
(1970) 08 MP CK 0001
In the Madhya Pradesh High Court
Case No : M.P. No. 120 of 1970

Dharampal Bhatia

APPELLANT

Vs

B.K. Mishra and others

RESPONDENT

Date of Decision : 14-08-1970

Acts Referred:

Constitution of India, 1950 — Article 173, 226
Representation of the People Act, 1951 — Section 36(4)

Citation : (1976) ILR (MP) 446 : (1970) JLJ 1024 : (1971) MPLJ 37

Hon'ble Judges : Bishambhar Dayal, C.J.; S.P. Bahrgava, J

Bench : Division Bench

Advocate : R.S. Dabir, H.L. Khaskalam and Ku. Rama Gupta, for the Appellant;
R.K. Tankha and A.S. Jha for Respondents Nos. 1 to 4, K.P. Munshi and B.B.L. Shrivastava, for the Respondent

Final Decision : Dismissed

Judgement

Bhargava, J.

The Petitioner Shri Dharampal Bhatia desired to contest the election of the members of the Court of the Jabalpur University. His nomination paper having been rejected by the Scrutiny Officer on the ground that the names of his proposer and seconder were not mentioned in the nomination form, he has filed this writ petition under Article 226 of the Constitution seeking the relief that the order of rejection of the nomination paper dated 28-3-1970 may be quashed and that the Respondents may be commanded to include his name in the ballot paper.

The admitted facts are that the Petitioner is a registered graduate of the Jabalpur University. His serial number in the list of registered graduates is 672. The nomination paper shows that he was proposed as a candidate by two registered graduates whose numbers in the list of graduates were 167 and 169. At No. 167 in the list of registered graduates, there is written the name of Kumari Rama Gupta. At No. 169 the name of the registered graduate is written as Har Sewaklal Khaskalam. In the nomination paper there is a column for writing name and

number of proposer and another column for writing the name and number of the seconder. In the first column only No. 167 was mentioned and in the second column only No. 169 was specified. The nomination paper bears signatures opposite the column of proposer which read as "Rama Gupta" and against the column of the seconder which read as "H. L. Khaskalam". As already stated, as the names of the proposer and seconder were not written in these columns, the nomination paper was rejected.

Section 22 of the Jabalpur University Act, 1956 (herein-after called the Act) provides for the constitution of Court. In Clause (xxi) it provides for the election of twenty representatives to be elected by the registered graduates of the University from amongst themselves, in accordance with such mode as may be prescribed by the Ordinances. The Ordinance applicable is Ordinance No. 4. It provides for the election of registered graduates to the Court. The following are its material clauses:

III. (i) Nomination shall be made by means of a nomination paper in Form A which shall be supplied by the Registrar to any elector asking for the same.

(ii) Every nomination paper shall be signed by two electors as proposer and seconder and shall be signed by the candidate as assenting to the nomination.

(iii) The same elector may sign as many nomination papers as there are vacancies to be filled.

(iv) Each candidate shall be nominated by a separate nomination paper.

IV. (i) Every nomination paper shall, on or before the date appointed for the nomination of candidates be delivered by the proposer or the seconder in a sealed cover to the Registrar personally or by registered post. They shall attach to such nomination paper a certificate from an Attesting Officer that they have signed the paper in his presence. The Attesting Officer shall place on the form his signature, the date of signature, designation and name of the city or town in which his headquarters are located. Not more than one nomination paper shall be sent in one cover.

(ii) Nomination papers not received by the Registrar during office hours before the aforesaid date shall be rejected.

(iii) On the date and time appointed for scrutiny of nomination papers every candidate and his proposer and seconder may be present at the scrutiny at the office of the Registrar, who shall allow them to examine the nomination papers of all candidates received by him as aforesaid.

(iv) The Registrar shall examine the nomination papers and shall decide all objections, if any to the nomination paper on the ground that it is not valid under rule III or this rule and may reject, either of his own motion or on such objection, any nomination paper on such ground including the ground that the cover containing the nomination paper is not sealed. The decision of the

Registrar shall be endorsed on the nomination paper.

The first contention advanced on behalf of the Petitioner is that it was not necessary for him to comply with the requirements of Form A mentioned in Ordinance No. 4 (III) (i) and to mention the names of the proposer and seconder in his nomination paper as that form has not been reproduced in the University Calender and cannot be accepted to be a part of Ordinance No. 4. In the return it has been pointed out that Ordinance No. 4 together with Forms A, B and C prescribed thereunder along with some other Ordinances were drawn up and sent to the Chancellor of the University according to the provisions of Section 40 of the Act and by the communication dated 11th October 1957 the Chancellor directed all those Ordinances, namely, Nos. 1 to 10, to come into force from 15th October 1957. Annexure R/4 shows that Ordinances 1 to 10 framed by the Committee appointed u/s 40 of the Act were sent to the Chancellor by the Vice-Chancellor and the Chancellor directed the first Ordinances 1 to 10 to come into operation from 15th October 1957. The mere fact that Form A was not published in the University Calender is not sufficient to enable us to conclude that it did not form part of Ordinance No. 4 particularly when recourse was had to the same Form A in all previous elections to the University Court. This contention of the Petitioner is, therefore, rejected.

The second contention advanced on behalf of the Petitioner is that Section 22 (xxi) of the Act prescribes the election of twenty representatives of registered graduates to the University Court "in accordance with such mode as may be prescribed by the Ordinances." It is contended that the word "mode" as used in the aforesaid Clause (xxi) of Section 22 has a restricted meaning and does not connote the manner or procedure which will be adopted for completing the election of the representatives of registered graduates to the Court. The learned Counsel for the Petitioner in this connection emphasized the language of Section 34 (b) of the Act where provision is made for the manner of election or appointment and the terms of office of the members of the bodies referred to in Clause (a). The argument is that as in Section 34 (b) the word "manner" has been used and as in Section 22 (xxi) the word "mode" has been used, the two words, must be interpreted differently and the meaning which should be given to the word "mode" must be that it only governs the method prescribed for voting, for example, by single transferable vote and so on. It was urged that the word "manner" would govern the procedure which has to be adopted in going through the various stages of election. We have not been impressed by this argument at all. The word "mode" has been defined in Oxford Dictionary thus:

Mode-Way, manner, in which thing is done; prevailing fashion or custom.

In Black's Law Dictionary also this word has been defined to mean "the manner in which a thing is done; as the mode of proceeding, the mode of process (Anderson's L. Dict.)." In Chambers' Dictionary the word has been defined in this manner:

Manner-Way or manner of acting, doing, happening or existing; kind; form; manifestation; state of being; that which exists only as a quality of substance; fashion.....

The two words "mode" and "manner" bear the same meaning and are used interchangeably.

Clause (xxi) of Section 22 is the only provision in the Act which prescribes for the election of the representatives of registered graduates and therefore the word "mode" occurring in the said clause in our opinion must be given as wide a connotation as possible. So interpreted, the word "mode" would cover the entire procedure laid down for all the stages of election. All the provisions made in Ordinance No. 4 are consistent with Clause (xxi) of section 22 and no part thereof can be held to be ultra vires. This contention also is, therefore, rejected.

The third contention raised by the learned Counsel for the Petitioner is that the omission to mention the names of the proposer and the seconder separately apart from their signatures in the nomination form is not a defect of a substantial character. It is urged that the only purpose of the said requirement could be to ensure either the identity or the eligibility of the proposer and the seconder and even if the form has not been meticulously filled up in the manner prescribed in Form A, the defect being merely technical should have been ignored by the Scrutiny Officer and could not be made a ground for rejecting the nomination paper.

In this connection, the learned Counsel for the Petitioner referred to *Thakur Pratap Singh Vs. Shri Krishna Gupta and Others*, , where it has been laid down that-

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

The aforesaid observations were made by their Lordships in the context of these facts that the nominations were on forms supplied by the municipal committee for its elections. The forms supplied turned out to be old ones which had not been brought up to date. Under the old rules candidates were required to mention their caste but the said rule was changed and instead of caste the candidates were required to state their occupation in the form. Only one of the candidates kept himself abreast of the law and he struck out the word "caste" in the printed form and wrote in his occupation. The other candidates including the Appellant before their Lordships filled in their form as they stood. Their Lordships

stressed the language of Section 23 of the Municipalities Act where it was said that "anything done or any proceeding taken under this Act shall not be questioned on account of any defect or irregularity not affecting the merits of the case." Their Lordships then referred to Rule 9(1)(i) which stated that "each candidate shall.....deliver to the

Supervising Officer a nomination paper completed "in the form appended" and subscribed by the candidate himself as assenting to the nomination and by two duly qualified electors as propose! and seconder." Rule 9 (1) (iii) directs that the Supervising Officer-

"Shall examine the nomination papers and shall decide all objections which may be made to any nomination and "may" either on such objection or on his own motion, after such summary enquiry, if any, as he thinks necessary, refuse any nomination on any of the following grounds:

x x x

(c) that there has been any failure to comply with "any" of the provisions of Clause (i).....

It was contended that the word "may" which we have underlined above has the force of "shall" in that context because Clause (a) of the rule reads-

(a) that the candidate is ineligible for election u/s 14 or Section 15 of the Act.

Their Lordships did not decide the force of the word "may" used in Rule 9 (1) (iii) (c) but taking into consideration the language of Section 23 reading it along with Rule 9 (1) (iii) (c) they observed that all that they were concerned was to see as to whether an admission to set out a candidate's occupation can be said to affect "the merits of the case" and it was concluded that the omission did not affect the merits of the matter. Their Lordships held that that part of the form was only directory and formed part of the description of the candidate. Their Lordships made the significant observation that the said omission "did not go to the root of the matter so long as there was enough material in the paper to enable the candidate to be identified beyond doubt.

In the same case, their Lordships approved the dictum of their Lordships of the Privy Council in (1940) 8 ITR 635 (Privy Council) where it has been laid down that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially.

Our attention was also drawn by the learned Counsel for the Petitioner on the principle enunciated in Municipal Committee, Champa v. Moolji Sikka and Co , Champa and Anr. 1961 MPLJ 1473 where a Division Bench of this Court has laid down principles for finding out as to whether a provision is mandatory or directory. The principle enunciated in the case is that as a general rule those rules whose provisions 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 that of substance are directory.

Strong reliance was placed by the learned Counsel for the Petitioner on the judgment of their Lordships in *Karnail Singh v. Election Tribunal, Hissar and Ors.* 10 ELR 189. The defect pointed out in that case was that in the nomination paper the name of the sub-division was not stated but on the evidence it was quite clear that there was no difficulty in identifying the candidate and the candidate had himself pointed out to the returning officer the entry of his name in the electoral roll. In these circumstances their Lordships held the defect to be a technical one. This case appears to have been decided on its particular facts.

On the other hand, reliance is placed on *Narotam Singh v. Des Raj and Ors.* 4 ELR 309 where the majority opinion was to the effect that the total omission of the name of the proposer in the column provided for the purpose in the nomination paper was not a mere technical defect of unsubstantial character. It was held that the fact that the name of the proposer could be ascertained from the signature and the electoral roll number which was given in the nomination paper was immaterial and could not cure the defect. In *P.N. Balasubrahmanyam Vs. Election Tribunal of North Arcot at Vellore and Others*, the failure to fill up the particulars as to the name of the constituency and his serial number by the candidate were held to be not mere technical defect but defects on the ground of which the nomination paper could be rejected. In *Brijendralal Gupta and Another Vs. Jwalaprasad and Others*, the candidate had failed to specify his age in the nomination paper. It was considered by their Lordships to be a defect of substantial character, as *prima facie* the eligibility of the person to stand as a candidate depended under Article 173 of the Constitution on his having completed the age of 25 years. Their Lordships further held that the argument that the returning officer could have easily verified the age from the electoral roll was not really material in construing Section 36(4) of the Representation of the People Act, 1951.

On consideration of the principles laid down in the authorities aforesaid, we are satisfied that the defect of not mentioning the names of the proposer and seconder in the nomination paper must be held to be a defect of substantial character. It is significant to note that in Ordinance No. 4 firstly there is a provision made that nomination shall be made by means of a nomination paper in form A which shall be supplied by the Registrar to any elector asking for the same. Form A requires full name and number of the candidate as also the names and numbers of the proposer and seconder to be stated. Further, the requirement in rule III (ii) is that every nomination paper shall be signed by the candidate as assenting to the nomination. If mere signature of the proposer and seconder could serve the purpose of a candidate being nominated validly, no insistence need have been made on the name and number of the proposer and seconder being specified. This requirement is obviously made for the purpose that on the basis of the name and number as stated in the nomination paper the

correctness of the signatures of the proposer and the seconder could be seen and if there was any difference, the identity of the person signing as proposer and seconder could be checked.

It is significant in the instant case that the seconder's name as written in the list of graduates is Har Sewaklal Khaskalam. If such a person normally signed without using his full name, the abbreviated name will be H. S. Khaskalam or H. S L. Khaskalam, but not H. L. Khaskalam. It was obviously not for the Registrar as Scrutiny Officer to speculate or assume that the correct name of the seconder in the list should have been recorded as Harsewak Lal Khaskalam, and not as Har Sewaklal Khaskalam. If the proposer and seconder or the candidate remained present at the time of the scrutiny and satisfied the Scrutiny Officer about the identity, it might have been possible for the Petitioner to press the view taken in Karnail Singh's case (*supra*). However, as none of these persons were admittedly present at the time of the scrutiny, it cannot be said that it was obligatory on the Scrutiny Officer to consult the electoral roll at the time of scrutiny and to satisfy himself on the basis of the entry which he found therein although the names of the proposer and seconder were not mentioned in the nomination paper. The provisions contained in rule III of the Ordinance require a candidate to see that the form of nomination paper was completed with care in respect of the items mentioned in it and the importance of the particular item of the names and electoral roll number of the candidates, proposer and the seconder cannot be ignored as *prima facie* eligibility of the person who is the candidate and of the person who is proposing or seconding a candidate would depend on the tallying of his name as mentioned in the nomination paper with his serial number in the list. As names of the proposer and the seconder were left blank in the nomination paper, there was nothing left for the Scrutiny Officer to compare the number with the name as entered in the electoral roll of the constituency.

The Scrutiny Officer under clause IV (iv) of Ordinance No. 4 is charged with the duty of examining the nomination papers. The rule enacted in Clause (iv) is rather stringent as the Scrutiny Officer can reject the nomination paper even on the ground that the cover containing the nomination paper is not sealed. The requirement of mentioning the name of the proposer and seconder in the nomination form has a purpose and cannot be construed as an idle formality. If a defect of substantial character is brought to the notice or comes to the notice of the Scrutiny Officer, it is his duty to reject the nomination paper. The use of the word "may" in clause IV (iv) does not enable him to overlook the defect unless he comes to the conclusion that the defect is of a merely technical nature which does not affect the merits of the case and does not go to the root of the matter. In our opinion, the identity of the proposer and seconder can only properly be established by the name and number being written in the nomination paper or possibly by their remaining present at the time of the scrutiny and clearing any doubt which may arise in the mind of the scrutiny officer by giving an explanation which is accepted, but nothing such was done in the present case. We are, therefore, of the view that even if the word "may" as used in clause IV

(iv) of the Ordinance No. 4, is taken to be discretionary, the discretion cannot be said to have been wrongly exercised in the circumstances of this case. In our view, whether the omission is of mentioning the serial number as was the case in *P.N. Bala-subrahmanyam v. Election Tribunal of North Arcot at Vellore and Ors.* (supra) or the omission is to state the name of the proposer and seconder, the consequence must be the same, i. e., the defect produced in the nomination paper is not merely a technical defect.

Lastly, the learned Counsel for the Respondents urged that according to the requirements of Ordinance No. 4, a nomination paper could be validly presented only in two ways: (1) by being presented either by the candidate himself or his proposer or seconder, and (2) by registered post. It is urged that in the instant case, the nomination paper was not presented in either of the said two ways but was presented by one P. M. Kohar. It is contended on behalf of the Respondents that in a writ petition it is for the Petitioner to affirmatively show that his legal right has been infringed and therefore the proper question before the Court is not merely to see as to whether the ground which was mentioned by the Scrutiny Officer for rejecting the nomination paper was valid but to find as to whether the Petitioner had been validly nominated. The learned Counsel refers to *N.T. Veluswami Thevar Vs. G. Raja Nainar and Others*, where it has been held that when a question is raised in an election petition as to the propriety of the rejection of a nomination paper, the point to be decided is about the propriety of the nomination and not the decision of the returning officer on the materials placed before him. It is contended that what has been said in the said decision in the context of an election petition applies equally well to this petition as in the event of the Petitioner not being able to show that his nomination paper was validly presented, he cannot be held to be entitled to contest the election and would not be entitled to any relief in the writ jurisdiction of this Court.

The learned Counsel for the Petitioner contends that it is not a good return to a rule nisi for the issue of writ of certiorari to state that the order is justified on facts not contained in the order. He has urged that the High Court cannot take notice of any fact which does not appear upon the face of the order. In this connection he has referred to *A. Vedachala Mudaliar Vs. The Central Road Traffic Board and Another*, and *Halsbury*, Vol. 9, p. 889.

It is well settled that the nomination paper must be delivered by the candidate himself or his proposer or seconder and if it is delivered by anybody else, the candidate will not have been validly nominated (see *Halsbury's Laws of England*, Third Edition, Vol. 14, p. 97). In view of the fact that the defect in presentation of the nomination paper is obvious from the record and has not been controverted in any manner, we must be slow in giving any relief to the Petitioner unless and until it is proved to our satisfaction that his nomination paper was validly presented and we will not be justified in overlooking such a patent defect in the presentation of the nomination paper if it was clear from the record. In this view of the matter also, the Petitioner is not entitled to any relief.

In the result, the petition fails and is dismissed with cost. The Respondents would be entitled to one set of costs. We assess the counsel's fee at Rs. 150.