

(1964) 12 MP CK 0001

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 76 of 1964

Ghisu Nathuji

APPELLANT

Vs

Returning Officer of Burwaha District West Nimar and another

RESPONDENT

Date of Decision : 24-12-1964

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1965) JLJ 670 : (1965) MPLJ 591

Hon'ble Judges : P.K. Tare, J;H.R. Krishnan, J

Bench : Division Bench

Advocate : Amarsingh, for the Appellant; Balwantsingh, Govt. Advocate for State, for the Respondent

Final Decision : Allowed

Judgement

P.K. Tare, J.

In this petition under Article 226 of the Constitution of India the Petitioner who was a candidate for the post of a Panch of the Gram Panchayat of Mogargaon challenges the order of the first Respondent rejecting his nomination paper. The second Respondent whose nomination paper was accepted, however, did not appear before this Court. The Government Advocate represented the Returning Officer and the State of Madhya Pradesh. The Petitioner was a candidate for ward No. 8 of the said Gram Panchayat. His proposer was one Bhalaji son of Narsingh resident of house No. 65, ward No. 8 of the village. A voters list had been prepared in Devnagari script as per the order of the Collector as required by Rule 5 of the M.P. Gram Panchayats Election and Co-option Rules, 1963. The voters list had been duly published in the office of the Gram Panchayat. In the said list the name of Bhalaji son of Narsingh aged 25 years was shown at serial No. 42 who was said to be occupant of house No. 65 in ward No. 8 of the village.

However, it appears that subsequently the voters list was printed. We have on record a printed list. As regards the voters of village Belali the serial numbers are

changed and also there appears to be some mistake in printing. In ward No. 8 there is one name described Bhagja son of Narsingh aged about 35 years said to be resident of house No. 65 of village Belaji. Evidently this description in the printed list is at variance with the certified copy of the voters list published in the Gram Panchayat Office. The variance is regarding the serial number of voters being changed and the name of Bhalaji being misdescribed as Bhagja. The other particulars remained the same.

The Returning Officer rejected the Petitioner's nomination paper on the ground that the name of the proposer was incorrect, also serial number of the proposer was incorrect and the father's name of the proposer had not been mentioned. On these three grounds the nomination paper was rejected. It is against that order that the Petitioner has filed this writ petition.

Rule 6 of the Madhya Pradesh Gram Panchayats Election and Co-option Rules, 1963 lays down the manner of publication of voters list. It is as follows:

(1) Each voters list to be prepared shall be published by being exhibited at the Office of the Panchayat, if any, on the notice board of the Tahsil within which the Gram Sabha lies and at one or two conspicuous places within the ward to which the list pertains, along with a notice-

(a) inviting objections thereto and claims in respect thereof to be presented in writing within ten days from the date of notice to the Collector or authorised officer, and

(b) fixing a date and time for the hearing of such objections and claims, if any, by him.

(2) From the date of the notice referred to in Sub-rule (1) each such list shall also be open to inspection free of charge by the public for ten days during office hours at the offices of the Panchayat, if any, and of the Collector or authorised officer.

For the purposes of the Act and the Rules the list so published will have to be taken as the authentic list. Rule 8 (4) lays down that the voters list so amended (after decision of claims and objections) shall be final and a certified copy of each of the same duly signed by the Collector or Authorised Officer shall be deposited in the office of the Panchayat, if any, and the Collector or authorised officer. As such, it is this list, which becomes final under Rule 8 (4). Any subsequent list that may be printed will evidently not be considered to be authentic list. Therefore, if there is variance between the list published as per Rule 6 (1) of the Rules and in subsequently printed list, a candidate's nomination paper cannot be rejected if it is in accordance with the authentic list which has been duly published as per the said rules. The Returning Officer, in our opinion, acted illegally in taking the subsequently printed list to be the authentic one. It may be that sometimes there may be typing mistakes or printing mistakes in such subsequent list. But the question of acceptance or rejection of a nomination

paper has to be decided by the Returning Officer only on the basis of an authentic list. In the present case, it is not disputed by the learned Government Advocate that the nomination paper would be correct in accordance with the particulars given in the list duly published under Rule 6(1) of the Rules it would be incorrect according to the particulars mentioned in the subsequently printed list. Thus there can be no doubt that the Petitioner's nomination paper could not at all be rejected as the proposer's name was the same as in the authentic published list. The serial number also tallied with the said authentic list. Therefore, if the serial number is altered in the subsequently printed list and the name of the proposer is wrongly printed in such list, that cannot be a ground for rejection of a candidate's nomination paper. As regards the omission to mention the name of the proposer's father, we think that it will not be very material if the identity of the proposer for the authentic voters list is established. In the present case all other particulars were mentioned correctly except the omission to mention the father's name of the proposer. But upon a reference to the authentic list the identity of the proposer is established beyond any doubt. In this connection, we might mention that Rule 27(4) of the Madhya Pradesh Gram Panchayats Election and Co-option Rules, 1963 lays down that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. In the present case the omission to mention the father's name of the proposer could not be said to be a defect of a substantial character as the proposer's identity was established from the authentic voters list duly published under Rule 6 (1) of the Rules. In our opinion, the Returning Officer acted illegally and contrary to the rules in rejecting the Petitioner's nomination paper. Having in view the real import of the said Rules, we are of opinion that the Returning Officer was bound to accept the Petitioner's nomination paper.

As a result of the discussion aforesaid, we quash the order of the first Respondent rejecting the Petitioner's nomination paper. We further hold that the said nomination paper was a valid one and the Petitioner was a validly nominated candidate at the said election, who is entitled to participate in the election. Therefore, we direct the first Respondent to accept the Petitioner's nomination paper and to proceed with the election according to law. This petition, therefore, succeeds and is accordingly allowed. However, under the circumstances, we direct that there shall be no order as to costs. The security deposit be refunded to the Petitioner.