid nomination papers. Merely because five nomination papers have

been presented it cannot be said that all the five nomination papers have to be rejected. Therefore, I am of the opinion that there is no failure, on the part of the respondents 1 and 2, to comply with any of the provisions of Section 33 of the Act leading to rejection of the nomination papers of the second respondent by the first respondent u/s 36(2)(b) of the Act. For the aforesaid reasons the petitioner is not entitled for any relief to declare the election of the second respondent as void.

The election petition is accordingly dismissed. However, each party shall bear their own costs.