

**(1962) 12 GUJ CK 0004**  
**In the Gujarat High Court**

Krishnarao Balwantrao Udar

APPELLANT

Vs

Patesingh Gemalsing Rana and Others

RESPONDENT

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**Date of Decision :** 20-12-1962

**Acts Referred:**

Bombay District Municipal Act, 1901 — Section 22

Bombay Municipal Boroughs Act, 1925 — Section 15, 15(1), 15(3)

**Citation :** (1964) 5 GLR 536

**Hon'ble Judges :** N.M. Miabhoy, J;B.J. Divan, J

**Bench :** Division Bench

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## Judgement

B.J. Divan, J.—This is a petition under Articles 226 and 227 of the Constitution for an appropriate writ direction or order praying that the order made by the 5th respondent herein be quashed and that the order made by the third respondent and confirmed by the 4th respondent in appeal be restored.

2. The general elections for the election of municipal councillors of the Baroda Municipality were held in June 1962. The petitioner and respondents Nos. 1 and 2 were proposed to be the candidates at that election. Under the programme for elections the date for filing nominations was June 8 1962 and the date for scrutiny of the nomination papers was June 9 1962 The Returning Officer for the elections was the third respondent in these proceedings. The petitioner wanted to stand as a candidate for the said election from Ward No. 11 and two councillors were to be elected from Ward No. 11 for the two seats allotted to that ward. The nomination paper of the petitioner was duly filed and thereafter two nomination-papers proposing respondent No. 2 as a candidate for Ward No. 11 were filed in both of which one Randive Shamrao Balwantrao subscribed as proposer and one Ambalal Motilal Parmar subscribed as seconder. The same two individuals viz. Randive Shamrao Balwantrao and Ambalal Motilal Parmar had also respectively proposed and seconded another set of two nomination papers in the case of the first respondent who was also a candidate for Ward No. 11 at the election. The two nomination papers of respondent No. 2 were received at 12-51 hours and 12-52 hours on June 8 1962 and were given Sr. Nos. 52 and 53 respectively. The

two nomination papers subscribed by Randive Shamrao Balwantrao and Parmar Ambalal Motilal as proposer and seconder in the case of respondent No. 1 were received on June 8 1962 at 12-53 hours and 12-54 hours respectively and were given Sr. Nos. 55 and 56 by the third respondent. The scrutiny of nomination papers took place on June 9 1962. The nomination papers of respondent No. 1 which were at Sr. Nos. 55 and 56 were held to be invalid by the Returning Officer on the ground that there were already two nomination papers which were subscribed by the said seconder and proposer and because under Rule 15 (3)(ii) of the Bombay Borough Municipalities Election Rules 1950 (hereinafter referred to as the Rules) the same proposer and seconder could not subscribe more than two nomination papers in this particular constituency which had two seats. The two nomination papers bearing Sr. Nos. 52 and 53 proposing respondent No. 2 as the candidate were already accepted and therefore the nomination papers proposing respondent No. 1 as the candidate at Sr. Nos. 55 and 56 were rejected. The proposer and seconder of the first respondent preferred an appeal to the Collector as provided by Sub-rule (4) of Rule 16 of the Rules. The 4th respondent the Collector of Baroda heard and disposed of the appeal on June 14 1962 and the 4th respondent held that the nomination papers proposing the name of the first respondent were rightly rejected by the Returning Officer. As there were no other candidates for Ward No. 11 the petitioner and respondent No. 2 were elected as councillors from Ward No. 11. Thereafter the first respondent filed Civil Miscellaneous Application No. 77 of 1962 in the District Court of Baroda under the provisions of Section 15 of the Bombay Municipal Boroughs Act 1925 (hereinafter referred to as the Act) on June 26 1963 and the contention of the first respondent was that as his nomination papers were illegally and wrongly rejected the result of Ward No. 11 had been materially affected and hence the election of Ward No. 11 should be set aside. This application was heard by the 5th respondent the Assistant Judge at Baroda to whom this application was assigned under the provisions of law and by his judgment and order the 5th respondent declared that the nomination papers of the first respondent herein had been improperly and wrongly rejected so as to affect materially the result of the election of Ward No. 11 and he set aside the election of the petitioner and respondent No. 2 and directed that a fresh election for Ward No. 11 should be held as may be fixed by the officers concerned. It is this order of the 5th respondent which has been challenged in the present petition.

3. Mr. Karlekar appearing on behalf of the petitioner has urged two points before us. He has firstly contended that the Assistant Judge at Baroda the 5th respondent herein had no jurisdiction to decide the question regarding the validity of the order rejecting the nomination paper of respondent No. 1 inter alia because under the rules the order of the Collector as regards the rejection of the nomination paper was final. His second point was that even if the Assistant Judge had the jurisdiction to decide the point on merits the nomination papers of respondent No. 1 were not valid and the order of the Assistant Judge holding

that these nomination papers of respondent No. 1 were valid was erroneous.

4. It is necessary to set out some of the rules and Sections of the Act in order to appreciate the two points which are urged before us. The provision for election has been made in a group of sections consisting of Sections 9 to 17 and 17A to 17(1) of the Act. u/s 10 of the Act the State Government has been empowered to make rules consistent with the Act prescribing the number and extent of the wards to be constituted in each municipal borough the number of councillors to be elected by each ward and the number of seats if any to be reserved for the representation of women Scheduled Castes and Scheduled Tribes and regulating generally such elections. u/s 15 of the Act provision has been made for election petitions in the case of election of a councillor. Under Sub-section (1) of Section 15 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 such person may at any time within ten 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. Thereupon an inquiry can be held by a Judge not below the grade of an Assistant Judge appointed by the State Government either specially or for such cases generally and such Judge may after such inquiry as he deems necessary and subject to the provisions of Sub-section (3) pass an order confirming or amending the declared result of the election or setting the election aside. Sub-section (3) of Section 15 provides as follows:

3(a) The Judge if satisfied that a candidate has within the meaning of Sub-section (4) committed any corrupt practice for the purpose of the election, shall declare the candidate disqualified both for the purpose of that election and of such fresh election as may be held under Sub-section (2) and shall set aside the election of such candidate if he has been elected.

(b) If in any case to which Clause (a) does not apply the validity of an election is in dispute between two or more candidates the Judge shall after a scrutiny and computation of the votes recorded in favour of each candidate declare the candidate who is found to have the greatest number of valid votes in his favour to have been duly elected.

The proviso to Clause (b) of Section 15(3) has no application to this case. Sub-section (5) of Section 15 provides as follows:

(5) 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 Clause (c) of Sub-section (1) of Section 10 or of an irregularity or informality not corruptly caused the Judge shall not set aside the election.

Explanation.- 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 there under whereby the result of the election has been materially affected.

Under the rules framed under the powers conferred upon it by Section 10 of the Act provision has been made for elections in the case of Borough Municipalities and these Rules are called the Bombay Borough Municipalities Election Rules, 1950 Rule 13 provides as follows:

13 Nomination of candidates.-(1) No person may be a candidate for a councillorship unless nominated in writing for the purpose by two persons entitled to vote in the ward to which he wishes to be elected. The nomination paper shall be in Form A and shall bear an endorsement signed by the nominee signifying his willingness to serve as a councillor. The nomination paper shall be delivered by the nominators personally to the Returning Officer on or before the date and during the hours fixed by the Collector under Rule 12 in this behalf

(2) On receiving a nomination paper under Sub-rule (1) the Returning Officer shall enter in its serial number and shall sign thereon a certificate stating the date on which and exact time at which the nomination paper was delivered to him.

(3) When elections are to be held at or about the same time in two or more wards one and the same person if qualified may be nominated for election in all or any number of the said wards.

Rule 14 provides as follows:

14 Deposit on Nomination.-(1) On or before the date appointed for the delivery of nomination papers each candidate shall deposit or cause to be deposited with the Returning Officer a sum of rupees hundred in cash and no candidate shall be deemed to be duly nominated unless such deposit has been made....

Sub-rule (2) of Rule 15 provides as follows:

(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:

..... (iii) a nominator not being qualified to nominate the candidate; (iv) failure to comply with any of the provisions prescribed by these rules or the Act

Rule 16 provides as follows:

16 Completion of scrutiny. (1) The scrutiny shall be completed on the day appointed in this behalf and no adjournment of the proceedings shall be allowed. (2) The Returning Officer shall on the same day endorse on each nomination paper his decision accepting or rejecting the same and if the nomination paper is rejected shall record a brief statement of his reasons for such rejection.

..... (4) An appeal by any aggrieved person against an order

rejecting under Sub-rule (2) a nomination paper shall lie to the Collector provided it is made within three days of the date of such order. The order passed by the Collector on such an appeal shall be final.

5. As regards the question of jurisdiction it was firstly contended on behalf of the petitioner that under Sub-section (2) of Section 15 of the Act the Judge holding an enquiry has the power to set aside that election and that order setting aside the election is subject to the provisions of Sub-section (3) under which provision has been made only for two contingencies viz. for corrupt practices by a candidate and for scrutiny of votes and for declaring a candidate who is found to have the greatest number of valid votes in his favour to have been duly elected. It was therefore contended that by using the words subject to the provisions of Sub-section (3) in Sub-section (2) of Section 15 the Legislature has clearly indicated that the election can be set aside only in the two cases contemplated by Sub-section (3). Now this contention on behalf of the petitioner cannot be accepted. By Sub-section (2) a general power has been conferred on the Judge holding the inquiry inter alia to confirm or amend the declared result or set aside the election. So far as Sub-section (3) of Section 15 is concerned it merely provides that in case there is an issue as regards the corrupt practice or an issue as regards the correct calculation of the votes then the election can be set aside only under the circumstances set out in Clauses (a) and (b) of Sub-section (3). This interpretation is borne out by the provisions of Sub-section (5) of Section 15 which also speaks of setting aside an election if there is an error as mentioned in the explanation to that sub-section. It is clear that under Sub-section (5) of Section 15 also an election can be set aside if there is an error which amounts to a breach or an omission to carry out or any non-compliance with the provisions of the Act or the Rules made thereunder whereby the result of the election has been materially affected. It is clear that if on a wrong interpretation of the rules a nomination paper has been wrongly rejected the election of that particular constituency is materially affected because the candidate who would otherwise have been eligible to be a candidate at the election is kept out and hence the entire election of that constituency must be materially affected. It is true that under Sub-section (5) each and every error by the officer or officers charged with carrying out the rules or each and every irregularity or informality would not entitle the Judge to set aside the election but if the error amounts to any breach or omission to carry out or any non-compliance with the provisions of the Act or the Rules and as a result of such an error the result of the election has been materially affected the Judge can set aside the election. Therefore in our view the power of the Assistant Judge to set aside an election on the ground of noncompliance with any of the provisions of the rules under the Act is not restricted merely to the two sub-clauses of Sub-section (3) of Section 15; but as shown by Sub-section (5) of Section 15 and the Explanation thereto the power is wide enough and if there is a dispute regarding the computation of votes the election of the successful candidate can be set aside after scrutiny and fresh computation of votes. The power to set aside an election is not confined to the

two cases contemplated by Clauses (a) and (b) to Sub-section (3) but it is a general power which is to be exercised subject as much to the provisions of Sub-section (3) as of the provisions of Sub-section (5) and the Explanation thereto. In our view so far as the provisions of Section 15 are concerned it cannot be said that the Assistant Judge had no power to set aside an election on the ground of noncompliance with the Rules by the officer concerned.

6. As regards the power of the Assistant Judge to entertain the petition it was secondly contended that under Rule 16 Sub-rule (4) the order passed by the Collector on an appeal preferred to him against the order of the Returning Officer is made final and since there is a finality to the Collector's decision under this sub-rule it was not open to the Assistant Judge to decide the question whether the nomination paper was validly rejected or not. In our opinion this argument must also be rejected. u/s 10 which confers the power to make rules on the State Government the rules must be consistent with the Act and therefore the power conferred on the Assistant Judge to set aside an election cannot be controlled in any manner by the rules framed u/s 10 of the Act. It is a well settled principle of construction of statutes that if there is any conflict between the rules made under the rules-making power conferred by the statute and any of the provisions embodied in that very statute then the provisions of the statute shall prevail in preference to the provisions of the rules. Of course in interpreting the rules and the sections the Court should attempt to see that the two are reconciled as far as possible but if any preference is to be given between the two the provisions of the statute are to be preferred as against the provisions of the rules made by the rule-making authority. In this particular case in our opinion the conflict between Rule 16(4) and Section 15 is more apparent than real. What is meant by the finality of the Collector's decision in Rule 16(4) is that at this stage i.e. prior to the election nobody can challenge the decision of a Collector given by him in appeal under Rule 16; but after the election is complete if the rejection of such nomination paper was due to any non-compliance with the provisions of rules which non-compliance had materially affected the result of the election then the Judge trying the petition u/s 15 of the Act can set aside the election. It is not that each and every rejection of a nomination paper would amount to a noncompliance of the provisions of the rules but if the rejection is due to any noncompliance with the provisions of the rules and has materially affected the result of the election the Judge trying the petition u/s 15 can set aside the election. Under these circumstances in our opinion the finality of the Collector's decision under Rule 16(4) is only upto the stage of the election and even if an election petition is filed in a particular case the Court can interfere only if the two conditions mentioned above are satisfied so far as the rejection of the nomination paper is concerned. In the case of *V.A. Ransing v. Shankar Vithal Sape* 57 Bom L.R. 254 Chagla C.J. has observed as follows:

It is a well known principle of election laws that decisions of Returning Officers cannot be challenged while the election has still to take place and we often find provisions in rules where the decision of the Returning Officer is made final. But

the finality is only an ad hoc finality. The reason for that finality is that the election should not be held up by parties going to Civil Courts and getting their rights adjudicated. The law provides that the proper time to adjudicate upon these rights is by election petitions after the election has taken place.

We respectfully agree with these observations of Chagla C.J. and as indicated above this is the very conclusion we ourselves have arrived at independently on our own interpretation of Sub-rule (4) of Rule 16 of the Rules.

7. Even if this interpretation placed by us on the provisions of rule 16 and Section 15(5) were not correct we hold that between the two provisions Section 15(5) should prevail and the power conferred upon the Judge for holding an inquiry u/s 15 to set aside an election cannot be curtailed in any manner by any of the provisions of the rules. In these circumstances the finality given to the Collector's decision by Rule 16 Sub-rule (4) cannot affect the power of the Judge for holding an inquiry u/s 15 to decide whether the nomination paper was rightly or wrongly rejected.

8. In this connection Mr. Karlekar appearing on behalf of the petitioner relied on a decision of the Supreme Court in *Ravanna Subanna Vs. G.S. Kaggeerappa*, . In that case the Supreme Court was concerned with the provisions of the Mysore Town Municipalities Act. Section 14 of that Act provided for disqualification of a councillor and under Sub-section (3) of Section 14 of that Act it was provided that if any question or dispute arose whether a vacancy had occurred under that section the orders of the Government would be final for the purpose of deciding such question or dispute. u/s 20 of that Act provision was made for holding an election inquiry and it may be pointed out that the provisions of Section 20 of the Mysore Act are in pari materia with the provisions of Section 15 of our Act. It was contended before the Supreme Court that since finality was given to the order of the Government u/s 14 the only remedy open to a person aggrieved by an election when he alleged lack of qualification in the returned candidate was to approach the Government u/s 14(3) of the Act and an election petition u/s 20 of the Act was not maintainable. The Supreme Court in this connection observed as follows:

Prima facie there appears to be force in this argument. It is to be noted that u/s 14 of the Act if a person is elected as a Councillor in contravention of the provisions relating to disqualification as contained in that section the seat of the returned candidate shall be deemed to be vacant. The language suggests that in such cases the election automatically becomes void without requiring it to be set aside by an election petition u/s 20 of the Act. At any rate if the seat becomes vacant and if under Sub-section (3) the Government is made the final authority to determine such disputes it would be unreasonable to hold that the same matter could be also agitated before the Election Commissioner u/s 20 of the Act with the attendant risk of a conflict of decision between the two authorities.

It was also observed as follows:

To reconcile the provisions of this section with those of Section 14 of the Act we would have either to put a restricted interpretation upon Sub-section (3) of Section 14 or on Sub-section (5) of Section 20 or else we would have to assume that the remedies provided under the two sections are cumulative which would hardly be reasonable assumption. We think however that it would not be necessary for us in the present case to express any final opinion on this question inasmuch as we have come to the conclusion that the appeal is entitled to succeed on the second point raised by the appellant namely that he was not subject to any disqualification rendering him ineligible to be elected as a councillor u/s 14 of the Act.

Thus so far as conflict between the provisions of Sections 14 and 20 was concerned the Supreme Court left the question open and has not given any decision nor any indication as to the proper interpretation of Sections 14 and 20 because it has decided the appeal altogether on a different ground. Therefore this decision in *Ravanna Subanna Vs. G.S. Kaggeerappa*, cannot help the petitioner. It may also be pointed out that the conflict if any in the case before the Supreme Court was between the different provisions of one and the same statute and not between the provisions of a statute and the rules made thereunder as in the case before us. Therefore even if there had been a specific decision of the Supreme Court in that particular case that decision would not have been of material help to us in deciding the question with which we have to deal.

9 In the case of *Narayan Maruti v. District Judge Kolaba* 55 Bom. L.R. 314 a Division Bench of the Bombay High Court was concerned with the provisions of Sections 15 and 22 of the Bombay District Municipal Act 1901 There as in the case before the Supreme Court the question was of a conflict between the provisions of Sections 15 and 22 of the Act and it was held that as the petitioner in that case was elected in contravention of the provisions of Section 15(c) of the Act he was disqualified and the only competent authority which could declare that he was disqualified and declare a vacancy was the Collector and not the District Judge and that by virtue of the provisions contained in Section 18 of the Act the District Judge had no jurisdiction to declare the opponent to be elected. There again the question was of a conflict between the provisions of the two sections of one and the same statute. We may point out that in that case at page 318 Chagla C.J. has observed as follows:

Mr. Gokhale on behalf of the Municipality on the other hand contends that the jurisdiction of the District Judge is much wider than deciding cases specified in Sub-sections (3)(a) and (3)(b) of Section 22. In our opinion Mr. Gokhale seems to be right because the powers of the Judge are really set out in Sub-section (2) of Section 22 and not in Sub-sections (3)(a) and (3)(b) of Section 22 when Sub-section (2) limits his powers by providing that his powers are subject to the provisions of Sub-section (3) all that it means is that in the two cases referred to in Sub-sections (3)(a) and (3)(b) it is obligatory upon him to set aside the election in one case and to declare a particular candidate elected in the other. But

apart from those two cases the District Judge has the power to pass an order confirming or amending the declared result of the election or setting the election aside.

This decision supports the view which we have taken as regards the proper interpretation of Sub-section (2) of Section 15 of the Act; and apart from this support this decision in 55 Bom. L.R. is not of much help in dealing with the problem which we have to consider in the present case.

10. We therefore reject both the contentions urged by Mr. Karlekaras regards the jurisdiction of the Assistant Judge to set aside the election on the ground of validity or otherwise of a nomination paper and we hold that the Assistant Judge had the jurisdiction to set aside the election if the conditions laid down in Section 15(5) of the Act and the explanation thereto were satisfied.

11. Dealing with the second point urged by Mr. Karlekar on behalf of the petitioner viz. that the nomination papers of respondent No. 1 were not valid one has to consider the provisions of Clause (ii) Sub-rule (3) of Rule 15 of the Rules which provides as follows:

(iii) where a person has subscribed, whether as a proposer or seconder a larger number of nomination papers than there are vacancies to be filled those of the papers so subscribed which were first received up to the number of vacancies to be filled in shall be deemed to be valid.

It was urged before us that in the light of the facts of this case since the same set of subscribers viz. Randive Shamrao Balwantrao and Parmar Ambalal Motilal has subscribed as proposer and seconder the two nomination papers of respondent No. 2 viz. nomination papers marked Sr. Nos. 52 and 53 and has also subscribed respectively as proposer and seconder the two nomination papers of respondent No. 1 which came to be marked as Sr. Nos. 55 and 56 only the nomination papers of respondent No. 2 marked as Sr. Nos. 52 and 53 can be deemed to be valid and therefore by necessary implication the nomination papers bearing Sr. Nos. 55 and 56 filed in favour of respondent No. 1 must be held to be invalid and it was therefore contended before us that the decision of the Returning Officer and the Collector was correct and that the learned Assistant Judge was in error when he held that the nomination papers of respondent No. 1 were wrongly rejected.

12. In our opinion as regards Rule 15(3)(ii) of the Rules what is to be borne in mind is that under the scheme of the Rules a clear distinction is made between nomination of a candidate and nomination Papers. Under Rule 13 a nomination paper as prescribed in Form A has to be filed after it has been subscribed by a proposer and a seconder and after it has been duly signed by the candidate intimating his willingness to stand for the election. Such nomination paper has to be given a serial number and on each nomination paper a certificate stating the date on which and the exact time at which the nomination paper was delivered to him has to be signed by the Returning Officer. Under Rule 15 the Returning

Officer has to make a scrutiny of the nomination papers and under Sub-rule (2) thereof the Returning Officer has to examine the nomination papers and decide all objections which may be made to any nomination paper and he has to decide such objections and he can reject a nomination paper on any of the grounds set out in Sub-rule (2) and inter alia on the ground of failure to comply with any of the provisions prescribed by the Rules or the Act. It may be pointed out that Sub-rule (4) of Rule 15 enacts that a candidate can file more than one nomination papers and if one of his nomination papers is rejected on the ground of an irregularity in respect of that particular nomination paper the nomination of that candidate can still be valid if he has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed. Thus there is a clear distinction in the Rules and particularly in Sub-rule (4) of Rule 15 between nomination of candidate and nomination paper. Under Clause (ii) of Sub-rule (3) of Rule 15, what is dealt with is the invalidity or validity of nomination papers and it provides that if one and the same individual voter has subscribed either as a proposer or a seconder a larger number of nomination papers than there are vacancies to be filled those of the papers so subscribed which are first received upto the number of vacancies to be filled shall be deemed to be valid and the others are by necessary implication deemed to be invalid. In case of Ward No. 11 in the present case there were two seats to be filled and therefore there were two vacancies to be filled and therefore so far as Ward No. 11 is concerned one and the same voter could subscribe either as a proposer or as a seconder only two nomination papers and if a voter has subscribed more than two then only two nomination papers received by the Returning Officer first in point of time are deemed to be valid and the subsequent ones must be deemed to be invalid. In this particular case it is an undisputed fact that the nomination papers of both respondents Nos. 1 and 2 were signed as proposers and seconders by the same individuals. Therefore the Returning Officer had to decide which were the two nomination papers received by him first in point of time and clearly they were the two nomination papers filed in favour of respondent No. 2. That being the case it is clear that the rejection of the nomination papers of respondent No. 1 was the correct decision taken by the Returning Officer. In our view in the light of the clear distinction between the nomination and the nomination papers observed throughout the Rules the only possible interpretation of Rule 15(3)(ii) is that what is to be considered by the Returning Officer are nomination papers as distinguished from nominations and therefore if in Ward No. 11 one and the same individual has subscribed more than two nomination papers either as proposer or seconder only the two received by him first in point of time are valid. There is no other interpretation possible so far as Rule 15(3)(ii) is concerned. It is true as contended by Mr. Shah on behalf of respondent No. 1 that the right to vote necessarily implies the right to nominate but that right must be exercised in accordance with the rules made by the rule-making authority and here the Rules clearly lay down a restriction on the exercise of the right to nominate.

13. In our opinion the use of the words vacancies to be filled indicates that any individual voter can subscribe as a proposer or seconder not unrestrictedly but only to the extent of the number of vacancies required to be filled in that particular ward or in that particular constituency. These words do not mean that a proposer or a seconder can sign nomination papers of two candidates and not more. All that this phraseology means is that a particular voter from Ward No. 11 can subscribe two nomination papers irrespective of the fact that these nomination papers are of the same candidate or of different candidates.

14. It was urged before us by Mr. Shah that under the scheme of the rules a nomination paper is equivalent to and the same as nomination itself because a nomination paper is the only way to nominate a candidate and no other way exists to nominate. This contention of Mr. Shah must be rejected because as pointed out earlier a clear distinction has been made throughout the Rules between a nomination paper and nomination. When one turns to the Rules it is obvious that under Rule 13 it is in Form A alone that a nomination paper can be filed and the Returning Officer has to endorse on the nomination paper itself an abridged statement of his reasons for the rejection if any. Thus it is not correct to say in so far as these Rules are concerned that a nomination paper is equivalent to and the same as nomination.

15. So far as the provisions of other similar statutes are concerned not much help is available from the provisions of other statutes. It has been observed in Halsburys Laws of England Third Edition Volume 14 para 172 at page 36 regarding the subscription of nomination papers as follows:

At a parliamentary election a person must not subscribe more than one nomination paper and if he does his signature will be inoperative on any paper other than the one first delivered.

At an election of county councillors for any county except London a person may not subscribe more than one nomination for the same electoral division.

At page 97 it has been observed as follows:

If any person subscribes nomination papers at a local government election in contravention of the foregoing provisions his signature is inoperative in all but those papers (up to the permitted number) which are first delivered.

It may be pointed out that these passages in Halsburys Laws of England are based on the provisions of various election rules. So far as the English decisions are concerned there is only one English case viz. *Burgoyne V. Collins* (1881) 8 Q.B.D. 450. In that case the relevant provision was that every candidate at a municipal election should be nominated in writing subscribed by two burgesses as proposer and seconder and by eight others as assenting to the nomination and that each candidate shall be nominated by a separate nomination paper but the same burgesses or any of them may subscribe as many nomination papers as there are vacancies to be filled but no more. At the particular election which

was the subject-matter of that decision there were four vacancies to be filled and a burgess subscribed four nomination papers which were delivered within due time and subsequently he subscribed a fifth nomination paper which was also delivered in due time. In each case he subscribed as one of the eight assenting burgesses as required by the Act. It was held by the Court in England that the first four nomination papers were valid and that the fifth was invalid. The judgment is a very short judgment and is as follows:

The only question for the opinion of the Court being whether or not the respondents were duly elected I am of opinion that they were not. If the mayor could entertain the objection to the nomination papers at all he ought to have decided that the nomination papers of the four petitioners were valid and that of Hughes was invalid.

16. As regards the Indian statutes the provisions similar to the provisions with which we have to deal were set out in the Representation of the People Act 1951 before its subsequent amendment. Under Sub-section (2) of Section 33 it was provided in that Act as follows:

(2) Any person whose name is registered in the electoral roll of the constituency and who is not subject to any disqualification mentioned in Section 16 of the Representation of the People Act 1950 (XLIII of 1950) may subscribe as proposer or seconder as many nomination papers as there are vacancies to be filled but no more.

Under Section 36(7)(b) it was provided as follows:

(7) For the purposes of this section-

(b) where a person has subscribed whether as proposer or seconder a larger number of nomination papers than there are vacancies to be filled those of the papers so subscribed which have been first received up to the number of vacancies to be filled shall be deemed to be valid.

Thus Rule 15(3)(ii) of the Rules with which we have to deal corresponds to Section 36(7)(b) of the Representation of the People Act 1951 but there is no provision under the Rules corresponding to Section 33 Sub-section (2) of the Act of 1951. But it is obvious that Section 33(2) provides for the positive aspect whereas Section 37(b) provides for the negative aspect of one and the same subject viz. the number of nomination papers which can be subscribed to by a voter. These provisions of the Representation of the People Act were considered in a number of election petitions by different Tribunals in India. It is true that the decisions of these Tribunals are not binding authorities but they were cited at the bar by the Learned Counsel appearing for the different parties as parts of their arguments and we have looked at those authorities to see whether there are any arguments in any of these decided cases which might be of assistance to us in considering the provisions with which we have to deal. In *Lakhanlal Mishra v. Tribeni Kumar and Ors.* 3 Election Law Reports 423 the Election Tribunal at

Bhagalpur was dealing with the provisions of Sections 33(2) and 36(7)(b) of the Representation of the People Act 1951. A decision of another Tribunal was cited before it and it was stated by the Tribunal as follows:

There is not a single word in Section 33(2) or Section 26(7)(b) to indicate that there could be no objection to the same proposer or seconder subscribing to different nomination papers of the same candidate. The words used in both these provisions make it quite clear that the same proposer or seconder cannot subscribe to more nomination papers than there are vacancies. Indeed a candidate can file several nomination papers each proposed and seconded by a different set of persons in order to indicate his popularity among different sections of people. There could be no sense in his filing different nomination papers proposed or seconded by the same person. We are of the opinion however, that Section 36(7)(b) makes it quite clear that nomination papers subscribed by the same proposer or seconder in excess of the number of vacancies are not valid at all. That being so such nomination papers need not be considered at all and no question of their rejection u/s 36(2) arises.

The same provisions were also considered by an Election Tribunal at Delhi in *Jamuna Madan Prasad v. Jagdish Narian* 7 Election Law Reports 14; and at pages 18 and 19 the Tribunal dealing with the provisions of Sections 33(2) and 36(7)(b) of the Representation of the People Act 1951 interpreted the said provisions follows:

Consistent with the schedule of the Act we are inclined to interpret Section 33(2) as meaning that if there is one vacancy to be filled a person can subscribe as proposer or seconder nomination of one candidate only if there are two vacancies a person can subscribe as proposer or seconder nomination of two candidates but not more. But the section in our view does not mean that a proposer or seconder cannot subscribe to more than one nomination paper of the same candidate if there is only one vacancy. The word vacancies occurring in Section 33(2) is significant and is a pointer to the fact that the number of candidates whom an elector can propose or second depends upon the number of vacancies to be filled in that constituency. If an elector subscribes as proposer or seconder more nomination papers than one of the same candidate he will be deemed to have subscribed in fact only one nomination paper. If all the nomination papers are in order, only one of them is to be considered and the rest are to be treated as superfluous. But any of them is found to be defective the other nomination paper subscribed by him in regard to the same candidate can be looked into. It is conceivable that as a measure of precaution a candidate sometimes gets the same proposer or seconder to subscribe in more than one of his nomination papers.

In our view the reasoning in 7 Election Law Reports 14 is not correct. The reasoning in 3 Election Reports 423 is the more correct reasoning. At least so far as the provisions with which we have to deal with are concerned there is a clear distinction between the nomination and the nomination paper of a candidate and

the equation which is made in 7 Election Law Reports 14 between the nomination paper and the nomination does not appear to us to be correct. In our view the only interpretation that can be put upon Clause (ii) of Sub-rule (3) of Rule 15 of the Rules is as we have indicated above and there is nothing in any of the authorities cited before us which militates against that view.

17. We therefore hold that so far as the decision of the learned Assistant Judge was concerned he was in error when he held that the nomination paper of respondent No. 1 was wrongly rejected. In these circumstances the order passed by the learned Assistant Judge on the basis of that finding must be set aside as it is an error apparent on the face of the record.

The result therefore is that this petition succeeds and the order of the Assistant Judge directing fresh election for Ward No. 11 is quashed. The petition is therefore allowed and the rule is made absolute with no order as to costs.