

(2007) 07 MAD CK 0006

In the Madras High Court

Case No : Election Petition No. 9 of 2006

S. Victor

APPELLANT

Vs

The Chief Election Commissioner and Others

RESPONDENT

Date of Decision : 24-07-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Registration of Electors Act — Section 22, 23, 23(1)
Registration of Electors Rules, 1960 — Rule 13(3), 26, 26(1)
Representation of the People Act, 1950 — Section 22
Representation of the People Act, 1951 — Section 100(1), 33, 33(4), 33(5), 36

Citation : (2007) 07 MAD CK 0006

Hon'ble Judges : S.R. Singharavelu, J

Bench : Single Bench

Advocate : C.D. Johnson, for the Appellant; P.S. Raman, S.C. for J. Ravindran, for 5, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Singharavelu, J.—The averments found in the election petition are as follows: The election for 13th Tamil Nadu State Assembly was

notified on 13.04.2006, nominations had to be filed on or before 20.04.2006, the date of scrutiny of nominations was fixed to be on 21.04.2006,

the last date for withdrawal of nomination was 24.04.2006 and the polling was held on 08.05.2006. For the Assembly Constituency of

Tiruchirappalli-II, the petitioner filed nomination on 20.04.2006 with full address and necessary documents to prove his eligibility to contest the

election as an independent candidate. He has also deposited Rs. 5,000/- towards the election deposit. Third respondent is the Returning Officer.

The Returning Officer issued a proceedings in Form No. VI stating that the nomination paper will be taken up for scrutiny at 11.00 A.M. on

21.04.2006. The petitioner appeared through his counsel before the third respondent during scrutiny. As the name of the petitioner was not found tallying with that of the Electoral List, the Returning Officer has called for explanation from the petitioner, who also explained stating that the error found in voters list is that his mother's name is shown as his father, that error occurred at the time of preparation of voters list. Soon after the said publication, petitioner gave an application to correct the said error by Form No. VIII, which was also accepted by the appropriate authority on 22.03.2006 and issued acknowledgement therefor. Despite the said application of petitioner no correction of the said error was made in the electoral list. However, the petitioner presented before the Returning Officer the Ration Card, Passport, School Transfer Certificate, to show that his father name is Susainathan and mother name is Mariya pushpam. Petitioner also produced voter list published in the year 2001, wherein his father's name did tally. Petitioner's mother name Mariya pushpam was printed above the petitioner's name, which indicated her husband as Susainathan. However, the third respondent without considering the explanation offered by the petitioner has rejected his nomination on 21.4.2006. That is a non-speaking order, without application of mind, whereby the electoral right of the petitioner was curtailed. Even in the electoral identity card issued on 19.4.2006 same mistake crept in. Had the Form VIII presented by petitioner was duly considered, suitable correction would have been made and identity card would have been issued by describing his father's name. Soon after the rejection by the Returning Officer of the nomination the petitioner issued a Fax message to second respondent for his intervention. But none responded. Therefore the petitioner filed a writ petition in W.P.No. 3661 of 2006 on 22.4.2006 under Article 226 of the Constitution before the Madurai Bench. Petitioner was directed to prefer election petition. The third respondent failed to apply Section 33(4) of the Representation of the People Act, 1950 while rejecting the nomination, his order was in contravention of Section 22 of the Representation of the People Act 1950. Therefore he prayed that the election of the 5th respondent, successful candidate is to be set aside, order re-poll by declaring the rejection of petitioner's nomination as improper.

2. In the counter affidavit filed by the 5th respondent it is contended that the 5th respondent is the successful candidate who was in no way responsible for the rejection of petitioner's nomination. Mere filing of Form VIII for correction without follow up action is not sufficient. Petitioner failed to make necessary correction in the electoral list within the prescribed time. The 5th respondent was elected with a huge margin of 16,300 votes during the elections held in May 2006. The Returning Officer, third respondent is duty bound to follow the rule prescribed, while entertaining the nomination papers filed by the candidates. The petitioner has given his father's name as Susainathan in the nomination. However, in the electoral list filed along with the nomination form petitioner's father's name has been shown as Maria Pushpam. Therefore, the Returning Officer having found that there is material discrepancy in the particulars provided by the petitioner has rejected the nomination. It was rejected at petitioner's own lapses in not rectifying the electoral rolls. The claim of the petitioner that he had acquired peoples support by social work is false. The production of voters list published in 2001 is not sufficient to accept the nomination; that petitioner as an independent candidate has to establish that his presence in the fray would have an impact in the outcome of the elections. There is no plea in that respect. The rejection of nomination of petitioner has arisen out of a substantial error which is apparent on the face of record. The 5th respondent has won the elections with a huge margin of 16630 votes and by any stretch of imagination the petitioner's presence in the fray would not have altered the outcome of the elections. So the election petition is liable to be dismissed. Respondents 4, 6 to 14 have not contested this election petition and they were set ex parte.

3. The point for determination is: Whether the election is to be set aside on the ground of improper rejection of nomination of petitioner?

Point: The petitioner seeks to set aside the election held for 167, Tiruchirappalli II Assembly Constituency on 08.05.2006 by declaring it as null, void; and also to declare the result of election in favour of the 5th respondent as invalid. According to that result the 5th respondent was the returned candidate who was said to have won the election with a margin of 16630 votes. This prayer was sought for, on the sole ground of

improper rejection of the nomination of petitioner.

4. The election of 13th Tamil Nadu State Assembly was notified on 13.4.2006. According to the notification the schedule of election was as under:

(i) Last date for filing of nomination paper 20.4.2006

(ii) Date of scrutiny of nomination paper 21.4.2006

(iii) Date of withdrawal of nomination 24.4.2006

(iv) Date of poll, if any 8.5.2006

(v) Date for counting of votes and

declaration of result.

5. In the Electoral List marked as Ex.P1 the inmates of Door No. 29 were mentioned as follows in Roll No. 340 to 343:

6. The third respondent, Returning Officer has produced the records of election which were marked as Exs.C1 to C4. Under Ex.C1 the

nomination, the petitioner's name and address were described as follows:

Candidates name S. Victor

...

Father's name ... D.M. Susainathan (Late)

Address ... Old. No. 2/New No. 2, Puthuvai Nagar,

Sinthamani, Tiruchy - 620 002.

The said nomination was submitted at 2.15 P.M. on 20.04.2006.

7. On 21.04.2006 the third respondent rejected it by contending that the description of name made in the nomination is not tallying with that found

in the voters list. Ex.C2 is the question form for the scrutiny of nomination paper wherein also for the question in column 3, as to whether the

nomination paper is in the form prescribed, it was stated ""Part III and IIIA is not properly filled by the candidate""; and in column 6 for the question

as to whether the candidate's name has been found in the electoral roll, it was stated by the Returning Officer, ""not found as mentioned in the

nomination paper"". It was again stated that opportunity for explanation is offered to the candidate.

8. Ex.C3 is the explanation dated 21.04.2006 of the candidate, which was received by the Returning Officer at 12.30 hours on the same day.

Petitioner explained that his father's name is Susainathan and the mother's

name is Maria Pushpam; and that mother's name was erroneously described as father's name in the electoral list; that even on 22.03.2006 an application for the required correction was made by him; in proof of which acknowledgement therefore along with the passport, family ration card and School Transfer Certificate were filed with this explanation.

There is an order found below the said application under Ex.C3 by the Returning Officer made on 21.04.2006 itself, according to which excepting the acknowledgement of Form VIII no other copy from the election officer of Trichy-II Constituency was submitted by the petitioner and as description of his name found in nomination do not tally with the electoral list the same was rejected. Under Ex.C4 we find the acknowledgement of petitioner for receiving the said rejection order made on 21.04.2006.

9. The draft electoral list for 2006 was marked as Ex.P1, wherein Sl.No. 342 describes Victor, with father's name Maria Pushpam. It is also true in Sl. No. 340 the husband name of Maria Pushpam was described as Susainathan. In Sl. Nos. 341 and 343 mother's name of Henridoss and Karmal were described as Maria Pushpam. All the four were shown to live under New Door No. 29. According to the learned Counsel for the petitioner by an application of mind by the Returning Officer it would be made known that Susainathan's wife was Maria Pushpam and whose children are Henrydoss, Karmal and the petitioner and they live under the same Door No. 29. Therefore he should have found that the description of Maria Pushpam as father's name of petitioner is ignorable clerical mistake.

10. In this connection reliance was placed upon (1) Ram Bhual Vs. Ambika Singh, (2) Somnath Rath Vs. Bikram K. Arukh and Others, (3) AIR 2004 SC 1067 (Harikrishna Lal v. Babu Lal Marandi)(4) AIR 1999 SCW 4439 (Ms. Krishna Mohini v. Mohinder Nath Sofat)

The facts in the above said fourth cited case AIR 1999 SCW 4439 is that a candidate whose nomination was rejected did not file election petition nor withdraw security deposit and that he was dummy and non serious candidate were held as immaterial fact and it was further held that rejection was illegal. Those facts are not applicable to the facts of the present case.

11. The second cited case Somnath Rath Vs. Bikram K. Arukh and Others, also dealt with a different type of case other than the facts of this one.

In that case it was held that Public distribution dealership is not a disqualification

and therefore rejection of nomination based upon that ground is not proper. That aspect is not relevant in this case.

12. In the above said first cited case Ram Bhual Vs. Ambika Singh, one Sita Ram being an independent candidate, had to be proposed by at least

ten qualified persons. Sant Lal, the 9th proposer, was shown at Serial No. 392 in Part 91 in the Voters' list. The Returning Officer on finding that

Serial No. 392 in the Voters' list was not Sant Lal, straightway rejected the nomination of Sita Ram. Sita Ram, of course did not agitate the

matter, except claiming to have given a complaint to the Returning Officer on the same day. In fact in that case Sant Lal name was found in Serial

No. 352 instead of 392. Both Serial Nos. were found on the same page of the Voters' list. This was held as a minor error as per Section 33(4)

and 36(4) of the Representation of the People Act 1951. So, rejection was held as improper.

13. In the third cited case AIR 2004 SC 1067 it was held that printing mistake in Voters' list as to real name of candidate is not a ground for

rejection. In that case the name printed in the electoral roll is Babu Lal Marandi, whose father's name and Village name were correctly printed.

The only defect was that in between Babu and Marandi the word Lal was missing and not printed. The correct name of the respondent is Babu Lal

Marandi S/o Sri Chhotu Marandi, Village Kodaibank, P.O. Chandauri, P.S. Tisri, District Giridih but by mistake in the voter list, his name is

printed as Babu Marandi son of Sri Chhotu Marandi and other particulars of Village etc., were correct. Apparently in the voters' list the word Lal

was left out due to mistake. In the next Serial No the name of his wife Shanth Marandi, wife of Babulal Marandi is mentioned. In continuity the

name of the respondent's son Sanstan Marandi, son of Babu Lal Marandi is mentioned. Therefore, by application of mind it could have been

arrived that it was only a printing mistake.

14. Mr. C.D. Johnson, learned Counsel for the petitioner pointed out that as per the above cited cases 1 and 3 clerical and type mistakes could be

ignored and before ever the Returning Officer rejects the nomination paper he should see the other corresponding serial Nos. of the said family

members living in the same Door No. and evolve the variation between the electoral roll and the nomination paper and if he found that it is a small

negligible variation due to type or printing mistake then he should not reject the nomination paper.

15. Mr. P.S. Raman, learned Senior Counsel appearing for the 5th Respondent pointed out that u/s 100(1)(c) of the Representation of the People

Act, 1951, it is true that the High Court is of the opinion that any nomination has been improperly rejected that can be a valid ground for declaring the election to be void.

16. The learned senior counsel for 5th respondent drew my attention to the requirements for a valid nomination as provided u/s 33 and 36 of the above Act.

Section 33(4) runs as follows:

On the presentation of a nomination paper, the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidate and

his proposer as entered in the nomination paper are the same as those entered in the electoral rolls:

Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or

any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in

regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll

or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such

as to be commonly understood; and the Returning Officer shall permit any such misnomer or inaccurate description or clerical, technical or printing

error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the

electoral roll or in the nomination paper shall be overlooked.

Section 36(4) runs as follows:

The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

17. Thus it is the duty of the Returning Officer to satisfy himself that the names and electoral roll numbers of the candidate and his proposer as

entered in the nomination paper are the same as those entered in the electoral rolls. The Returning Officer shall not reject any nomination paper on

the ground of defect which is not of a substantial character. No misnomer or inaccurate description or clerical or technical or printing error in

regard to the name of the candidate shall affect the full operation of the electoral roll; and the Returning Officer shall permit any misnomer or

inaccurate description or clerical, technical or printing error to be corrected and that the same can be overlooked. The object of this provision

seem to avoid impersonation of a candidate.

18. In the event of there being a substantial error in between the electoral roll and the nomination paper the same can be corrected only by the

competent authority and as provided in Rule 13(3) and Rule 26 of The Registration of Electors Rules, 1960. Rule 13(3) runs as follows:

Every objection to a particular or particulars in an entry in the roll shall be -

(a) in Form No. VIII; and

(b) preferred only by the person to whom that entry relates.

Rule 26(1) runs as follows:

Every application u/s 22 or Sub-section (1) of Section 23 shall be made in duplicate in such one of the Forms 6, 7, 8, 8A and 8B as may be

appropriate

Provided that the statements in Forms 2, 2-A and 3, from persons having service qualifications, received after the final publication of the electoral

roll shall be deemed to be the applications under Sections 22 and 23.

Therefore, in summing up the above details, we may put forth that an ignorable error between the nomination paper and the electoral roll can be

cured by the Returning Officer himself as provided u/s 33(4) and 36(4). He can also conduct a summary enquiry. He is not duty bound to make a

roving enquiry. In case if the defect is of substantial nature then it could be rectified in such a manner as provided in Rule 13(3) and Rule 26(1) as

aforesaid; wherein it is mentioned that the candidate should apply for rectification of the defect to the competent authority under Form No. VIII.

19. In the present case the enumeration officer is Municipal Commissioner, Trichy, who is different from the returning officer. As a matter of fact

the petitioner had taken steps to correct the defect. His evidence in this regard is as follows:

...I submitted Form VIII for carrying out the necessary correction in the draft

electoral list in respect of my name. Ex.P2 is the copy of Form VIII.

After submitting Form VIII, the error was not rectified immediately.... Several times I gave representation to the Electoral Officer to rectify the

error in the draft electoral list with regard to my name. The Electoral Officer told me that the rectification work is going on and it will take time.... I

informed the Electoral Registration Officer, who were camping for door verifications in my area about this error in the identity card also.... The

Returning Officer orally informed me at the time of scrutiny that certain details in my nomination papers are not proper.... For the objection raised

by the officer, I submitted four documents viz., Ex.P8 is my School Transfer Certificate, Ex.P9, my passport, Ex.P10 my ration card and Ex.P11

copy of the draft Electoral List published in the year 2001. Although the other contesting candidates do not oppose to my explanation above

mentioned, my nomination was rejected.... The order of rejection of my nomination is Ex.P12.... I have immediately filed a writ petition before the

Madurai Bench of this Hon"ble Court. The order copy thereof is Ex.P16. In the writ petition it was mentioned that the remedy lies in filing Election

Petition and so this petition was filed by me. I have waited till the election was completed.... Because of illegal rejection of my nomination, I could

not contest the election....

In the course of cross-examination it was further deposed as follows:

...I have seen the draft Electoral rolls only 15 days prior to the announcement of election. In the draft electoral roll my name was correctly

mentioned. Because of my mother's name was wrongly described in the place of my father's name, I filed Ex.P2 on 22.03.2006.... So far as my

name and particulars are concerned, the same was described in my nomination and in the draft electoral rolls. But the only difference was wrong

description of my father's name in the form.

However, P.W.1 himself has admitted in the course of cross-examination as follows:

...My name as described in the nomination was different from that found in draft electoral rolls.

20. Even in Ex.C3 the explanation dated 21.4.2006 of petitioner given to the Returning Officer (RDO) it has been mentioned that only on

21.4.2006 the mistake in describing the father's name was found wrongly

mentioned as Maria Pushpam instead of Susainathan. It was further mentioned therein in this regard that as early as on 22.3.2006 the petitioner has given Form No. VIII to the enumeration officer in order to correct the defect. Even though it was claimed in such application of the petitioner as if acknowledgement for submitting Form No. VIII to the enumeration officer along with the documents annexed with that application was given to the Returning Officer neither the annexure nor the acknowledgement of the enumeration officer was found given to the returning officer. In the rejection order found under Ex.C2 it was also mentioned that no copy of order rectifying the defect as aforesaid was filed before the Returning Officer and so the nomination was rejected. Of course the candidate has produced his passport, S.S.L.C. certificate, wherein his name was described as son of Susainathan. Although there are enough materials to cure the defect, the competent person to correct the defect is only the Enumeration Officer and not the Returning Officer.

21. The argument on behalf of the petitioner that if Maria Pushpam was described as mother of Victor in the electoral roll instead of father of Victor, then everything would be set right and that needs only substitution of in Tamil instead of indicating mother and father respectively. This contention is unacceptable; because even if that clerical mistake is ignored then also there is variance in between the electoral roll and the nomination, admittedly inasmuch as one is described as Victor son of Susainathan and the other is Victor son of Maria Pushpam. The further argument advanced on behalf of the petitioner is that all the inmates of Door No. 29 as found in the electoral roll if taken into consideration would indicate that Maria Pushpam was the wife of Susainathan, whose children were Hendrydass, Victor and Karmal, and therefore, one could understand that there was no defect, as Victor was son of Maria Pushpam as well as Susainathan. This could be found only by a roving enquiry, which is not expected from the returning officer, what he can do was only a summary enquiry and he is competent only to correct clerical or typographical mistake. Only by a roving enquiry one could understand that there was no impersonation made by the petitioner because of the reason that he was described as son of Susainathan in the nomination and as son of Maria Pushpam in the electoral roll. Unless there is roving

enquiry we cannot say Maria Pushpam indicates the name of a female person, as some times Maria Pushpam also indicates the name of a male

person. Therefore, roving enquiry is necessary, which could not be done by the Returning Officer.

22. Application of mind by the Returning Officer, that is sought by the petitioner may not go in his favour. This is so because unless and until a

roving enquiry is made by the Returning Officer which forbidden, he cannot make a decision as to whether Maria Pushpam is necessarily a female.

He cannot also rule out the possibility that Maria Pushpam also be a male member and the other description contained in Serial Number 341 to

343 may only be erroneous. To avoid these probabilities and to come only to the conclusion in favour of the petitioner there could be a roving

enquiry as, the error happens to be a substantial one in nature.

23. Regarding substantial error it could be got rectified only by following the procedures mentioned in Rule 13(3) and 26(1), in which case it

should be by making Form No. VIII to the enumeration officer viz., the Municipal Commissioner, whereas the Returning Officer is Revenue

Divisional Officer. Therefore, whatever could be done by the competent authority viz., the Municipal Commissioner, the enumerating officer could

not be done by the returning officer.

24. This aspect has been mentioned in *Narbada Prasad Vs. Chhaganlal and Others*, as follows:

It is well understood rule of law that if a thing is to be done in a particular manner it must be done in that manner or not at all. Other modes of

compliance are excluded.

In that case there was change in serial number of the electoral roll. The candidate did not produce the kind of evidence which Section 33(5) of the

Representation of the People Act, 1951 requires to be produced when a candidate is registered as a voter in some other constituency. It was held

that one was to produce any of the documents mentioned before the Returning Officer or to have filed it earlier with his nomination paper. He did

neither. He produced a certificate from an officer who it is not proved to our satisfaction had the authority to issue a certified copy of the electoral

roll. It was also held that there was no compliance with the provisions of Section 33(5) of the Representation of the People Act. It is in that context

it was observed that it is a well understood rule of law that if a thing is to be done in a particular manner it must be done in that manner or not at all.

Other modes of compliance are excluded. Likewise in this case also a substantial defect in description of the name of the petitioner in the electoral

roll and the nomination could be rectified only as provided under Rule 13(3) and 26(1) of the Registration of Electors Rules 1960 and not

otherwise. In fact the petitioner had taken steps in filing Form No. VIII as provided in the above Rule, but no such rectification was obtained by

him from the competent authority. So the defect remains a substantial one without getting rectified and therefore, there was no other go for the

Returning Officer but to rightly reject the same.

25. The learned senior counsel for 5th Respondent also relied upon Brij Mohan Vs. Sat Pal, . In that case the election petition was filed by Sat Pal.

His case was that Dog Ram was registered as an elector at Serial No. 177 and house No. 57 in part 39 of the electoral roll of the Jind

constituency. Although the name and postal address of Dog Ram was given correctly in the nomination paper, the part of the electoral roll was

mentioned as 57 instead of 39 by an inadvertent mistake committed by the person who filed the nomination paper. The order of rejection of the

Returning Officer was as follows:

Particulars of the candidate and the proposer have been wrongly entered in the nomination paper. The candidate who is present in person failed to

show me the voters" list where his and the proposer"s names are entered. Hence rejected.

In these circumstances it was held as follows:

The serial numbers and part numbers mentioned in the nomination paper relate to Ami Lal of Jalapura Khurd and Premo wife of Satbir of Barasna

village and not to the candidate Dog Ram and the proposer P.W.2. It is possible to say generally and in the abstract that all errors in regard to

electoral roll numbers of the candidate and the proposer in the electoral rolls or nomination papers do not constitute defects of a substantial

character. They would not be defects of a substantial character only if at the time of the scrutiny the Returning Officer either by himself with the

material placed before him during the scrutiny or with the assistance of the candidate or his proposer or any other person is able to find out the

correct serial number of the candidate and the proposer by reference to the correct part number of the electoral roll. If that is not the case, he

would be committing a grave error by accepting the nomination paper without verifying whether the candidate is a voter in that or any other

constituency of the State and whether the proposer is a voter in that constituency.... The candidate and the proposer are always expected to go

fully prepared to meet any objection that may be raised by any candidate or even by the Returning Officer himself suo motu at the time of the

scrutiny and they cannot be expected to go any the less prepared merely because the Returning Officer had received the nomination paper without

raising any objection. It is at the time of scrutiny which is done in the presence of all concerned that the nomination papers come up for more

detailed consideration at the hands of the Returning Officer against whom there is no estoppel in regard to the statutory duty of scrutiny.

Therefore the rejection order of Returning Officer was upheld.

26. This case was referred to in a subsequent case law in Mathura Prasad Vs. Ajeem Khan, . In that case at the time of scrutiny, the Returning

Officer had pointed out that voter number was not mentioned in the nomination paper and Jaiprakash (R.W.3) who was the proposer of

Ramprakash had told the Returning Officer that he would (ask) Ramprakash regarding the above defect. The Returning Officer then put that

nomination inform paper aside and took other nomination papers for scrutiny. Jaiprakash remained present in the hall awaiting the arrival of

Ramprakash. The Returning Officer after scrutinising all the other nomination papers again called out the name of Ramprakash. As Ramprakash

had not arrived till then, Jaiprakash left the hall after informing the Returning Officer that he would fetch Ramprakash. Jaiprakash left the place and

went in search of Ramprakash but his efforts to search Ramprakash went in vain and he did not return back before the Returning Officer. In view

of the above circumstances, the Returning Officer passed the order rejecting the nomination paper of Ramprakash u/s 33(4) of the Act.

In that context it was held as follows:

It depends on the facts and circumstances of each case to find as to what mistake in a nomination paper can be considered a mistake of substantial

nature. It is correct that the Returning Officer should not reject a nomination

paper merely on a mistake of technical or formal nature, where the identity of the candidate can be ascertained by him on the material made available to him. He should also give an opportunity to the candidate or his representative present at the time of scrutiny to remove the defect. However, in case neither the candidate nor his representative be present and without removing such defect in the nomination paper the identity of the candidate cannot be ascertained, then there is no statutory duty cast on the Returning Officer to make a roving enquiry by going through the material placed before him and to remove such defect himself.

(emphasis supplied)

Thus where the candidate was not identified as per the electoral roll and neither the candidate nor any representative on his behalf assisted the

Returning Officer in curing the defect the rejection of the Returning Officer of the nomination was held as correct.

27. In 1997 (1) J LJ 340 (SC) it was held that the question whether the defect is of a substantial character or not would depend on the facts of

each case. It was further held that : ""Unless the defect is one which can be per se noticed and corrected at the stage of Section 33(4) or later at the

stage of Section 36(4) without the need to refer to various other documents the same cannot be said to be of a non-substantial character.

(emphasis supplied) In the instant case also the defect as to the number could have been said to be not of a substantial character if the appellant

had shown that the name of the proposer appeared on the very same sheet at Serial Number 138 instead of 136 i.e. only two steps away. In that

case one can say that the Returning Officer could have verified the same if he had exercised due diligence. In such a situation even if the appellant

had his proposer absent the court could have taken the view that the defect was nor of a substantial nature. But the defect cannot be noticed unless

the Returning Officer is required to sift through various other documents or the voters" list or is required to undertake an enquiry as to whether the

proposer"s name appears anywhere else in the voters" list. The defect may not be one capable of being cured without the assistance of the

candidate or his proposer and in such a situation he would be justified in rejecting the nomination paper. (emphasis supplied) In the instant case

since there is no evidence to suggest that the name of the proposer appeared on

that very sheet at Serial Number 138 instead of 136 in the electoral roll, we find it difficult to find fault with the rejection of the nomination paper by the Returning Officer.

28. In the above cited case reference of an observation made in Bhogendra Jha Vs. Manoj Kumar Jha, was culled out in the following lines:

Under Section 36(4) of the Act, the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a

substantial character. u/s 36(1), the Returning Officer has the power to conduct an enquiry (emphasis supplied). It is settled law that it is a

summary enquiry. When the Returning Officer scrutinise the nomination paper, the parties or the nominees are required to be present and if they

seek liberty to place the necessary material, the Returning Officer is enjoined to adjourn the case to the next day. In case they are able to place the

necessary material and satisfy the Returning Officer of the correctness of the enrolment as a candidate or the address of the nominee, the Returning

Officer would consider the same. But he is not expected to sift the evidence and find the placement in the electoral roll, the name and particular of

the nominee

(emphasis supplied).

29. It was further submitted by the learned senior counsel for the respondent that the petitioner cannot be heard to say that he had applied to the

enumerating officer in Form No. VIII for rectifying the defect and so the Returning Officer should not reject the nomination. In support of the

above contention, a proposition was taken from the following observation made in Shaligram Shrivastava Vs. Naresh Singh Patel, :

Therefore providing a pro forma, eliciting necessary and relevant information in the light of Section 8 of the Act to enquire as to whether the person

is qualified and not disqualified, is an act or function fully covered under Sub-section (2) of Section 36 of the Act. The Returning Officer is

authorised to seek such information to be furnished at the time or before scrutiny. If the candidate fails to furnish such information and also absents

himself at the time of the scrutiny of the nomination papers, is obviously avoiding a statutory enquiry being conducted by the Returning Officer

under Sub-section (2) of Section 36 of the Act relating to his being not qualified or disqualified in the light of Section 8 of the Act. It is bound to

result in defect of a substantial character in the nomination.

30. When the Court was anxious to know as to whether the petitioner has also burden to prove that had he been allowed to contest he would have

changed the result and that this factor would go against the 5th Respondent. The learned senior counsel Mr. P.S. Raman fairly made it clear that

the improper rejection of the nomination paper by itself and without anything more is a ground u/s 100(1)(c) to declare the election of returned

candidate, void, as was observed in *Somnath Rath Vs. Bikram K. Arukh and Others*, . The Respondent cannot be heard to say that the petitioner

if allowed to have contested would not have made any difference in the voting pattern. This was as also so held at para 19 of the judgment in *Anil*

Baluni Vs. Surendra Singh Negi, ""In such a case the only issue before the Court is to examine the correctness and propriety of the order by which

the nomination papers of a candidate are rejected and the scope of inquiry is limited to the said consideration."" Therefore the say of petitioner if

any, that had he been allowed to contest, there may be variation in result, may not be relevant his case. He has also not produced any material in

that regard, in his support.

31. Thus, it is obvious that the difference in between the electoral roll and nomination paper in respect of description of the name under the

particulars of name of parents of the petitioner was of substantial character and so it can be classified as substantial error, the cure of which would

be made by a competent authority as per the provisions related thereto and not by the Returning Officer, who could only correct any numerical,

typographical or printing error. The fact that a roving enquiry is required would also indicate that it was an error substantial in nature and not a

typographical mistake. The fact that Form No. VIII has been given was made known to the competent authority but no orders have been passed.

Therefore, the error is found in existence at the time of scrutiny without getting corrected. Therefore, the action of the Returning Officer cannot be

said as illegal.

32. Having given a careful consideration to the evidence on record and the submissions made by the learned Counsel for the parties, I have no

hesitation in holding that the nomination paper was rejected in a proper manner and there is no illegality in the same.

In the result, the Election Petition is dismissed.