
(1960) 09 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1425 of 1960

Darbara Singh M.Sc.

APPELLANT

Vs

Vice-Chancellor, Punjab University and Another

RESPONDENT

Date of Decision : 14-09-1960

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab University Act, 1947 — Section 31(2)

Citation : AIR 1961 P&H 194

Hon'ble Judges : A.N. Grover, J

Bench : Single Bench

Advocate : H.R. Sodhi and R.K. Sood, for the Appellant; F.C. Mittal and N.N. Goswami, for the Respondent

Final Decision : Allowed

Judgement

1. This order will dispose of both the writ petitions (Civil Writs Nos. 1425 of 1900 and 1452 of 1960) in which the points involved are identically the same.

2. The facts in Civil Writ No. 1425 of 1960 may be shortly stated. The petitioner who passed the Master of Science Examination of the Punjab University in 1927 has been in the employ of Khalsa College, Amritsar, as a Professor for several years. His name is borne on the register of Registered Graduates maintained by the Punjab University, his number on the register being 283.

He was elected as a follow of the University from the Constituency of registered graduates in the elections which were held in the year 1956. The next election of fellows from the same Constituency has to take place on 15-9-1960. Under the regulations framed under the Punjab University Act (to be referred to as the Act), the Registrar of the Punjab University was appointed the Returning Officer by the Syndicate.

The petitioner submitted his nomination paper duly proposed and seconded on the prescribed form in a registered cover which was addressed to the Registrar

and it is common ground that it reached the Registrar in time. An order was made by Mr. J. R. Agnihotri, Registrar, who was the Returning Officer on the nomination paper of the petitioner on 20-8-1960 in the following terms:

"Invalid as not addressed to the Returning Officer by name as required by regulation 24(ii) at page 4".

It is stated in paragraph 5 of the petition that a representation was made by the petitioner to the Registrar with regard to the alleged illegal rejection of the nomination paper on the ground mentioned above and that the case was referred to the Vice-Chancellor who considered that he had no power to interfere with the decision of the Returning Officer. The representation for reconsideration was thus rejected by the Registrar as was clear from the Communication dated 25-8-1960 received from him. It is in these circumstances that the matter has been brought to this Court and various prayers have been made invoking the exercise of extraordinary powers under Article 226 of the Constitution.

3. Mr. Faqir Chand Mital who appears for the respondents has raised a preliminary objection to any relief being granted under Article 226 of the Constitution principally on the ground that the petitioners in both the petitions can challenge the election after it is held before the Tribunal provided by and in accordance with the procedure prescribed by regulation 24 (xvii) of the regulations framed under the provisions of the Act. It is necessary to refer to the relevant provisions of the Act and the regulations.

Section 14(1) is to the effect that once in every year, on such date as the Chancellor may appoint in this behalf, there shall, if necessary, be an election to fill any vacancy among the Ordinary Fellows elected by Registered Graduates. Section 31 confers powers on the Senate to make regulations with the sanction of the Government and Sub-section (2)(a) relates to the power to make regulations for "the procedure to be followed in holding any election of Ordinary Fellows". In regulation 24 it is provided inter alia:

"The forms of nomination paper, ballot paper, covering letter, etc., shall be, unless otherwise prescribed by the Syndicate, as given in Schedule II to these Regulations.

(i) The Returning Officer shall issue a notice in such manner as may be decided by the Syndicate stating the number of vacancies and the date and time by which the candidates should be nominated.

(ii) Nomination of a candidate shall be by one elector and supported by another elector on the prescribed form obtainable from the Registrar (or on an identical form) which shall be forwarded to (the Returning Officer by name, under a registered cover, so as to reach him by the date and time notified under Clause (i) of this regulation.

(iii) The candidate proposed shall sign his Nomination Form as a token of his consent to stand for election.

(iv) An elector shall be entitled to nominate as many persons for election as there are vacancies.

(v) If a proposer or a seconder has signed the nomination papers of more candidates than the number of vacancies, then these nomination papers shall be declared invalid.

(vi) The Returning Officer shall affix at his office a list of names of all the candidates who have been proposed and seconded.

All nomination papers shall be scrutinised by the Returning Officer on the date prescribed for the purpose".

Clause (xvii) of regulation 24 may now be reproduced:

"Any objection to the decision of the Returning Officer as regards the validity or otherwise of a voting paper must be made forthwith. A petition on any other point in connection with the election must be made within 10 days of the declaration of the result. A petition or an appeal against the order of the Returning Officer shall lie to a Committee consisting of the Vice-Chancellor and two members of the Syndicate to be appointed annually. The Vice-Chancellor shall be ex-officio Chairman and in his absence the other members present shall elect one of them as Chairman of the Committee. The decision of the Committee shall be final and shall not be liable to be questioned in a Court of Law. In the case of difference of opinion the question of majority shall prevail. Two members shall form quorum of the Committee. In case of difference of opinion between the two members, the decision of the Vice-Chancellor or in his absence the member who acts as Chairman, shall prevail and shall be final".

4. The argument that has been canvassed by Mr. Faqir Chand Mittal involves a double-barrelled objection. It is said, firstly, that the election has not yet taken place and it is open to the petitioners to challenge the election within ten days of the declaration of the result before the Committee consisting of the Vice-Chancellor and two members of the Syndicate to be appointed annually. In other words, according to Mr. Mittal, no relief is open to the petitioners at this stage because the election has not taken place and it is only after the election that any remedy can be availed of by the petitioners.

In the second place, it is pointed out that in the presence of an alternative remedy, this Court should not entertain petitions of this nature until resort has been had to that remedy. The general principle that this Court will not interfere in exercise of its extraordinary powers under Article 226 unless the alternative remedy has been exhausted has been strenuously pressed into service by Mr. Mittal.

Mr. H. R. Sodhi, the learned counsel for petitioner Darbara Singh, has sought to meet the objections that have been raised by laying emphasis on the tact that if the rejection of nomination papers is contrary to the regulations and is beyond the power and authority of the Returning Officer, then it would materially affect

the result of the election and, therefore, the proper stage to interfere is before the elections are held. He has further relied on the principle that the existence of an alternative remedy is not an insuperable bar provided a proper case is made out for interference under Article 226. As a number of decisions have been referred to, it is necessary to notice and discuss those which are of importance.

5. Mr. Faqir Chand Mittal in support of his preliminary objection relied largely on N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, In that case, while construing Article 329(b) of the Constitution of India their Lordships observed that the word "election" in that Article had by long usage in connection with process of selection of proper representatives in democratic institutions, acquired both a wide and a narrow meaning.

In the narrow sense, it was used to mean the final selection of a candidate which might embrace the result of the poll when there was polling or a particular candidate being returned unopposed when there was no poll. In the wide sense, the word was used to connote the entire process culminating in a candidate being declared elected. In that case their Lordships had to decide whether the rejection of the nomination paper by the Returning Officer for election to the Madras Legislative Assembly could be challenged before the High Court under Article 226 of the Constitution and apart from other various constitutional provisions, the main controversy centred round the meaning of the words "no election shall be called in question except by an election petition" in Article 329(b).

The provisions of the Representation of the People Act, 1951, were also examined and it was observed that the aforesaid Act was a self-contained enactment so far as elections were concerned, which meant that whenever the true position in regard to any matter connected with the elections had to be ascertained, the Court had only to look at the Act and the rules made thereunder.

It was particularly noticed that no provision had been made anywhere to the effect that anything connected with elections could be questioned at an intermediate stage. At page 69 of the report, Fazl Ali, J. expressed the view that the words "notwithstanding anything in this Constitution" preceding Article 329(b) were quite apt to exclude the jurisdiction of the High Court to deal with any matter which might arise while the elections were in progress. The conclusions at which he arrived were summed up in the following words:

"(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time-schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to

anything which does not affect the "election"; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the "election" and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any Court while the election is in progress." It was consequently held that the High Courts had no jurisdiction under Article 226 of the Constitution to entertain the petitions regarding improper rejection of nomination papers. Mr. Sodhi has sought to distinguish the above case in several ways. The main point of distinction made out by him is that in that case the clear provisions of Article 329(b) stood in the way of the High Court entertaining a petition under Article 226 of the Constitution with regard to the alleged illegal rejection of a nomination paper by a Returning Officer and that no such provision exists either in the Act or in the regulations.

A machinery has certainly been provided by Clause (xvii) of regulation 24 by way of a petition within the period prescribed after declaration of the result to a Committee and although the decision of the Committee is to be final, it is nowhere said that the election of the fellows shall not be called in question except by an election petition. It is difficult to agree with Mr. Mittal that the instant cases are covered by the ratio of the decision of the Supreme Court in the case referred to before.

6. Mr. Mittal has next relied on *Dhirajkunwar Vs. Lakhan Singh*, , in which the matter had been brought to the High Court as the nomination papers filed by one of the candidates for election to the Gram Panchayat had been rejected by the Election Officer. In that case, the petitioner's main contention was that the Election Officer by wrongly rejecting the nomination papers had interfered with his right to be elected to the Panchayat.

The point to be considered was whether a challenge to the correctness of the impugned order at that stage and in the manner sought to be done was permissible according to the Panchayat Act or the rules framed thereunder. After referring to the meaning of the word "election" as discussed in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, and after examining the scheme of the Panchayat Election Rules, the learned Madhya Bharat Judges were of the opinion that the word "election" in those rules and in the Panchayat Act was used in the wider sense.

According to them, the whole process of election as one complete process to be gone through in different stages commencing with the preparation of voters' list and ending with the declaration of the names of successful candidates was contemplated by the relevant rules. As the filing of nomination paper, its scrutiny and rejection or acceptance was the stage of process, it could not by itself be treated as a completed act, namely, the election itself. Samvatsar, J. made the following observations at page 42 of the report which may be noticed:

"It appears to me that the Legislature in conferring finality upon the order of the election officer under Rule 18(1), intended that there should be no obstruction at the stage of scrutiny of nomination papers and that the validity of the elections, on the material grounds, should be challenged only by a petition under Rule 41.

This however does not mean that this Court has no jurisdiction to entertain petitions like the one before us but it means that the Legislature did not intend that there should be any interruption in the election at an interlocutory stage and that the matter should be examined only after the election is over and proper proceedings are commenced for challenging its validity."

It is significant that regulation 24, which contains the procedure of elections, nowhere contains any provision by which the order of the Returning Officer has been made final. It is only the decision of the Committee to whom some sort of election petition is to be filed after the result of the election is declared that has been given finality. Consequently it is not possible to say that the Act or the regulations are of such a nature as were to be found in the *Madhya Bharat* case.

There is then the principle that was accepted in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, by their Lordships of the Supreme Court that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute must be availed of. It is indisputable that the right to vote or stand as a candidate for election is not a civil right but is a creature of statute and, therefore, it must be subject to the limitations imposed by the statutory provisions.

If the sole right to examine and determine all matters with regard to the elections to a particular body is conferred on some special tribunal, then normally it is that tribunal alone which will have the jurisdiction to determine those matters. Even if it be assumed that in the instant cases it was the Committee that had the jurisdiction to decide matters relating to election taken in its wider sense and including the question of proper or improper rejection of nomination paper, it cannot be said that this Court will not have jurisdiction under Article 226 of the Constitution to interfere if a proper case is made out for its interference.

It is entirely a different matter that while exercising discretion, this Court must bear in mind the existence of such a tribunal to which normally resort should be had before any relief is granted under Article 226. I have not been persuaded to change the view which I have expressed in *Lekh Raj v. Cantonment Board, Jullundur*, AIR 1958 Punj 356, that even if it be assumed that it will be possible for a petitioner who approaches this Court under Article 226, to agitate the questions raised by him in an election petition, it only means that he can avail of an alternative remedy and, therefore, there should be no interference under Article 226, but the existence of such a remedy is not an insuperable bar.

The powers of this Court under that Article are untrammelled by law and even though there be a provision that elections can be challenged only by way of

election petition before a tribunal created by the rules, the jurisdiction of the High Court which is derived from the Constitution can in no way be affected. Thus where the point raised is of fundamental character and affects the elections as a whole, the High Court can interfere in a suitable case in exercise of its extraordinary jurisdiction conferred by Article 226.

The observations in the previous Bench decision of this Court in Civil Writ No. 1174 of 1959: (62 PLR 377) which are set out at pages 682-683 in *Amir Chand v. Dhan Raj* 62 PLR 679, support the above view and reliance has been placed on them by Mr. Sodhi for the other question whether there can be interference at this stage before the elections have taken place. In *Lajpat Rai v. Khilari Ram* 62 PLR 377, *Dulat and Dua, JJ.* have laid down that the existence of an alternative adequate or suitable remedy is not per se an absolute bar to a petition under Article 226 of the Constitution.

It is only a material circumstance to be taken into account on the facts of each case, it being in the judicial discretion of the Court whether or not to afford the extraordinary relief. It has in this connection to consider inter alia the nature and extent of the right violated, the nature and extent of the injury caused thereby, the delay in approaching the Court and whether the alternative remedy is equally adequate, inexpensive, efficacious and speedy.

The decision in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, was considered by the Bench and was distinguished on the ground that it dealt with the effect of Article 329 of the Constitution. Mr. Mittal points out that all the aforesaid decisions were given in cases where the elections were to be held or had been held on the basis of electoral rolls which were found fundamentally defective and that the relief claimed in those cases could not have been secured by an election petition.

It is not possible to confine the principles that have been established by the Bench decisions to cases where only the electoral rolls were defective. What has to be seen is whether the election is going to be held or has been held in a manner that will affect the election fundamentally and vitally. If there is any such defect or infirmity as would render the entire election invalid and which goes to the root of it, I have little doubt that the same principles would govern the instant cases as were applied with regard to the elections with basically defective electoral rolls.

In *Surendra Nath Khosla Vs. Dalip Singh*, the effect of the improper rejection of a nomination paper was considered by their Lordships and it was pointed out that almost all the Election Tribunals in the country have consistently taken the view that there is a presumption in the case of improper rejection of a nomination paper that it has materially affected the result of the election. The following observations at page 245 are noteworthy:

"Apart from the practical difficulty, almost the impossibility, of demonstrating that the electors would have cast their votes in a particular way, that is to say, that a

substantial number of them would have cast their votes in favour of the rejected candidate, the fact that one of several candidates for an election had been kept out of the arena is by itself a very material consideration. Cases can easily be imagined where the most desirable candidate from the point of view of electors and the most formidable candidate from the point of view of the other candidates may have been wrongly kept out from seeking election. By keeping out such a desirable candidate, the officer rejecting the nomination paper may have prevented the electors from voting for the best candidate available. On the other hand, in the case of an improper acceptance of a nomination paper, proof may easily be forthcoming to demonstrate that the coming into the arena of an additional candidate has not had any effect on the election of the best candidate in the field. The conjecture realising the difference between the two classes of cases has given legislative sanction to the view by amending section 100 by the Representation of the People (Second Amendment) Act, 27 of 1956, and by going to the length of providing that an improper rejection of any nomination paper is conclusive proof of the election being void."

In *Surajmal Sharma Vs. Pirthisingh and Others*, Wanchoo, C. J. (as he then was) and Bapna, J. had to deal with a case where the nomination paper had been rejected under the Panchayat Election Rules on the ground that in the electoral rolls there was one name of Phunda Lal whereas the name given in the nomination paper was Phundilal. It was stated before the Returning Officer that Phundilal was the correct name, and he was Up-Sarpanch of the Gram Panchayat of Madhogarh and his identity could be verified, but the Returning Officer rejected the nomination paper.

The candidate whose nomination paper had been rejected approached the High Court under Article 226 with a prayer that the order of the Returning Officer rejecting the nomination paper be quashed and further a direction be issued not to hold the election of the Tehsil Panchayat of Bassi till the election of the Gram Panchayat of Bassi had been completed. The Rajasthan Bench laid down that a mere slight difference in the name would not be a good ground for rejection of a nomination paper, if the identity of the person proposing could be established among the persons entitled to propose and second.

The Returning Officer was directed not to hold the election till the completion of the electoral college of the Tehsil Panchayat. The election from the Constituency of Registered Graduates is of such a nature that if the petitioner in each of the two petitions is not allowed to stand for the election on account of the nomination paper having been illegally rejected, the entire election from the Constituency will be affected as a whole.

The observations that have been made by their Lordships of the Supreme Court which have been set out before are quite apposite in the instant cases and I am constrained to hold that the principles which have been laid down by the Bench decisions with regard to interference under Article 226 in case of defective electoral rolls will also govern these cases. In this view of the matter, the

preliminary objection that has been raised by Mr. Mital cannot be sustained.

7. On the merits, the only question that requires consideration is whether the Returning Officer could validly under the regulations reject the nomination papers on the sole ground that they had not been forwarded to him by name as provided by Clause (ii) of regulation 24. So far as nomination papers are concerned, apart from Clause (ii) the other relevant clauses are (iii) to (vi) together with what follows Clause (vi), namely, that all nomination papers shall be scrutinised by the Returning Officer on the date prescribed for the purpose.

In the case of an election by Registered Graduates, if the candidate is a defaulter on the date of publication of the final Register of Graduates, the nomination paper shall be invalid. Now the aforesaid provisions contained certain express ground on which the nomination paper must be held to be invalid. That is provided for by Clause (v) as also by what follows Clause (vi) as set out above.

At the same time it can legitimately be said that it is implicit that if the other conditions which have been laid down and which can be regarded to be of a mandatory nature are not complied with, the Returning Officer would be fully justified in rejecting the nomination papers. For instance, according to Clause (ii), nomination of a candidate has to be by one elector and supported by another elector on the prescribed form. If that is not done, then surely it cannot be said that the Returning Officer cannot reject the nomination paper.

Similarly if the candidate proposed does not sign his nomination form as a token of his consent to stand for election, it cannot possibly be said that his nomination should be accepted by the Returning Officer. There can be little doubt that these requirements are of an essential and mandatory nature without which no nomination paper or form can possibly be accepted as valid. But it is urged by Mr. H. R. Sodhi, the learned counsel for petitioner Darbara Singh, that the further requirement in Clause (ii) of forwarding the prescribed form of nomination paper to the Returning Officer by name is not of a mandatory nature, and so long as the form is sent to the Returning Officer and it is actually received by him, there has been substantial compliance with the same.

It has not been denied by him that the further requirement of the form reaching by the date and time notified under Clause (i), of regulation 24 would be of a mandatory nature. Mr. F. C. Mittal, on the other hand, contends that the very fact that all these requirements or conditions exist in Clause (ii) indicates that they are of a mandatory nature. There is no indication in the return which has been filed on behalf of the respondents to show any particular circumstances which would make such requirement mandatory.

It has, however, been suggested that although it is only the Registrar or the Deputy Registrar who can be appointed as Returning Officers under regulation 24(i)(a) and although on this occasion it was the Registrar who was appointed the Returning Officer, the requirement of forwarding the nomination form to him by name is meant for ensuring that it reaches the Registrar personally and that it

does not fall into the hands of other subordinate officers or clerks in the Registrar's office because numerous communications come to the Registrar in connection with several matters which are dealt with by different subordinate officers in his office.

It has not been indicated in the return as to who deals with communications generally addressed to the Registrar in his office and there is no material on which it can be held that such a communication addressed to the Registrar would have been dealt with in the ordinary course by some subordinate officer in his office. The admitted fact is that the registered covers containing the nomination papers in question which bore the address of the Registrar reached him alone and nobody else and notwithstanding that fact they were declared to be invalid merely because they had not been addressed to him by name.

8. Now Section 36 of the Representation of the People Act, 1951, which relates to scrutiny of nominations contains a provision in sub-section (4) that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. Prior to the amendment introduced by Central Act 27 of 1956, the word "technical" appeared before the word "defect" for the same was omitted as a result of the amendment.

Section 36, of course, cannot be made applicable here but it is significant that even in a matter of election to the Parliament and the State Legislatures, it has been specifically provided that a nomination paper shall not be rejected on the ground of a defect which is not of a substantial character. It illustrates the principle that nomination papers should not be rejected on flimsy, technical, inconsequential or unsubstantial grounds.

In *Parmeshwar Mahaseth and Others Vs. State of Bihar and Others*, the question was whether the publication of a notification under Rule 7 of the Bihar Municipal Elections and Election Petition Rules was mandatory, non-compliance with which rendered the entire election invalid. The Patna Bench referred to the principles given in *Crawford's Construction of Statutes* and in *Ajit Kumar Sen and Another Vs. State of West Bengal and Others*, which may be summarised as follows:

(1) As a general rule, those provisions which relate to the essence of the thing to be performed or to matters of substance are mandatory, and those which do not relate to the essence and whose compliance is merely a matter of convenience rather than of substance are directory.

(2) It is the duty of the Court to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed. In each case the subject matter is to be looked to and the importance of the provision in question in relation to the general object intended to be secured by the Act is to be taken into consideration."

In the Patna case, it was held that the publication of the notification was the very foundation of the election and the non-compliance with those provisions was

calculated to deprive the electors of their right to vote. In *Ram Rachhpal v. Union of India* 62 PLR 612: (AIR 1960 P&h 439) I had occasion to consider whether the proviso to Section 3 of the Bombay Agricultural Produce Markets Act was of a mandatory or directory nature.

It was held that the provision relating to consultation with the Municipality Concerned of intention of exercising control over purchase and sale of agricultural produce in Najafgarh Mandi was merely directory and not mandatory. In *State of U.P. Vs. Manbodhan Lal Srivastava*, while considering whether the use of the word "shall" in Article 320(3)(c) made the consultation with the Public Service Commission essential and whether that provision was of a mandatory nature, their Lordships relied on the following passage from Crawford on Statutory Construction at page 516:

"The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature & not upon the language in which the intent is clothed. The meaning & intention of the Legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other....."

9. Mr. Faqir Chand Mittal has been unable to persuade me to hold that the requirement about addressing the cover to the Returning Officer by name is of a mandatory nature. The nomination paper must be sent to the Returning Officer and it is difficult to see that it would be of the essence of the thing to be performed or it will be a matter of substance that it must be addressed to him by name or that it would lead to such consequences as were never intended by the makers of the regulation.

On the contrary, if it is so held, it is likely to lead to absurd situations. For example, a candidate under regulation 24 forwards his nomination paper to the Returning Officer, who is the Registrar, by name but does not write his initials correctly. Can it lead to such drastic and unjust consequences that it can be regarded a sufficient ground for rejecting the nomination paper? It can also happen that after a candidate has sent his nomination paper addressed to the Returning Officer by name, that Returning Officer becomes by reason of some accident or otherwise incapacitated to attend to his duties.

The Vice-Chancellor, under Clause (xix) of regulation 24, assumes the powers of the Returning Officer and functions as such either by himself or by deputing any other person to carry out those duties. Will the nomination paper which has been sent, become invalid because at the time when it reaches, it does not bear the name of the Returning Officer who is functioning at that time?

If the argument of Mr. Mittal is to be accepted, the Returning Officer will be entitled to reject the nomination paper either because his name is not correctly written or because he has ceased to be a Returning Officer at the time when the communication reaches him. Surely no such interpretation should be given to the

language employed in Clause (ii) of regulation 24 as will lead to such inconvenient and impractical results.

In *Karnail Singh v. Election Tribunal, Hissar*, 10 ELR 189 (SC), the name of the part of the electoral roll in which the name of the candidate appeared was not filled up against column No. 8 of the nomination paper, but there was no difficulty in identifying the candidate, and the entry of his name in the roll was pointed out to the Returning Officer, but the nomination paper was rejected by him on the ground that the nomination form had not been duly filled up.

Their Lordships came to the conclusion that the defect was a technical one and the Tribunal was perfectly right in holding that it was not of a substantial character and that the nomination paper should not have been rejected. The result of the election was held to have been affected by this wrong rejection of the nomination paper. In *Gian Chand Puran Chand Vs. Smt. Om Prabha Jain and Another*, a Bench of this Court relied on an unreported decision of their Lordships of the Supreme Court with regard to section 117 of the Representation of the People Act, 1951, in which it was observed that a literal compliance with the terms of Section 117 was not at all necessary.

The Election Tribunal had taken the view that although the amount of Rs. 1,000/- tendered by Gian Chand had been deposited in favour of the Secretary of the Election Commission, it was nowhere stated in the receipt that the amount was deposited in favour of the said Secretary. This view of the Tribunal was considered to be wholly erroneous and the following observations made by Falshaw, J. may be referred to with advantage:

"It has often been stressed that it is in the Interest of justice not to throw out election petitions on hypertechnical grounds."

It may be mentioned that this judgment was affirmed by the Supreme Court in *Om Prabha Jain Vs. Gian Chand and Another*, In Rajasthan case, (AIR 1957 Raj 383) has already been referred to where a mere slight difference in name between the one given in the electoral roll and that written in the nomination paper was held not to be a good ground for rejection of the nomination paper.

After all the whole intention and object of the provision in regulation 24 about the nomination paper being forwarded to the Returning Officer by name is to ensure that it reaches the Returning Officer. If the Registrar is the Returning Officer and the cover is addressed to him and it is received by him, there has been substantial compliance though technically and literally it may be said that the requirement had not been satisfied. Mr. Mittal has not been able to cite any case where the nomination paper was rejected on a ground of such inconsequential nature.

10. For all these reasons, I would hold that the provision in regulation 24 about sending the nomination paper on the prescribed form under registered cover to the Returning Officer by name is merely of a directory nature and is not

mandatory. Its non-compliance was not a defect of such a substantial nature as could justify the rejection of the nomination papers which admittedly satisfied all the other conditions which have been laid down, by the regulation. As such, both the petitions must succeed.

There can further be no doubt that if the election is held without the petitioners, Darbare Singh and Man Mohan Kapur, being allowed to contest it, the election is bound to suffer from a defect of such a serious and vital nature and it will be wholly invalid. A proper case has, therefore, been made out for an appropriate writ to issue that the election, should not be held from the Constituency of Registered Graduates until the petitioners, Darbara Singh and Man Mohan Kapur, are permitted to seek election as Fellows of the Punjab University along with other candidates in accordance with law. Accordingly to this extent the rule is made absolute in both the cases (Civil Writs Nos. 1425 of 1960 and 1452 of 1960). Considering the nature of the points involved, the parties will be left to bear their own costs.