
(1958) 12 MP CK 0003
In the Madhya Pradesh High Court
Case No : C. Rev. No. 288 of 1957

Ram Kumar Sharma

APPELLANT

Vs

Phoolchand

RESPONDENT

Date of Decision : 12-12-1958

Acts Referred:

Central Provinces and Berar Municipalities Act, 1922 — Section 20A(5)

Citation : (1959) JLJ 446

Hon'ble Judges : K.L. Pandey, J

Bench : Single Bench

Advocate : A.P. Sen, for the Appellant; J.P. Sanghi, for the Respondent

Final Decision : Allowed

Judgement

K.L. Pandey, J.—This is a revision under sub-section (5) of section 20-A of the Central Provinces Municipalities Act, 1922 (11 of 1922) against an order dated 12th October 1957 by which the. District Judge, Chhindwara, on an election petition under sub-section (2) of section 20-A ibid, declared void the election of the petitioner Ramkumar Sharma as a member returned from ward No, I of the Chhindwara Municipal Committee and further declared the respondent No. 1 Phoolchand as duly elected from that Ward.

2. The facts of the case in brief are these. In March-April 1957, general elections were held for replacing the pre-existing committee after the expiry of its time. Nominations were made for the various Wards of the municipality and the position obtaining in Ward No. 1 was as follows:--

- (1) Phoolchand (respondent No. 1) nominated on 26-2-57 (serial No. 31).
- (2) Kalyandas respondent No. 2) nominated on 26-2-1957 (serial No. 38).
- (3) Ramkumar Sharma (petitioner) nominated on 1-3-1957 (serial No. 57)
- (4) Janki Prasad (respondent No. 3) nominated on 1-3-1957 (serial No. 69)

(5) Khillooram nominated on 1-3-1957 (serial No. 109)

3. After Ramkumar Sharma had filed on 1-3-1957 his nomination paper for ward No. 1, he filed on the same date another nomination paper for Ward No. 22 (serial No. 100), However, on the date of scrutiny (7-3-1957), the Supervising Officer found Ramkumar Sharma's nomination for ward No. 22 to be invalid as contravening the provisions of section 14 (3) of the Act and thereupon he withdrew that nomination.

4. So far as ward No. 1 was concerned Khillooram withdrew his nomination paper two days before the date of scrutiny. The nomination of Janki Prasad was rejected on the date of scrutiny. The other 3 nomination papers for Ward No. 1 referred to in paragraph 2 were accepted as valid. Thereafter, on 18 3-1957, Kalyandas withdrew from contest, leaving in the field only Ramkumar Sharma and Phoolchand. After the poll was taken on 5-4-1957, Ramkumar Sharma, who Secured a large number of votes, was notified as elected from the Ward.

5. Phoolchand, in his election-petition, urged that Ramkumar Sharma had filed on 1-3-1957 two nomination papers for two different wards that both the nomination papers were invalid as contravening section 14 (3) of the Act and that the election of Ramkumar Sharma from Ward No. 1 was therefore void. This election-petition was allowed by the District Judge, Chhindwara, who, while declaring void the election of Ramkumar Sharma from Ward No. 1, also declared Phoolchand to be duly elected from that Ward.

6. The order of the District Judge has been challenged on three grounds. In the first place, the District Judge was not empowered to decide the election-petition. Secondly, the election-petition was bad for non-joinder of Khillooram, who had withdrawn his nomination paper for Ward No. 1 before the date of scrutiny. Lastly, the view that both the nomination papers of Ramkumar Sharma were invalid is contrary to law.

7. As provided by sub-section (2) of Section 20-A of the Act, an election petition may be presented to "the District Judge or Additional District Judge or to a Civil Judge especially empowered by the Provincial Government in this behalf". In my view, this means that an election petition may be heard by the District judge or Additional District Judge. It may also be heard by a Civil judge if he is especially empowered in that behalf, The Statute itself empowers the District Judge or Additional District Judge to entertain and dispose of an election-petition and he has not to be empowered in that behalf : Bhajraj vs. State of Madhya Pradesh (1958 J LJ 509). There is, therefore, no substance in the first ground.

8. The second ground has reference to Rule 3 (b) of the Rules framed u/s 176 (2) (i) of the Act. Having regard to the view that I have taken of this case, I do not consider it necessary to express any opinion on the point.

9. In regard to the third ground, sub-section (3) of section 14 of the Act is as follows:--

A person shall be entitled to stand as a candidate for one constituency only, whether a ward of special constituency.

In *Nandkishore vs. Lalji* ILR (1950) Nag. 975 Sen J. interpreted the sub-section as follows:--

The language of section 14 (3) is plain and means that a person is entitled to contest an election from one constituency only that constituency may be a ward or a special constituency. He cannot be a candidate for two wards, nor can he be a candidate for two special constituencies. Similarly, he cannot be a candidate for a ward and a special constituency.

10. While I agree respectfully with the meaning ascribed by Sen, J. to sub-section (3) of section 14, I would like to add that it does not, and cannot be, interpreted to, mean that a person who files a second nomination paper must forfeit his right to be a candidate on the basis of his first nomination paper. On the other hand, I am of the view that once a person has filed a nomination paper from one constituency, he has exhausted his restricted right under sub-section (3) *ibid* to stand as a candidate and ceases to be competent to file a second nomination paper from another constituency. That being so, it is the second nomination paper which must be regarded as invalid, because it was made by a person who had already made the first and was for that reason disentitled to make the second.

11. The District Judge has sought support for his decision from the following observations of Sen, J. in *Nandkishore's* case:

The supervising officer has to examine the validity of the nomination with reference to the state of affairs on the date of nomination. The object of the scrutiny is to see whether the nomination was valid on the date on which it was made. The date with reference to which the question of eligibility of a candidate is to be determined is the date fixed for the nomination and if on that date a candidate is not eligible, his nomination paper must be rejected. The candidate has to make his choice in respect of his constituency on or before the date fixed for filing the nomination papers. The choice cannot be deferred till the date of scrutiny. I am of the opinion that the nomination must be in respect of one constituency only.

In my view, these observations correctly state the law and lend no support to the view that both nominations must be regarded as invalid. They are consistent with the view that the second nomination for another ward must be regarded as invalid. If, on the other hand, the observations are regarded as laying down that both nominations must be struck down as invalid, with all due respect I find myself unable to agree.

12. In *Bapurao vs. Supervising Officer*. Gram Panchayat Miscellaneous Petition No. 291 of 1956, decided on 20-7-1956, Naik J. dealt with a case, where a duly qualified elector could, under the relevant Panchayats Rules subscribe only one

nomination paper. It was held, relying upon *Burgovne vs. Collins* (1882) 8 Q.B.D. 450, that if an elector subscribed two nomination papers, the one received first or considered first alone would be valid and the second would be invalid, as it would be by a person incompetent to do so, having subscribed the first.

13. A case, somewhat similar to the one here, came up in *Chhangaram vs. Deputy Com. missioner Bhandara*, Miscellaneous petition No. 397 of 1956, dated 6-9-56. Nandkishore's case and Bapurao's case were cited before Kotval J. and he was requested to refer the case to a larger Bench to resolve the conflict. Kotval J. observed that he did not find any deliberate decision in Nandkishore's case to the effect that in such a case both nominations had to be rejected and recalled the following passage in Nandkishore's case for his view that Sen, J. had left the question, open:

The view of the Sub-Divisional Officer that the nomination of Nandkishore was valid is not correct. Even on his reasoning the nomination paper of Masangarj should have been held to be valid as being prior in time. The nomination paper of Dayalband should have been rejected. Nandkishore was not validly nominated on the date of nomination and was therefore ineligible to stand as a candidate from Dayalband ward.

In the end, Kotval J. accepted the principle laid down in Bapurao's case.

14. It is obvious that Nandkishore's case is distinguishable on facts, since the candidate there was returned on the basis of his second nomination from another ward. Two subsequent cases decided by Naik, J. and Kotval, J. clearly accept the principle that in such cases the second nomination should be rejected as invalid. In this view, the decision of the lower Court cannot be sustained.

15. The revision succeeds and is allowed. The lower Court's order dated 12th October 1957 is set aside and the election petition is dismissed. The Respondent No. 1 (Phoolchand) shall bear his own costs and pay those of the petitioner (Ramkumar Sharama) throughout. Counsel's fee here Rs. 50/- . The outstanding amount of security deposited by the petitioner shall be refunded.