

(1968) 01 GUJ CK 0006
In the Gujarat High Court

Case No : Spl. Civil Application No. 1525 of 1967

Indravadan Parshotamdas Desai and Another	APPELLANT
Vs	
Indravadan Ambalal Mehta and Others	RESPONDENT

Date of Decision : 23-01-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 101
Constitution of India, 1950 — Article 173, 226, 227
Evidence Act, 1872 — Section 115, 17, 21
Gujarat Municipalities Act, 1963 — Section 100, 100(1), 100(3), 11(2), 14
Gujarat Municipalities Rules — Rule 10, 10(1), 7
Representation of the People Act, 1951 — Section 100(2), 7

Citation : AIR 1969 Guj 251 : (1969) 10 GLR 697

Hon'ble Judges : Shelat, J

Bench : Single Bench

Advocate : J.M. Thakore, General, K.H. Kaji and V.J. Desai, for the Appellant;
C.T. Daru, for the Respondent

Final Decision : Dismissed

Judgement

Shelat, J.—This petition is directed against an order passed on 29th November, 1967 by Mr. J. D. Desai, Assistant Judge, Nadiad, in Civil Misc. Application (Election) No. 51 of 1967 whereby the election of Wards Nos. 8 and 9 block J of the Nadiad Municipality came to be set aside as the nomination paper of opponent No. 13-respondent No. 12 before this Court was improperly rejected by the Returning Officer and thereby the result of the election materially affected.

2. The municipal limits of the City of Nadiad have been divided into various blocks such as blocks A to J for the purpose of municipal elections. The Wards Nos. 8 and 9 fall within block J. This block J has been allotted in all three seats. While two of them were general seats, the third one was a reserved seat for scheduled caste for the purpose of elections. For the elections to be held in the month of June 1967 nomination papers were invited from voters qualified to vote at the general election and they were accordingly filed by the two petitioners

before this Court and respondents Nos. 2, 3, 4, 5, 6, 8 and respondent No. 12 for the general seats allotted to that Block and that respondents Nos. 7 and 9 had their nomination papers filed for the reserved seat for the scheduled caste. They filed on 12th May 1967 and the scrutiny thereof took place before the Returning Officer-respondent No. 10 on 16-5-67. At the time of scrutiny it appears that an objection arose with regard to the eligibility for standing as a candidate at the election of respondent No. 12, the allegation being that he had stood as a surety for one Ramanbhai -- Ex. 67 -- an employee of the Municipality of Nadiad. The Returning Officer asked respondent No. 12 by showing the surety bond to him as to whether he had signed the same and that he had stood surety for the Municipal Clerk Ramanbhai. To that he replied in the affirmative and on that basis the Returning Officer, the respondent No. 10, passed an order stating as under :--

"Rejected. The candidate is a surety for a municipal employee Shri Ramanbhai Chunibhai Patel. When the surety bond was shown to the candidate he admitted his signature. He is therefore indirectly interested in the employment of a municipal servant. u/s 11(2)(c) he incurs disqualification."

It may be stated at this stage that there arises a disqualification u/s 11(2)(c) of the Gujarat Municipalities Act, 1963, hereinafter referred to as "the Act", on that ground and over which there is no dispute before this Court.

3. The elections were thereafter held on 10-6-67 in respect of the other candidates whose nominations were accepted by the Returning Officer for the general seats. While petitioner No. 1 got 997 votes, the other petitioner got 1303 votes. Since that was the highest amongst the candidates for general seats, they came to be declared as duly elected by the Returning Officer on 13-6-67. For the reserved seat, the respondent No. 7 got 238 votes. Since they were more than what the other candidate obtained, he also similarly came to be declared as duly elected. The respondent No. 1 Indravadan Ambalal Mehta undisputedly was a voter in the Voters' List Ex. 68/3 at Serial No. 335 of Ward No. 8 in Block J. He filed a petition in the District Court at Nadiad, u/s 14 of the Act for having the entire elections set aside in respect of these two wards in block J on the ground that the nomination paper of respondent No. 12 Thakorbbhai Maganbbhai Patel was improperly rejected and that it has materially affected the election. According to him, this respondent No. 12 had never stood as a surety for any municipal employee such as Ramanbhai Ex. 67 and that the real surety for him was one other person having the same name as respondent No. 12.

4. Various points were raised by the opponents-respondents and the main point that came to be decided by the learned Assistant Judge who heard the petition was that respondent No. 12, much though he had admitted to have passed the surety bond for that witness Ramanbhai, he was not the real person who had passed the said surety bond and that the real surety was witness Thakorbbhai Maganbbhai Patel Ex. 69 in the case. He, therefore, found that the nomination paper of respondent No. 12 was wrongly or improperly rejected by the Returning

Officer and that since the election was materially affected, he set aside the same u/s 14 of the Act. One other point raised at the trial was that the election cannot be set aside for any such error having regard to Sub-section (7) of Section 14 of the Act. The learned Judge found that the nomination paper was improperly rejected u/s 14(5)(a)(iii) of the Act and even if there was any error, the error was such which cannot be called "error" under Sub-section (7) by reason of Explanation thereto which contemplated that the expression "error" in this clause does not include any breach of or any omission to carry out or any non-compliance with the provisions of this Act or the rules made thereunder whereby the result of the election has been materially affected. The learned Judge thereupon set aside the election and it is against that order that the two returned candidates who were opponents Nos. 2 and 7 have come before this Court under Article 227 of the Constitution of India praying for quashing and setting aside the order passed by the learned Assistant Judge.

5. The facts over which there arises no dispute and the facts established require to be set out. The nomination papers of all the candidates who intended to stand for the election in respect of the Wards Nos. 8 and 9 block J were scrutinised on 16th May, 1967. The scrutiny was to be done by the Returning Officer having regard to Rule 10 of the Rules made in exercise of the powers conferred by Sub-section (1) of Section 277 of the Act read with Sub-section (5) of Section 6 and Sub-section (2) of Section 9 of the said Act, by a Notification issued on 1st February 1965 by the Rural Development Department, Clause (1) of Rule 10 provides for the persons who can remain present at the time of scrutiny. It runs thus:--

"10. (1) The candidates, their nominators and one other person duly authorised in writing by each candidate shall alone be entitled to be present at the time and place fixed for the scrutiny of the nomination papers under Rule 7. The Returning Officer shall allow such persons all reasonable facilities for examining all nomination papers."

Thus Clause (2) lays down as under :-(2) The Returning Officer shall examine the nomination papers and 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 considers necessary, reject a nomination paper, on any of the following grounds namely:--

(i) A candidate being disqualified or not qualified under the Act or these rules for election;

* * * * *

It is essential to note at this stage that no voter unless he was duly authorised in writing by any candidate was entitled to remain present at the scrutiny of the nomination papers. Besides, the Returning Officer can reject a nomination paper either on any objection raised or on his own motion, and in that event he has to decide the same after making summary enquiry if any, as he considers necessary

in relation to any of the grounds set out there below. The first ground relates to as to whether a candidate is disqualified or not qualified under the Act or the rules for election. It may be stated that it does not appear in any way clear as to whether any objection as to the validity of the nomination paper of respondent No. 12 was raised by any candidate or any other person present at the time when the scrutiny took place. But it appears that the objection was raised by the Returning Officer suo motu and at that time a surety bond said to have been executed by respondent No. 12 was brought before him. The Chief Officer is respondent No. 3 before this Court and he was also present at the time of the scrutiny he being the principal officer of the Municipality. Finding that the bond Ex. 68 bore the signature bearing the name of Thakorbbhai Maganbbhai Patel, the Returning Officer inquired from respondent No. 12 whether it bears his signature and to that he replied in the affirmative. From the evidence led in the case including that of the Returning Officer Ex. 80 and the Chief Officer of the Municipality Ex. 75 read with the order Ex. 79 passed by the Returning Officer on 16-5-67, the learned Judge came to the conclusion that respondent No. 12 had admitted his signature and the way about his having executed the surety bond in respect of one Naka Clerk Ramanlal Ex. 67 in the case. If that admission were ultimately to prevail as established, having regard to Section 11(2)(c), the respondent No. 12 would not be entitled to become a councillor of the Municipality. As provided in Section 6 Sub-section (5), an election shall be held in accordance with the rules made by the State Government in that behalf subject however to the provisions of this Act. It would, therefore, follow that because of the disqualification of respondent No. 12 arising out of the provisions contained in Section 11(2)(c) by reason of his being a surety for a municipal employee, his nomination paper was required to be rejected by the Returning Officer. It may be incidentally stated that respondent No. 12 did not prefer any appeal against the rejection of his nomination by the Returning Officer before the Collector as provided under the rules and that rejection, therefore, stood with the result that the election was held for the said Wards on 10-6-67 and the two petitioners before this Court came to be duly elected from the general seats. Respondent No. 7 came to be elected for one reserved seat from those Wards. After the results of the election were declared. Mr. Mehta Indravadan Ambalal, a voter qualified to vote at the election, filed an application in the District Court at Nadiad. That right to file such an application for setting aside the election has been given to any such voter provided he is qualified to vote at the election. His right to challenge the election, therefore, has not been in dispute before this Court. At the time of the hearing of the application, the respondent No. 1 led evidence of the employee Ramanbbhai Ex 67 and one other person bearing the same name as that of respondent No. 12, namely, Thakorbbhai Maganbbhai Patel at Ex 69 in the case. It may be also stated that respondent No. 12 had filed no written statement in that proceeding and the learned advocate appearing for him. retired from the case after the issues were raised. It further appears, as pointed out by the learned Advocate General appearing for the petitioners, that he was cited as a witness by respondent No. 1 in the case and was, however, not

examined. The learned Assistant Judge considered the effect of that evidence and came to the conclusion that the real person who stood surety for employee Ramanbhai was not respondent No. 12 but was the witness Ex. 69 examined before him. He, therefore, found that the order Ex. 68(?) passed by the learned Returning Officer whereby the nomination paper of respondent No. 12 was rejected was not valid and that the rejection was consequently illegal as contemplated u/s 14(5)(a)(iii) of the Act. He also considered that the election of other candidate was materially affected on that account and he set aside the entire election of those Wards.

6. In a petition under Article 227 of the Constitution of India, the findings of facts arrived at by proper appreciation of the evidence in the case have to be taken the basis for considering any points of law involved in the ultimate result of the matter. As I said above, therefore, the material findings of the learned Assistant Judge are that respondent No. 12 had admitted to have signed the surety bond Ex. 68 and that the evidence led by the Court also established about his having admitted to have become a surety for that Ramanlal by executing the bond Ex. 68, The other finding is about this very respondent No. 12 being not the person who was in reality surety having executed a bond Ex. 68 for that Ramanlal an employee of the Municipality and that one other Thakorbbhai who came to be examined as Ex. 69 had become the surety for that Ramanlal --Ex. 67 in the case. Now the contention made out by the learned Advocate General appearing for the petitioners in this regard was that the admission made by respondent No. 12 before the Returning Officer would stand till it is withdrawn at any time by him or established to be in any way erroneous. It was besides, said, that such a piece of evidence is the best type of evidence unless successfully shown to be erroneous and the burden of showing that it was so erroneous would be on the respondent No. 12 if he were to allege it or on any other person who wants to negative the effect of any such evidence in the case. In support thereof, he invited a reference to the observations made in the case of Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Others, . The observations are to the effect that the admission is the best evidence that an opposing party can rely upon, and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous. An-other case in this respect referred to by him was of Bharat Singh and Another Vs. Bhagirathi, . The observations relied upon by him are to the effect that the admissions are substantive evidence by themselves in view of Sections 17 and 21 of the Evidence Act, though they are not conclusive proof of the matters admitted. The admissions duly proved are admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether such party when appearing as witness was confronted with those statements in case it made a statement contrary to those admissions. It follows, therefore, that admission of any such person would no doubt be the best evidence against that person unless it is shown to be erroneous. That may be even decisive of the matter. It is a substantive piece of evidence as contemplated under Sections 17 and 21 of the Indian Evidence Act,

but with all that, it cannot be said to be a conclusive proof of the matters admitted. It was, in this connection, said that so far as respondent No. 12 is concerned, he stood by such admission made by him before the Returning Officer at the time of the scrutiny of his nomination and had not even chosen to prefer any appeal against that decision. Not only that, but he did not even contest the matter in the proceedings before the learned Assistant Judge much though he was a party, and though cited as a witness by the petitioner, he was not examined in the case. Were it merely to rest with this part of the evidence containing his admission said to have been made before the Returning Officer in the presence of the Chief Officer at the time of the scrutiny of nomination papers and if he were a person to challenge the same, we can legitimately say that he was estopped from going contra to what his admissions contained in respect of a fact in issue. The scheme of the Act, however, shows clearly that a voter who is qualified to vote at any such election, has a right to have the validity of the election determined u/s 14(1) of the Act As provided therein, if the validity of any election of a councillor is brought in question by any person qualified to vote at the election to which such question refers or by any candidate for such election such person may, at any time within fifteen days after the date of the declaration of the result of the election, apply to the District Court of the district within which the election has been or should have been held, for the determination of such question. Thus, he has an independent right to challenge any such order passed by the Returning Officer relating to the rejection of the nomination paper of respondent No. 12, He was not a person present at the time of scrutiny -- he being in no way concerned either as an agent or a representative on his behalf. The principle of estoppel cannot, therefore, extend to any such right of a voter to challenge the order u/s 14(1) of the Act. The admissions made by respondent No. 12, therefore, would not bind him and he cannot be so estopped from challenging the same.

7. What was urged by Mr. Thakore, the learned Advocate General appearing for the petitioners was that this is not a case of improper rejection of a nomination paper contemplated within the meaning of Section 14(5)(a)(iii) of the Act, and according to him, it is a case relating to the rejection of the nomination paper invited by the candidate himself. In other words, the respondent No. 12 had himself invited a disqualification on his part to stand as a candidate and if at the time of scrutiny the Returning Officer were to act on any such admission given by him, it cannot be said to be in any way an improper rejection. He had no other alternative but to reject the same. His contention then was that unless his rejection is shown to be improper on some other grounds touching his eligibility to stand as a candidate and found by the Court to be so, the present case would not fall u/s 14(5)(a)(iii) of the Act -- it being in no way an improper rejection on the part of the Returning Officer. In this connection, he invited a reference to the case of *Durga Shankar Mehta Vs. Thakur Raghuraj Singh and Others*, . His attempt was to point out that the case of improper acceptance of any nomination paper as also a case of improper rejection of a nomination paper stood on the

same footing and that there would not be any alternative to the Returning Officer to do any other thing except to reject the same and when that is so, it cannot be said to be improper rejection as contemplated u/s 14(5)(a)(iii) of the Act. The material facts in that case were that the Lakshadweep Legislative Assembly Constituency in Madhya Pradesh was a double member constituency, one of the seats in which was reserved for scheduled tribes. The appellant and respondents Nos. 1, 3, 5 and 7 were duly nominated candidates for the general seat in the said constituency, while respondents Nos. 2, 4 and 6 were nominated for the reserved seat. No objection was taken before the Returning Officer in respect of the nomination of either the appellant or respondent No. 2 Vasant Rao. Out of those other candidates, respondents Nos. 5, 6 and 7 withdrew their candidature within the prescribed period and the actual contest at the election was between the remaining five candidates, namely, the appellant and respondents Nos. 1 to 4. The appellant and respondent No. 2 were declared elected and the results were duly published. Thereafter the respondent No. 1 Raghuraj Singh filed an election petition against the appellant and the other respondents, u/s 81 of the Act, praying that the said election to be declared wholly void or in the alternative the election of Vasant Rao and/or that of the appellant Durga Shankar Mehta be declared void. The substantial ground upon which the petitioner sought to assail the validity of the election was, that the respondent No. 2 Vasant Rao, who was declared duly elected to the Reserved seat in the said constituency was, at all material times, under 25 years of age and was consequently not qualified to be chosen to fill a seat in the Legislative Assembly of a State under Article 173 of the Constitution. This allegation was found to be true by the majority of the Tribunal and by its judgment dated the 30th of April 1953 the Tribunal came to the conclusion that the act of the Returning Officer in accepting the nomination of Vasant Rao, who was disqualified to be elected a member of the State Legislature under the Constitution, amounted to an improper acceptance of nomination within the meaning of Section 100(1)(c) of the Act and as the result of the election was materially affected thereby, the whole election must be pronounced to be void. That decision came to be challenged before the Supreme Court in the appeal. Section 100 of the Act provides the grounds for declaring election to be void. It ran thus :--

"100. Grounds for declaring election to be void. --

(1) If the Tribunal is of opinion --

(a)

(b)

(c) that the result of the election has been materially affected by the improper acceptance or rejection of any nomination, the Tribunal shall declare the election to be wholly void.

.....

(2) Subject to the provisions of Sub-section (3), if the Tribunal is of opinion-

(a)

(b)

(c) that the result of the election has been materially affected by the improper reception or refusal of a vote or by the reception of any vote which is void, or by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act or of any other Act or rules relating to the election, or by any mistake in the use of any prescribed form.

The Tribunal shall declare the election of the returned candidate to be void."

Then while concluding that point, it was observed that it was not suggested on behalf of the respondent that the nomination paper filed by Vasant Rao was in any manner defective. It was admitted that the names and electoral numbers of the candidate and his proposer and seconder as entered there were the same as those entered in the electoral rolls. It was also not disputed that the nomination paper was received within proper time as was laid down in Section 33, Sub-section (4) of the Act. Then after referring to Section 36 which provided for scrutiny of nominations by the Returning Officer, it has been observed that he has got to examine the nomination papers and decide all objections that may be made to any nomination and he 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 grounds which are specified in the different clauses of the sub-section. The ground mentioned in Clause (a) of the sub-section was, that the candidate is not qualified to be chosen to fill the seat under the Constitution or the Act and it was, therefore, contended that the nomination of a person should have been rejected on this ground and since the Returning Officer did not do that, his act amounted to an improper acceptance of nomination within the meaning of Section 100(1)(c) of the Act Then Their Lordships said that they did not think that the contention was sound and observed as under:--

"If the want of qualification of a candidate does not appear on the face of the nomination paper or of the electoral roll, but is a matter which could be established only by evidence, an enquiry at the stage of scrutiny of the nomination papers is required under the Act only if there is any objection to the nomination. The Returning Officer is then bound to make such enquiry as he thinks proper on the result of which he can either accept or reject the nomination. But when the candidate appears to be properly qualified on the face of the electoral roll and the nomination paper and no objection is raised to the nomination, the Returning Officer has no other alternative but to accept the nomination."

It was, on the strength of these observations, urged by Mr. Thakore that the Returning Officer had no other alternative but to reject the nomination when the candidate himself admitted to have become a surety for an employee of the

Municipality and thereby inviting a disqualification on his part to stand as a candidate and, therefore, there was no other alternative for the Returning Officer but to reject the same. It cannot, therefore, be said according to him that the rejection was in any way improper as the acceptance of the nomination paper was not held to be improper though no doubt on any other ground it would be so fatal if it went to the root of the matter.

8. On the other hand, Mr. Daru, the learned advocate for the respondent, referred to a subsequent decision in the case of N.T. Veluswami Thevar Vs. G. Raja Nainar and Others, . The facts of that case in brief were that Veluswami Thevar, respondent No. 2, Chellapandian, and respondent No. 4, Arunachalam were nominated for election to the Legislative Assembly of the State of Madras from Alangulam Constituency in the District of Tirunelveli. At the time of scrutiny which was on 1st February 1957 Chellapandian raised an objection to the nomination of Arunachalam on the ground that he was the Head Master of the National Training School, Tiruchendur, which was a Government-aided school, and that he was therefore disqualified u/s 7 Clauses (d) and (e), Representation of the People Act, 1951 as holding an office of profit under the Government. The Returning Officer upholding the objection observed as under:

"Sri S. Arunachalam is not present at the time of scrutiny of nominations nor any authorised agent of his could take notice of the objection and file a reply.

In view of the objection which has not been cleared by Shri S. Arunachalam by satisfying me that he is not holding an office of profit in a concern in which the State Government has financial interest, the objection is upheld and Sri S. Arunachalam is disqualified u/s 7(d) and (e) of Act 43 of 1951. Accordingly his nomination is rejected."

The five nomination papers were accepted; two of the candidates subsequently withdrew from the election; the other three went to the polls, and on 10th March 1957, the appellant who secured the largest number of votes was declared elected. Then one Raja Nainar, respondent No. 1, who was not a candidate but a voter filed the election petition praying that the election of the appellant be declared void on the ground that the rejection of the nomination paper of Arunachalam was improper, because he had ceased to be a Head Master at the time of his nomination, and that further the institution was a private one. Then while considering the question as to what was understood by the expression "improperly rejected" in Section 100(1)(c), after referring to the provisions Their Lordships took up the consideration of the points raised before them. The contention raised was that the proceedings before the Tribunal were really by way of appeal against the decision of the returning officer and that, therefore, the scope of the enquiry in the election petition must be co-extensive with that before the returning officer, and must be limited to the ground taken before him. It was argued further that a decision could be said to be improper only with reference to a ground which was put forward and decided in a particular manner by the returning officer, and that, therefore, the expression "improperly rejected"

would, in its true connotation, restrict the scope of the enquiry before the Tribunal to the ground taken before the Returning Officer. Their Lordships then observed that they were unable to agree with such a contention. Then they have observed thus:

"The jurisdiction which a Tribunal exercises in hearing an election petition even when it raises a question u/s 100(1)(c) is not in the nature of an appeal against the decision of the returning officer. An election petition is an original proceeding instituted by the presentation of a petition u/s 81 of the Act. The respondents have a right to file written statements by way of reply to it; issues have to be framed, and subject to the provisions of the Act, the provisions of the CPC regulate the trial of the petition. All the parties have the right to adduce evidence, and that is of the essence of an original proceeding as contrasted with a proceeding by way of appeal. That being the character of the proceedings, the rule applicable is that which governs the trial of all original proceedings; that is, it is open to a party to put forward all grounds in support of or negation of the claim, subject only to such limitations as may be found in the Act."

Then later on they have observed that the view taken by the learned Judges in the Court below that though the enquiry before the Tribunal was restricted to the particular ground put forward before the returning officer, it was not restricted to the material placed before him, and that all evidence bearing on that ground could be adduced before the Tribunal, was quite correct. They have then observed as under;

"The enquiry which a returning officer has to make u/s 36 is summary in character. He may make "such summary enquiry, if any, as he thinks necessary"; he can act suo motu. Such being the nature of the enquiry, the right which is given to a party u/s 100(1)(c) and Section 100(1)(d)(i) to challenge the propriety of an order of rejection or acceptance of a nomination paper would become illusory, if the Tribunal is to base its decision only on the materials placed before the returning officer." In other words, it was open to the petitioners to lead all evidence with regard to the point at issue and it is that way that the evidence was led in that respect before the Court. In that context the learned Assistant Judge had to take into account also a piece of evidence contained in the admission said to have been made by respondent No. 12 and after taking into account the other materials placed before him, he had to determine as to whether the rejection of a nomination paper of respondent No. 12 made by the Returning Officer was proper or not. Howsoever strong the piece of evidence contained in the admission may be so far as respondent No. 12 is concerned, it has been taken into account by the learned Assistant Judge vis-a-vis direct evidence of two persons Ramanlal and Thakorbhal with regard to the surety bond said to have been executed which entailed disqualification on the part of the respondent No. 12. The decisions which have been referred to hereabove go to the length of allowing other grounds to be raised in any such petition in addition to the one raised either by way of objection from any other candidate or suo

motu on the part of the Returning Officer at the time of the scrutiny. It therefore, makes no difference whether the point was raised or not before the Returning Officer. The respondent No. 1 was, therefore, entitled to place all the material before the Court and have the point decided as to whether this respondent No. 12 had in fact and in reality become the surety of the employee Ramanlal so as to entail disqualification on his part from standing as a candidate at the election. Even if one were to say that he invited disqualification by making any such admission, it would not necessarily mean that such a point cannot be gone into though it related to him and the rejection of his nomination paper. The question of the validity of the rejection of his nomination paper though no doubt may be proper at that stage, but it has always to be taken subject to the decision of the Court if the matter is taken before the Court for the determination of any such point involved therein. The validity or otherwise of any such order would depend upon the decision of the Court in relation thereto. The case of Durga Shankar Mehta Vs. Thakur Raghuraj Singh and Others, relates to an acceptance of a nomination paper as against rejection thereof as we have in this case, Besides no objection had at all been raised by anyone or suo motu by the Return- ing Officer as against what we have in the present case. The subsequent case of N.T. Veluswami Thevar Vs. G. Raja Nainar and Others, cited by Mr. Daru for respondent No. 1 by analogy, applies to the facts of this case as it related to a rejection of a nomination paper and the objection raised about it had remained unreplied to. In my view, the latter case applies on all fours to the facts of this case and the observations in the earlier case cannot govern the case.

9. Now Section 14(5)(a) of the Act deals with certain type of cases which justify the Judge to set aside the election of the elected candidate. The first four clauses of Clause (a) of Sub-section (5) of Section 14 of the Act cover different grounds. The first relates to a ground as to whether the elected candidate was not qualified or disqualified to be chosen to fill the seat under the Act The second ground relates to any corrupt practice said to have been committed by the elected candidate or his election agent etc. The third ground relates to the question of improper rejection of a nomination paper of any candidate. The last one provides that the result of the election, so far as it concerns the elected candidate, has been materially affected by the improper acceptance of any nomination or by any corrupt practice committed in the interests of the elected candidate by an agent other than his election agent, or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or by any non-compliance with the provisions of the Act or of any rules or orders made under the Act. It may be noted that this Clause (iv) relates to improper acceptance of any nomination or any corrupt practice committed in the interests of the elected candidate and even relates to improper reception, refusal or rejection of any vote etc. Not only that, but in that case it has further to be shown that the result of the election was materially affected on that account The first two clauses do not arise to be considered in this case, and it falls under the third clause, and if the case falls thereunder, it is not required to be shown that

the election was materially affected and the Judge can set aside the election of the elected candidates. The words "improperly rejected" are quite wide enough to include several things including the disqualification or want of qualification as also disqualification arising out of non-compliance with provisions of the Act or the rules made there-under. In the present case, as I said above, according to the finding of the learned Assistant Judge, the rejection of the nomination paper of respondent No. 12 was found to be invalid for what was taken by the Returning Officer to disqualify respondent No. 12 did not in reality disqualify him. It was, thus, a case of pure rejection on the ground of his disqualification and that way falling u/s 14(5)(a)(iii),

10. In my opinion, therefore, the learned Assistant Judge was perfectly right in holding that the nomination paper of respondent No. 12 was improperly rejected by the Returning Officer. In those circumstances, there does not arise any question of having to consider as to whether the result of the election has been materially affected, as thought by the learned Judge, by any such improper rejection of the nomination of respondent No. 12 in the case. The learned Judge has no other alternative but to set aside the election of the elected candidates as provided therein,

11. It was next urged by Mr. Thakore that Section 14 Sub-section (7) would cover such an error and it was an error of such a character that the election cannot be set aside. Sub-section (7) of Section 14 provides as under;

"14. (7) If the validity of the election is brought in question only on the ground of any error by the officer or officers charged with carrying out the rules made under Sub-section (5) of Section 6, or of an irregularity or informality not corruptly caused, the Judge shall not set aside the election." Then comes the Explanation which says that the expression "error" in this clause does not include any breach of or any omission to carry out or any non-compliance of the provisions of this Act or the rules made thereunder whereby the result of the election has been materially affected. It was pointed out by Mr. Thakore, the learned Advocate General appearing for the petitioners, that the error alleged to have been committed by the Returning Officer would not fall under the Explanation for, according to him, it does not involve any breach of or any omission to carry out any of the provisions of the Act or the rules made thereunder; nor does it, in his view, amount to non-compliance with the provisions of the Act or the rules made thereunder. He further urged that on the contrary the Returning Officer had zealously complied with the provisions of the Act in properly deciding that respondent No. 12 was not qualified to stand as a candidate as he admitted the facts which disqualified him as contemplated by the provisions contained in Section 11(2)(c) of the Act. Now even if this Sub-section (7) were to be considered, the error can easily be said to fall under non-compliance with the provisions of this Act. The term "non-compliance" similarly used in Section 100(2)(c) of the Representation of the People Act came to be considered in the case of Durga Shankar Mehta Vs. Thakur Raghuraj Singh and

Others, : Durga Shankar Mehta Vs. Thakur Raghuraj Singh and Others, . The argument advanced was that the expression "non-compliance" would suggest the idea of not acting according to any rule or command and that the expression is not quite appropriate in describing a mere lack of qualification. A similar argument was advanced before this Court by Mr. Thakore in this case, and that the reply thereto is well covered in the observations of the Supreme Court saying that it would be a narrow way of looking at the thing. Then the relevant observations run thus:--

"There is no material difference between "non-compliance" and "non-observance" or "breach" and this item in Clause (c) of Sub-section (2) may be taken as a residuary provision contemplating cases where there has been infraction of the provisions of the Constitution or of the Act but which have not been specifically enumerated in the other portions of the clause. When a person is not qualified to be elected a member, there can be no doubt that the Election Tribunal has got to declare his election to be void."

In other words, similarly it appears that Sub-section (7) of Section 14 of this Act also is of a residuary character and is intended to safeguard the decisions otherwise legal and proper, if some errors are committed which did not fall under the Explanation therebelow, and non-compliance with the provisions of the Act as contemplated therein would mean the result arising ultimately in contravention of the provisions of the Act or the Rules framed thereunder. In other words, if the decision of the Returning Officer turns out to be such as he cannot be said to have complied with the provisions of the Act viz. that respondent No. 12 was not disqualified to be elected u/s 11(2)(c) of the Act, then that error cannot be said to be such as would fall under Sub-section (7) in which case the election cannot be set aside. I do not, therefore, think that the case of the petitioners would be covered u/s 14 Sub-section (7) of the Act.

12. Lastly it was urged that the election of respondent No. 7 returned on a reserved seat could not have been set aside on the ground that it would not have been materially affected even if respondent No. 12 was allowed to stand as a candidate at the election. Apart from the fact that the question of any election being materially affected does not arise in a case arising out of improper rejection of a nomination paper in the same wards, there is no such petition filed by any such returned candidate for the reserved seat, and no point has been even raised in the present petition. Such a point cannot, therefore, be allowed to be raised.

13. In the result, therefore, the petition fails. The petition is dismissed with costs.