
(2003) 03 KAR CK 0083
In the Karnataka High Court
Case No : E.P. No. 3 of 1999

Laxman Sangappa Savadi

APPELLANT

Vs

Dongaragaon Shahajan and Others

RESPONDENT

Date of Decision : 20-03-2003

Acts Referred:

Election Symbols (Reservation and Allotment) Order, 1968 — Section 13
Representation of the Peoples Act, 1951 — Section 36, 36 (2), 36 (5)

Citation : (2003) ILR (Kar) 2732

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : S.M. Patil Ankalgi, Jagadish Patil and Ravivarma Kumar, for the Appellant; R. Sharathchandra, for R3, B.S. Subbramaiah, for R-6, Tajuddin, HCGP. for R-7, K. Anand Kumar, for R2, C.B. Srinivasan, A.K. Vasanth and V.P. Kulkarni for R1, R-4 and R5, for the Respondent

Final Decision : Dismissed

Judgement

Gururajan, J.—Laxman Sangappa Savadi, an unsuccessful candidate in the election to the Athani constituency is before me seeking for a declaration declaring that the election of first respondent to the House of Assembly from 209 Athani Constituency as null and void. Petitioner alternatively prays that the petitioner be duly declared as elected to 209 Athani Assembly Constituency to fill the seat of the house.

2. Facts as narrated in the petition are as under:

Petitioner hails from an agricultural family and is a social activist in Athani for several years. He is an active member of National United Janata Dal political party. He aspired to contest to the seat of Assembly from 109 Athani Constituency and sought for ticket from the United Janata Dal Party. Party issued him "A" and "B" forms to file his nomination. Prior to issue of those forms the petitioner had filed nomination on 23.8.1999 and he had submitted the forms on 24.8.1999 at 2.45 P.M. to the Returning Officer. The same political party issued

"A" and "B" forms to Respondent No. 6 to contest in the said election from the same constituency. Smt. Leeladevi R. Prasad, approached the President of the Political Party to get clarification. Ultimately, the President of the political party issued forms to the petitioner cancelling the forms issued to Respondent No. 6. According to the petitioner he was under the impression that he alone represents the United Janata Dal party in the said election. Nominations were scrutinized on 25.8.1999. The Returning Officer returned the form of the petitioner on the ground that respondent No. 6 has filed another set of "A" and "B" forms at 2.59 PM by cancelling the forms already submitted by the petitioner. Petitioner made a representation at 12.40 PM stating that the petitioner has been issued with "A" and "B" forms by the President of the party and such forms have not been issued to respondent No. 6 also and there is some confusion regarding "A" and "B" forms, and that a clarification is necessary from the President of the Party. He requested for 24 hours time to get clarification from the President. The respondent No. 7 passed an order on 25.8.1999 accepting the notice in B form in respect of Respondent No. 6 and treated her as the candidate set up by the United Janata Dal Party and the notice in Form B in respect of the petitioner was not accepted. Petitioner's grievance is that an erroneous order has been passed by the seventh respondent and that there is non - application of mind. The refusal of time is contrary to Section 36(5) of the Representation of People Act. Respondent No. 6 was the Minister of Kannada and Culture and she has misused the machineries of the Government according to her convenience and got the Returning Officer of her choice to do her mis-deeds and illegalities with a sole object to get elected. Respondent No. 7 has acted as a tool of Respondent No. 6. Petitioner also complains that the denial of time has caused injustice to him. This according to him is a patent error. Elections were held both to the Legislative Assembly and Lok Sabha on 11.8.1999. The ballot paper of the Assembly consisted of the symbol allotted to the respondents representing the various parties. Voters were under confusion while casting their votes, as more than 6000 votes have been invalidated due to costing of two votes on the ballot paper of assembly election. The symbol allotted to the petitioner was "Aero plane" and the voters desire is to vote to "arrow" symbol in respect of Lok Sabha election. The gullible voters could not distinguish the ballot papers of Assembly and Lok Sabha. According to the petitioner if he had contested the election with the recognition of United Janata Dal, he could have been easily elected to fill the seat of the assembly. Respondent No. 1 in collusion with respondent No. 7 has rejected the application of the petitioner. Respondent No. 1 was in full control of Respondent No. 7. With these facts, petitioner wants the election of the first respondent to be set aside by this Court.

3. Respondents have entered appearance pursuant to the notice by this Court. Written statement is filed by the first respondent -winning candidate. In the written statement it is stated that the election process and declaration made by R-7 is in accordance with law. He has also stated that the differences between R-1 and 6 are inner party rivalries. Neither the first respondent nor the returning

officer can be held responsible for the same. He has stated that the petitioner did request the returning officer to get confirmation from the President of his Party regarding the confusion in issuing B-forms. The Returning Officer has rightly come to a conclusion that giving 24 hours time to the petitioner does not serve any purpose because the stipulated time to file nomination along with "A" and "B" Forms has already been over. No further information can be entertained after the stipulated time was over. With regard to various allegations made against the petitioner, those allegations are denied by a detailed statement. In so far as Section 36(5) is concerned, respondent No. 1 states that the Returning Officer shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or causes behind his control. In the instant case there is no such interruption or obstruction warranting any time. The Returning Officer according to the respondent is correct in rejecting the prayer of the petitioner for grant of time. In so far as allegations against R-6 is concerned, they have been denied.

4. Respondent No. 7 has also filed a written statement. The seventh respondent has denied the allegations made against him. He further states that the petitioner did file his nomination on 23.8.99 for contesting 209 Athani Assembly Constituency. The nomination paper was not accompanied by Form -A or Form - B issued by any political party. Petitioner submitted the forms on 24.8.1999. In the Form --B submitted by the petitioner, the Form -B issued in favour of the 6th respondent was rescinded. The scrutiny of nomination papers was scheduled on 25.8.1999. Petitioner as well as respondent No. 6 filed two sets of Form B each, and only after scrutiny and also after holding enquiry by this respondent it was found that the Form B submitted by the sixth respondent is to be accepted. This respondent has further stated that at the time of scrutiny i.e., on 25.8.1999, he has examined the validity of Form-B of the sixth respondent as well as the petitioner. Even in the event, if any information afresh was to be given by any of the contestants in this regard he could not have entertained the same after 3 PM on 24.8.1999 as it was the last date for filing of nomination papers. As per Section 36 of Representation of People Act, the Returning Officer shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or causes beyond his control. No such circumstances, exists in the case on hand. He has acted in accordance with law. The case of the petitioner does not fall within the purview of Section 36 of the Act. He has also denied with regard to the allegations made against him.

5. My Brother Judge who was the Election Judge in this case earlier, has framed the following issues.

1. Whether the petitioner proves that the Form No. A and B issued by the Party President to Respondent No. 6 were cancelled at his instance and further the form No. A and B came to be issued by his party Janata Dal United in his favour to make him an official candidate of his party?

2. Whether the petitioner prove that the refusal of his prayer for postponement

of the scrutiny of nomination papers by 24 hours by respondent No. 7 the Returning Officer was illegal and had resulted in material irregularity in the conduct of the election?

3. Whether the respondent No. 7 Returning Officer had acted with bias and prejudice resulting in material irregularity in the conduct of the election as pleaded by the petitioner?

4. Whether the petitioner proves that the respondent No. 7 Returning Officer acted with prejudice as against him and accepted the Form No. "A" and "B" submitted by the respondent No. 6 to treat her as official candidate of the Janata Dal United Party and further he had acted with material irregularity in the matter of conduct of the election?

5. Whether the petitioner proves that the respondent No. 7 the Returning Officer had illegally rejected the Form No. "A" and "B" submitted by the petitioner claiming to be an official candidate of the Janata Dal United Party and thus he had acted with material irregularity in the matter of conduct of the election?

6. Whether the petitioner proves that he suffered prejudice or prejudices in the elections, because he was permitted to contest the same as an independent candidate?

7. Whether the petitioner proves that there was any material irregularity in the matter of conduct of the election in question as the elections to the State Assembly and the Loksabha had been conducted together and jointly and whether because of that he suffered prejudice in the election?

8. Whether the petitioner proves that the respondent No. 7 had shown favoritism to the respondent No. 6 in any way?

9. Whether the petitioner is entitled to have a declaration that the result of the election of the first respondent is null and void?

10. Whether the petitioner is entitled to for a declaration that he is a duly elected candidate to 209. Athani Assembly Constituency?

11. Whether the petitioner alternatively is entitled to have a direction for re-poll in the matter of election to No. 209 Athani Assembly Constituency?

12. Whether respondent No. 1 proves that the petitioner had not approached this Court with clean hands and thus entitling him for exemplary cost in the Election Petition?

13. To what relief the petitioner is entitled to in the election petition?

Witnesses have been examined on behalf of the parties. On behalf of the petitioner three witnesses have been examined and respondent No. 1 has examined one witness. Witnesses have given evidence in terms of the pleadings. Witnesses have been fully cross-examined. Petitioner has filed as many as eighteen documents and respondent has filed as many as four documents.

6. At the time of arguments, Sri Ravi Varma Kumar, learned Counsel filed list of dates and argued at great length. He took me through the pleadings to contend that in the case on hand. Petitioners as well as the sixth respondent filed their respective nomination as official candidates of United Janata Dal Political Party for Athani Constituency. He invites my attention to the Representation of People Act, 1950. 1951 Act regulates the conduct of elections. Section 30 provides for appointment of dates for nomination. Sections 31 to 36 provides for various stages in the matter of public notice, filing of nomination, scrutiny etc. There is a prescribed procedure in the matter of nomination to a political party and for non-political party. Section 33 provides for a nomination of a political party. Section 36(2) provides for rejection of a candidate. According to the learned Counsel this code is a complete code by itself. He essentially concentrated on Section 36(2) to contend that in the case on hand the said proviso is clearly violated by the seventh respondent. After taking me through the two sets of forms filed by the petitioner as well as the sixth respondent he states that he sought for time of 24 hours in terms of an application. The same was rejected by an order at Ex.P-12 to his disadvantage. He also says that Section 13A of the Election Symbols Order cannot be understood to deny a reasonable opportunity in the case on hand. He also took me through the relevant dates to contend that he has made out a case in this Court in terms of Section 100(3)(c) of the Act. He also took me through the evidence on record. He read to me the evidence of PW1- who reiterates these allegations against R-7, Ex.P.11 is a written request of the petitioner and Ex.P.12 is a written order rejecting his request. He states that the fairness as expected of Respondent-7 is not seen in the case on hand. Respondent-7 has prejudged the entire issue according to the learned Counsel. He strongly relies on 1992 SCC 496 in the case on hand. At the time of argument, learned Counsel for the petitioner would say that he would not like to press the issues 3,4,7,8,10,11 and 12. Sum and substance of the argument of the learned Counsel is that there is a clear violation of statutory requirement of time in the case on hand. According to him, the same has resulted in a void election and the said election has to be set aside by this Court.

7. Per contra, learned Counsel for the first respondent would say that the facts of this case warrant no interference. He states that the internal quarrel between the two candidates belonging to the same political party should not come in his way of getting elected to the Assembly. He states that nomination in terms of the statute has to be understood on the facts of this case. In the case on hand, according to the learned Counsel, nomination is not rejected, only Form-A and B is rejected which according to the learned Counsel would mean that the tag of the political party is removed and not the nomination as such. He makes a distinction between nomination to the election and rejection of forms A and B in respect of a political party. According to the learned Counsel Section 36(5) has no application at all to the given set of facts. Moreover, according to the learned Counsel the petitioner has contested the election as an independent candidate and therefore it cannot be said that the nomination as such has been rejected in

terms of the Act. He took me through Ex. P6, 7,12,16 and 17 to contend that no case as such is made out. In so far as the application is concerned, learned Counsel states that it is true that 24 hours time was sought and the same has been rejected. He states that the rejection is in accordance with law in the light of Section 13A which is introduced subsequent to the judgment of the Supreme Court in AIR 2000 SCW 3250. Learned Counsel relies on the judgment of the Supreme Court contend that it is only a statutory right available to a candidate in the matter of election. In so far as Section 100(1)(c) is concerned, learned Counsel says that no case is made out. He explains to me the judgment of the Supreme Court to say that the said judgment is not applicable to the facts of this case. Nomination and that is not the case here. Moreover that was pre-amendment and Section 13A was not available and therefore the counsel says that the same is to be understood as a judgment on the facts of that case.

8. In reply Sri Ravi Varma Kumar learned Counsel reiterates his earlier arguments and further says that petitioner has made out a case requiring my interference. According to him the judgment of the Apex Court reported in 1992 SCC 496 is squarely applicable to the facts of this case. He further says that mere introduction of Rule 13A would not take away the rigour of the judgment of the Supreme Court. Let me see in the light of the argument, a case is made out or not in the given set of evidence.

9. Issue No. 1 contains two part. The first part is with regard to proof by the petitioner with regard to cancellation in favour of R-6. Material evidence would prove that Form-"A" and "B" issued in favour of respondent No. 6 initially was cancelled at the instance of the petitioner. The first part of this issue in these circumstances is answered in favour of the petitioner. The second portion of the issued with regard official candidate has to be considered along with issues 2-4 and 5. In fact at the time of arguments, both the parties concentrated only on these issues.

10. Issues 1.2.5.6 and 9.

The second portion of the first issue is with regard to proof of the petitioner being a official candidate of Janata Dal (U) political party. Issue No. 2 deals with the refusal for postponement of scrutiny resulting in material irregularity and illegality. Issue No. 5 deals with illegal rejection of the form submitted by the petitioner as an official candidate of Janata Dal (U) party. Issue No. 6 deals with prejudice in the elections and issue No. 9 deals with regard to declaration of the election of the first respondent being null and void. All these issues, in one way or the other, are interlinked with one another. Learned Counsel also addressed combined arguments in respect of these issues. It is useful to notice the pleadings of the parties in this regard.

11. In the petition filed by the petitioner, petitioner states that he is an active member of JD(U). It is further stated that the party had issued him Forms-A and B to file his nomination along with other forms. He has submitted the forms at 2.

45PM to the Returning Officer. Scrutiny has taken place and at the time of scrutiny, Returning Officer rejected the forms of the petitioner on the ground that respondent-6 has filed another set of B forms at 2,59PM by cancelling the Forms already submitted by the petitioner. He has also stated in the petition that the said rejection is erroneous in the matter. Petitioner has also stated that he submitted an application seeking for grant of 24 hours for getting clarification and time was rejected and an order was passed to his retirement. The same is countered by the contesting party. It is stated in the written statement that the rejection is proper and legal in the light of various provisions of the Representation of People Act. Evidence also is recorded in this regard.

12. PW-1 is the petitioner. He has reiterated the averments in his evidence PW-2 is an advocate and while supporting the petitioner's case he has stated that on 25.8.1999 scrutiny of papers was set down by R-7. Petitioner was present along with his witness. During the time of scrutiny, respondent 6 was represented by an advocate and he argued that nomination of R-6 is to be accepted. Per contra, according to PW-2 nomination paper and Form-B submitted by the petitioner has to be accepted. He also argued that within 14 minutes that it is not possible for R-6 to produce another B-Form and at that time prayed for 24 hours time to clarify the issue.

13. RW-1 Returning Officer has stated in evidence that as per the calendar of events published by the Election Commission 24.8.99 upto 3 "O" clock was the last date for filing the nomination papers to the 209 Athani Assembly Constituency. The nomination papers were taken up for scrutiny on 25.8.1999 and all the candidates and their agents and official representatives attended the scrutiny. He states as under;

"None had raised any objection till I have taken up the nomination papers of the respondent No. 6 or scrutiny, I informed the candidate and others present there that the respondent No. 6 had produced B Form, from JD(U) Party. At that time, petitioner informed RW-1 that he also had obtained B Form from Janata Dal (U) Party. Thereafter, he states that petitioner prayed for time to file his written representation and hence he postponed the scrutiny of the nomination paper of respondent No. 6 then in hand till 1.00 PM on that day. Then at about 1.00 pm I have yet again taken up the nomination papers of the respondent No. 6 for scrutiny. I also say that that was done by me at the end. At the same time, I also took up the nomination paper of the petitioner simultaneously for scrutiny.

Before 1.00 pm on that day, the petitioner had given me his written representation, copy at Ex.P.11. I identify the said representation the petitioner had filed before me. I have considered the said representation filed by him. Since the petitioner was represented by his Counsel, I heard the petitioner through him. The learned Counsel appearing for the respondent No. 6 too argued her side of the case, she also gave a written representation, through her Counsel.

In filing the written statement as Ex.P.11, the petitioner had contended that he

had filed two separate forms No. B before me and that the respondent No. 6 had also filed two B forms before me independently. According to the petitioner there was some confusion with regard to the issuance of the Forms No. B and further that, it was difficult for me to allot the party symbol of JD(U) party. He also prayed before me for extension of time of 24 hours for the purpose of getting necessary clarification from the party President of JD (U).

Because of the above situation, I afforded the petitioner on the one side and the respondent No. 6 on the other to present their respective side of the case and thereafter, I passed a considered order thereon as at Ex.P-12. I see Ex.P-12 now before and I identify the same. In my said order, I have accepted the argument advanced by the respondent No. 6 and accordingly, I have treated her as the official candidate of JD(U) party. Because of that conclusion I have reached, I have rejected the nomination paper of the petitioner filed for an on behalf of JD (U) party. Accordingly, to me, I have passed the considered order as above, by applying my mind and I further say that the same was in consonance with law."

14. From the pleadings and the evidence what is clear to me is that the Returning Officer has accepted the nomination of R-6 as an official candidate of JD (U). In fact Mr. Ravi Varma Kumar, learned Counsel has filed list of dates and the list of dates would reflect in short form the admitted material pleadings and evidence.

List of Dates

1.

1.7.1999

—

Elections announced

2.

17.7.1999

—

Notification of Election

3

20.8.1999

—

Respondent files two nominations as JDU candidate

4.

23.8.1999

Petitioner filed his nomination paper 2.45 pm

5

24.8.1999

Last date for filing nominations

6.

24.8.1999

Forms A and B cancelling form B issued to R-6 filed at 2.45 PM

7.

25.8.1999

date of scrutiny

8.

25.8.1999

respondent files forms A and B purporting to cancel those issued in favour of the petitioner at 2.59 PM

9.

25.8.1999

Petitioner's representation to Returning Officer seeking time.

10.

25.8.1999

Returning Officer passes order rejecting the nomination papers of the petitioner as JD(U) candidate.

11.

25.8.1999

Last date for withdrawal

12.

27.8.1999

List of contesting candidates announced

13.

27.8.1999

Petitioner treated as Independent and respondent No. 6 treated as JD(U) candidate.

14.

11.9.1999

Date of Poll

15.

6.10.1999

Counting held

16.

7.10.1999

Result declared

17.

2.11.1999

Election petition filed

15. A joint reading of the issues would shows that in the case on hand, in the light of admitted facts a plea is raised with regard to the violation of Section 36(5) read with Rule, as applicable to the facts of this case. It is also at this stage, necessary to notice Form --A and B filed by the parties. Ex.P.-1 is the

nomination paper in Form 2-B filed on behalf of the petitioner. In part 2 column 1(B) it is stated that this candidate is set up in this election by the JD (U). Ex.P. 3 is Form -A issued by Sri Sharad Yadav, President of the party dated 11.8.1999. Ex.P-4 is Form -B submitted by the petitioner for which it is stated that the notice in Form-B given earlier in favour of Smt. Leela devi R. Prasad, as parties approved candidate is hereby rescinded. At Ex.P4A it is seen that the same was received at 2.45 PM. Ex.P-5 is again Form-A issued by the President of the party and Form -B. Ex.P. 6 shows that the nomination in Form -B given in favour of Smt. Prabhu R. Prasad is rescinded. The same was received at 2.59 PM. Ex.P-7 and 8 are submitted by Respondent No. 6 Ex.R-1 is the nomination of the petitioner as an independent candidate received at 1.15 pm. Ex.R-3 is the crucial document which has been presented by respondent No. 6. Ex.R-4 is Form --B submitted by the respondent No. 6 in which the notice in form-B given in favour of the petitioner is rescinded. The same was received on 24.8.1999 at 2.59 PM. On coming to know of this, petitioner filed Ex.P.11 requesting for 24 hours time to get confirmation from the President of the party. Evidence also reveals that the Returning Officer after noticing all these material facts has chosen to accept the notice in Form-B filed by R-6 and treat her as the candidate set up by the JD(U). He has not accepted the Form -B submitted by the petitioner. He has rejected the request of the petitioner for time and in the order it is stated that as per Rule 13 of the Election Symbols Order (Reservation of allotment) 1968, Smt. Leela Devi R. Prasad, respondent No. 6 is the candidate, who has delivered her nomination papers first to the Returning Officer and that being the position, the said Form-B has been accepted. It amounts to acceptance of cancellation in favour of the petitioner.

16. In this connection, it is relevant to notice the various provisions of the Representation of the People Act and also the various Rules as applicable to the facts of this case. Part V of the Representation of People Act deals with conduct of Elections. Chapter 1 provides for nomination of candidates. Section 30 provides for appointment of dates for nominations. Section 31 provides for public notice of election. Section 32 provides for nomination of candidates. Section 33 provides for presentation of nomination paper and requirements for a valid nomination. Section 34 provides for deposits. Section 35 provides for notice of nomination. Section 36 provides for scrutiny of nominations. Section 36(5) provides for adjournment of scrutiny when proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control. It further provides for allowing time to rebut it not later than the next day but one following the date fixed for scrutiny. Rules have been framed in this regard. Rule 13(A) provides for specification of a candidate by a political party. In fact this very issue came up for consideration before the Supreme Court in the case of RAKESH KUMAR v. SUNIL KUMAR (1999) 2 SCC 495, on which a very strong reliance is placed by the petitioner. The Supreme Court after noticing this proviso has stated in para 13 as under;

"A conjoint reading of the aforesaid provisions, inter alia, shows that after the

amendment of Section 33(1) of the Act, a nomination paper of a candidate in order to be valid must be;

(a) where the candidate is set up by a political party;

(b) contain a declaration by the candidate to the effect that he has been set up by a recognized political party;

(c) be supported by a notice (Forms A and B) duly signed by the President, Secretary or any other office-bearer of the party duly authorized by the party to send such a notice; and

(d) the name and specimen signatures of such a authorized person are communicated to the Returning Officer of the constituency and to the chief Electoral Officer of the State, not later than 3.00 PM on the last date for making nominations.

(ii) where the candidate is not set up by a recognized political part, his nomination paper shall be valid only if it is subscribed by ten proposers, being electors of the constituency."

17. Therefore what is clear to this Court is when a candidate is set up by a political party the nomination is to be supported by the notice in Forms A and B duly signed by the President. In the case on hand, there is no difficulty in as much as Forms A and B have been submitted to the Returning Officer. Form-B earlier filed by respondent No. 6 was rescinded in terms of Form B issued to the petitioner. Subsequently, at 2.59 PM respondent No. 6 filed one more Form-B rescinding the Form B issued in favour of the petitioner. Further petitioner produced Form -B in which the President rescinded Form-B issued in favour of one Prabhu R. Prasad. At the time of scrutiny, what was available for scrutiny was Form-B submitted by R-6 rescinding the earlier Form-B issued in favour of the petitioner. The same was produced at 2.59 p.m. After seeing this, petitioner filed an application seeking 24 hours time. The Returning Officer after a careful study of the application made by the petitioner came to the conclusion that giving 24 hours time to the petitioner does not serve any purpose as there was no provision to accept any further information on Form-B after 3.00 PM. on the last day of filing nomination papers either from the authorized person or from the party President. The Returning Officer has ruled as under:

"Smt. Leeladevi R Prasad was the first person to file her nomination papers from 209 Athani Assembly Constituency as the candidate set up by Janata Dal (United). She has filed two nomination papers on 20.8.1999. She has produced Form A and B on 21.8.1999 in support of her claim. Sri Laxman Savadi has filed two nomination papers on 23.9.99 as Janata Dal (U) candidate and produced form B on 24.8.1999 at 2.45 PM in support of his claim. In this B form, the notice in B form given earlier in favour of Smt. Leeladevi R Prasad as parties approved candidate has been rescinded. She produced another B form at 2.59 PM just a minute before the closing time which mentioned herself as the approved

candidate and rescinded the notice in Form -B given earlier in favour of Sri Laxman Savadi. At the same moment Sri Laxman Savadi came to the table of Returning Officer and submitted one more B form with himself as approved candidate. On examination of this B form it is noticed that it rescinds earlier B form given in favour of one Sri Prabhu R Prasad. Hence the B form submitted by Smt. Leeladevi R Prasad at 2.59 pm did not get rescinded. To conclude one B form submitted by her has been rescinded and another B form submitted by her on 24.8.1999 at 2.59 pm remains intact. About B forms submitted by Sri Laxman Savadi, one B form submitted at 2.45 pm on 24.8.1999 gets rescinded where as another B form submitted by him at 2.59 pm remains intact which happens to be the last B form received by me before the stipulated time".

18. The Returning Officer after noticing para 13 of the Election Symbols Order (Reservation and Allotment) 1968, has ruled that R-6 first delivered to him the nomination papers hence he treated her as the candidate set up by the Janata Dal (United). The argument of the petitioner is that rejection of time resulted in improper rejection of the nomination of the petitioner. Learned Counsel strongly relies on Section 100(1)(C) to contend that a case is made out for improper rejection of the nomination in the light of refusal to grant time to rebut respondent's case. It is also pointed out that once improper rejection is proved, election is to be declared as void. Let me see as to whether this legal contention in the given set of facts is acceptable or not.

19. Section 100(1)(C) comes to the aid of a candidate only in the event of improper rejection. Learned Counsel for the respondent would say that rejection of time is proper in the light of Rule 13. It is also pointed out that provisions are to be read in the light of the main section itself. It is no doubt true that grant of time is not available in all circumstances. Adjournment is available only when proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control. It is not the case of anybody that proceedings were interrupted by riot or open violence. It is the case of the petitioner that for causes beyond the control of the Returning Officer the proceedings require to be adjourned. This argument of the petitioner is to be accepted because the President of the political party has chosen to issue Form -B to both the candidates without rescinding the Form-B issued in favour of R-6 which is produced at 2.59 PM. Therefore the petitioner is right in seeking time on the ground of causes beyond control. This argument cannot be said to be an unacceptable argument. Therefore, petitioner is justified in seeking time. What is to be seen next is as to whether the rejection is proper or not. If the rejection is not proper then the consequence would be improper rejection of the nomination itself. In this regard, it is to be noticed that the returning officer may allow time not later than the next day but one. This very question was considered by the Supreme Court in 1999 (2) SCC 497. The Supreme Court has ruled in para 20 and 21 as under:

"20. Through the proviso, the legislature has provided that in case an objection is

raised during the scrutiny to the validity of a nomination paper of a candidate, the Returning Officer may give an opportunity to the candidate concerned to rebut the objection by giving him time "not later than the next day". This is in accord with the principles of natural justice also. In the present case, the respondent had sought an opportunity to meet the objection, but even if had not sought such an opportunity, the returning officer ought to have granted him time to meet the objection in the interest of justice and fair play.

21. The Returning Officer would have been justified in rejecting the nomination paper of the respondent, had the respondent not sought an opportunity to rebut the objection within the time allowed by the Returning Officer. Since the respondent had by his written application filed at the time of scrutiny of the nomination paper itself claimed to be the official candidate set up by the BJP, which claim was not disputed by anyone else during the scrutiny, and had sought time 24 hours to provide relevant material in support of his submission, it was obligatory on the part of the Returning Officer to allow time to him to rebut the objection *suomotu* raised by the Returning Officer. Having raised the objection *suo motu*, the request of the respondent who was present and sought time in writing to seek clarification from the BJP as to who was its official candidate, the Returning Officer in all fairness was obliged to grant time to the respondent as prayed for by him and postpone the scrutiny to the next day but he ought not to have rejected his nomination paper in haste. The Returning Officer, obviously, failed to exercise his jurisdiction u/s 36(5) of the Act properly and thereby fell in a grave error in rejecting the nomination paper of the respondent. The learned Single Judge of the High Court was, therefore, perfectly justified in holding that the nomination paper of the respondent had been wrongly and illegally rejected, thereby, rendering the election of the returned candidate as void. The impugned order, thus, suffers from neither a jurisdictional defect nor any other error whatsoever".

20. Strong reliance is placed on Section 36(5), Rule 13 and the judgment of the Supreme Court to contend that the rejection order for time is unsustainable in law. At the outset, the said argument of the learned Counsel for the petitioner is attractive, but as rightly pointed out by learned Counsel for the first respondent this judgment has to be considered in the given set of facts and circumstances. That case according to the learned Counsel was pre-13(A), and post -- 13(A) stands on a different footing. Rule 13(A) has been introduced after the said judgment. The said rule has been introduced to remove any doubt in the matter. In the case on hand Ex.P4 provides for rescinding in favour of Respondent No. 6 and Ex.R-2 provides for rescinding in favour of the petitioner. It is filed at 2.59 PM. It is rightly decided by the Returning Officer that there is no need to grant time. When the law is clear that in such cases, the first delivered form has to be accepted and hence no fault can be found with the Returning Officer. The Returning Officer has rightly decided to accept Form-B submitted by the sixth respondent in the light of Rule 13(A). Therefore the petitioner's contention of improper rejection in the light of refusal of time cannot be accepted. The

judgment of the Supreme Court if read would show that the Supreme Court has accepted the violation theory in the absence of Rule 13(A). The Supreme Court ruled that time ought to have been given to rebut the objections raised by the Officer. He could have been given 24 hours time to do so within 24 hours but to deny him such an opportunity in the facts and circumstances of this case was neither fair nor proper. This finding has to be understood in the light of nonavailability of Rule 13(A). Now no time for rebuttal is needed in the light of the clear law in terms of Rule 13(A). This judgment has to be understood on the facts of this case and it cannot be applied without reference to subsequent case and the facts of the subsequent case. Therefore in my view the said judgment cannot be pressed into service since the facts of this case stand on a different footing. I am unable to accept the argument of the learned Counsel for the petitioner that Rule 13(A) does not make any deviation in the matter. The argument that Section 36(5) provides for time is to be understood in the light of Section 13(A), If so understood, the petitioner's case has to fail on the facts of this case.

21. A serious argument was advanced by the learned Counsel for the respondent is that what is rejected is only Form-B and it cannot be understood as rejection of nomination. Nomination without Form-B is no nomination at all. The nomination paper is submitted in Form -2 B in terms of Rule 4 of the Rules. Therefore this contention cannot be accepted. In fact the judgment of the Supreme Court would show that in identical circumstances, the Supreme Court noticed the rejection of Form B as rejection of the nomination paper.

22. Learned Counsel for the respondents also raised a plea that the right to contest is a statutory right and not any constitutional right. I do not want to go into this matter in the light of my earlier finding in this regard.

23. In the issues framed, it is seen that the Returning Officer has acted with bias and prejudice but no acceptable argument or for that matter no argument is placed accusing respondent No. 7 in this regard. Moreover, in this circumstances, the rejection cannot be said to have resulted in material irregularity in the conduct of election. Petitioner has failed to prove that the refusal of his prayer for postponement is illegal and has resulted in irregularity. Petitioner has also failed to show that Respondent No. 7 acted with bias and prejudice. Petitioner is also unable to show in terms of the law governing the matter that Form-B submitted by respondent No. 6 is unsustainable and that he is the authorized candidate of JD (U). All these issues are answered against the petitioner and in favour of respondent No. 6. Parties have not addressed any argument with regard to any other issue. Having come to this conclusion, issue No. 9 is to be answered against the petitioner. In so far as issue No. 12 is concerned, it cannot be said that the petitioner has not approached this Court with clean hands and that the respondent No. 1 has not proved this issue in his favour resulting in exemplary costs.

24. In these circumstances, petition stands rejected. Parties are to bear their

respective costs.