
(1963) 04 MP CK 0010
In the Madhya Pradesh High Court
Case No : First Appeal No. 33 of 1962

Shanti Swaroop Sharma

APPELLANT

Vs

Abdul Rehman Farooqui

RESPONDENT

Date of Decision : 29-04-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10
Conduct of Elections Rules, 1961 — Rule 2, 4
Evidence Act, 1872 — Section 101, 102, 103, 104
Representation of the People Act, 1950 — Section 17, 23(3)
Representation of the People Act, 1951 — Section 100(1), 116A, 123(4), 169, 33

Citation : AIR 1965 MP 55 : (1965) ILR (MP) 608 : (1965) JLJ 1176

Hon'ble Judges : S.P. Bhargava, J;K.L. Pandey, J

Bench : Division Bench

Advocate : B.R. Mandlekar and P.R. Padhya, for the Appellant; Y.S. Dharmadhikari, for the Respondent

Final Decision : Dismissed

Judgement

Pandey, J.—This appeal u/s 116A of the Representation of the People Act, 1951 (hereinafter called the Act), is directed against an order of the Election Tribunal, Chhindwara, dated 24 September 1962 whereby, on an election petition filed by Abdul Rehman Farooqui (respondent) whose nomination was rejected by the Returning Officer, the election of Shanti Swaroop Sharma (appellant) to the Madhya Pradesh Legislative Assembly from the Parasia constituency was declared to be void on the ground that the nomination of Abdul Rehman Farooqui was improperly rejected.

2. Shanti Swaroop Sharma Las also filed First Appeal No. 8 of 1963 against another order passed by the same Tribunal on 22 December 1962 by which, on an election petition filed by an elector Shamshul Haque, the same election was again declared to be void on two grounds:

(i) The nomination of Abdul Rehman Farooqui was improperly rejected.

(ii) The returned candidate committed certain corrupt practices.

This judgment shall dispose of the two appeals.

3. In the general elections held " in the first quarter of 1962, Shanti Swaroop Sharma, Kashi Prasad Verma, Ramswaroop, R. K. Haldulker, Hariprasad and Abdul Rehman Farooqui filed their nomination papers for the Parasia Assembly constituency. While the two papers filed by Abdul Rehman Farooqui were rejected, those filed by the other five candidates were accepted. The poll took place on 19 February 1962 with the following result:

Contesting Candidates Number of votes polled.

Shanti Swaroop Sharma 16,803 Kashi Prasad Verma 8,223 Ramswaroop 2,516
R.K. Haldulker 1,426 Hariprasad 854

In accordance with this result, Shanti Swaroop Sharma was declared duly elected from the constituency.

4. In the election petition filed by Abdul Rehman Farooqui, he claimed a declaration that the election of Shanti Swaroop Sharma was void. The only ground urged in support of that relief was that his nomination was improperly rejected for the unsubstantial reason that the name of the constituency was not entered in columns 2 and 5 of his nomination papers, more particularly when his name and that of his proposer were, at the time of filing the nomination papers and also at the time of scrutiny, pointed out to the Returning Officer from the relevant parts of the electoral roll of the Parasia constituency.

5. In the other election petition filed by Shamshul Haque, he claimed, in addition to a declaration that the election of Shanti Swaroop Sharma was void, a further declaration that Kashi Prasad Verma was duly elected. For the reliefs claimed by him, Shamshul Haque relied, inter alia, upon the following grounds:

(1) The nomination of Abdul Rehman Farooqui was improperly rejected.

(2) The returned candidate published and distributed, by himself and through his agents, the pamphlets Exs. P-3 and P-4 containing false statements relating to the personal character of another contesting candidate, Kashi Prasad Verma,

(3) The returned candidate and his agent Gumansingh orally published another false statement relating to the personal character of Kashi Prasad Verma, namely, that he had amassed by unfair means property worth Rs. 40,000/-.

6. The Election Tribunal accepted the grounds mentioned in the last paragraph, declared the election of Shanti Swaroop Sharma to be void and recorded, as required by Section 99 of the Act, that he had committed the corrupt practices indicated in that paragraph.

7. The first point urged before us is that in view of the fact that an election petition had been previously filed by elector Shamshul Haque, the other election petition by Abdul Rehman Farooqui on the same ground ought to have been

stayed u/s 10 of the CPC and the Election Tribunal acted without jurisdiction in proceeding with, and deciding earlier, the subsequently instituted petition. In our opinion, there is in this contention no substance. u/s 90(1) of the Act, every election petition has to be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the CPC to trial of suits, but this is expressly subject to the provisions of the Act and the rules made thereunder, including Section 87 which reads :

"Where more petitions than one are presented in respect of the same election, the Election Commission shall refer all of them to the same Tribunal, which may, in its discretion, try them separately or in one or more groups."

Although Section 10 of the Code is so worded that, when the conditions therein specified are fulfilled, the Court has no discretion in the matter, Section 87 expressly confers upon the Election Tribunal a discretion in the matter. That being so, when the Tribunal, in its discretion, proceeded with the subsequently instituted election petition, the exercise of that discretion cannot be challenged on the basis of the provisions of Section 10 of the Code. This is more particularly so when only Shamshul Haque applied for consolidation of the two election petitions and Shanti Swaroop Sharma did not make any application u/s 10 of the Code and thereby waived his right to have the proceedings in the subsequently instituted election petition stayed. As pointed out by this Court in AIR 1937 132 (Nagpur) Section 10 of the Code merely lays down a rule of procedure which may be waived.

8. The second point is that, having one declared the election of Shanti Swaroop Sharma to be void on the election petition of Abdul Rehman Farooqui, the same Tribunal ought not to have, proceeded to make the same declaration once again on another election petition and it had, in any event, no jurisdiction so to do on general principles of res judicata. The short answer to this contention is that only one ground was common to the two election petitions and that, since there were charges of corrupt practices in the second petition, it had to be tried for the purpose of naming, as required by Section 99 of the Act, the persons guilty of those practices. Again, the conclusion recorded in the first decided case that the nomination of Abdul Rehman Farooqui was improperly rejected may, as between him and Shanti Swaroop Sharma, well operate as res judicata against the latter, but that can be of no advantage to him when the same conclusion was reached in the other case.

9. The third point is that the election petition filed by Shamshul Haque is liable to be dismissed u/s 90(3) of the Act because Abdul Rehman Farooqui, who was neither a contesting candidate nor a candidate against whom there were allegations of any corrupt practice, was improperly impleaded as a respondent in disregard of the provisions of Section 82. In our opinion, there was a full compliance with the requirements of Section 82 in that Shamshul Haque duly impleaded all the contesting candidates as parties for the reason that he had claimed a further declaration that Kashi Prasad Verma was duly elected. If

Shamshul Haque impleaded Abdul Rehman Farooqui also as a respondent, he did something more than what was strictly necessary u/s 82. But that can be no reason for taking the view that there was no compliance with the provisions of Section 82. We would also like to point out that, since Abdul Rehman Farooqui was claiming to have been duly nominated, he was a (candidate within the meaning of Section 79(b) of the Act and so entitled, u/s 90(4) of the Act, to apply for being impleaded as a respondent. In other words, he was a proper party and his joinder can be no ground for dismissing the election petition as improperly constituted. If any authority is required, we may refer to the view taken by a Division Bench of this Court in Vidya Charan Shukla Vs. G.P. Tiwari and Others, .

10. Yet another point made in support of these appeals is this. Abdul Rehman Farooqui had made an application dated 27 December 1961 for the inclusion of his name in the electoral roll of Seoni constituency and succeeded in having his name registered as an elector in that constituency. That being so, his name should be regarded, in view of Sections 17 and 23(3) of the Representation of the People Act, 1950, as having been struck off from the electoral roll of the Parasia constituency. The two provisions just mentioned read as follows :

"17. No person shall be entitled to be registered in the electoral roll for more than one constituency."

"23(3). The chief electoral officer or, as the case may be, the electoral registration officer shall, if satisfied that the applicant is entitled to be registered in the electoral roll, direct his name to be included therein:

Provided that if the applicant is registered in the electoral roll of any other constituency in the same State, the chief electoral officer or, as the case may be the election registration officer shall inform the electoral registration officer of that constituency and that officer shall, on receipt of the information, strike off the applicant's name from that electoral roll."

We are inclined to think that the provisions of Section 17 are directory and that, even if they are not observed in a particular case, it cannot be said that the nomination of any person, whose name appears in the electoral rolls of two constituencies, is void or that there was any non-compliance with the provisions of the Constitution or the Representation of the People Act, 1951. In Ramnarain Ramgopal Chamediya Vs. Ramchandra Jagoba Kadu, , the Bombay High Court took this view about a similar provision in Section 18 of the 1950 Act. We may also add that, u/s 23(3) of that Act, the electoral registration officer of the other constituency has to pass an order about removal of the name from the electoral roll of that constituency and such removal is not an automatic consequence of the entry of the name in the electoral roll of the first constituency. In our opinion, the failure of the electoral registration officer of the Parasia constituency to remove the name of Abdul Rehman Farooqui from the electoral roll of that constituency does not make the entry invalid or liable to be called in question

otherwise than by way of an appeal u/s 24 of the 1950 Act : B.M. Ramaswamy Vs. B.M. Krishnamurthy and Others, .

11. The matter is covered by Section 36(7) of the Act which reads :

"For the purposes of this section, a certified copy of any entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in Section 16 of the Representation of the People Act, 1950 (43 of 1950)."

Having regard to this provision, it is manifest that, unless there be a question about disqualification u/s 16 of the 1950 Act, a certified copy of the entry in the electoral roll shall be conclusive evidence of the fact that the person referred to in that entry is an elector, for that constituency. It is true that merely because he is an elector, there is no presumption that he has the age qualification for membership of the Legislative Assembly : Brijendralal Gupta and Another Vs. Jwalaprasad and Others, . We are of the view that, apart from the questions of age and of the disqualifications mentioned in Section 16 of the 1950 Act, the entry is conclusive evidence of the person referred to in the entry being an elector eligible for contesting the election in the constituency and it cannot be allowed to be rebutted by showing that his name was, in disregard to Section 17 of the 1950 Act, also entered in the electoral roll of another constituency. An identical question was considered by a Division Bench of this Court in Keshoprasad v. A.D. Mani 1961 MPLJ 1021. The Division Bench stated:

"In our opinion, it is not open to the appellant to question in these proceedings the validity of the acceptance of Shri Mani's nomination on the grounds urged by him. u/s 100(1)(d)(i), the Tribunal can declare the election of a returned candidate to be void if it is of opinion that the result of the election, in so far as it concerns a returned candidate, has been materially affected by improper acceptance of any nomination. The earlier clause, namely, Clause (c), relates to the power of the Tribunal to declare the election to be void if it is of opinion that any nomination paper has been improperly rejected. As laid down by the Supreme Court in Veluswami v. Raja Nainar AIR 1059 SC 422, the word "improper" which occurs in both Section 100(1)(c) and Section 100(1)(d)(i) bear the same meaning and they provide a remedy to persons who are aggrieved by an order improperly rejecting or improperly accepting any nomination paper, that the improper rejection or acceptance must have reference to Section 36(2) and that the rejection of a nomination paper of a candidate who is qualified to be chosen as a candidate for election and does not suffer from any of the disqualifications mentioned in Section 36(2) would be improper within Section 100(1)(c) and that, likewise, acceptance of nomination paper of a candidate who is not qualified or who is disqualified will be equally improper u/s 100(1)(d)(i). Thus an election cannot be declared to be void on the ground of improper acceptance of any nomination unless the ground rendering the nomination invalid is one falling u/s 36(2). Before the Tribunal, the enquiry u/s 100(1)(d) can

embrace only those matters as to qualification or disqualification mentioned in Section 36(2) of the Act of 1951. The grounds on which the learned counsel for the appellant has founded his objection as to improper acceptance of the respondent No. 1 Shri Mani's nomination are clearly not those falling u/s 36(2) and which could he raised before the Returning Officer for the rejection of the nomination. It would not have been within the competence of the Returning Officer to entertain any such objection for the rejection of the nomination paper of the respondent No. 1. Again under Sub-section (7) of Section 36 of the Representation of the People Act, 1951, a certified copy of an entry in the electoral roll is conclusive evidence of the fact that the person referred to in that entry is an "elector" for that constituency unless it is proved that he is subject to any disqualification mentioned in Section 16 of the Representation of the People Act, 1950. Section 16 of the Act of 1950 prescribes the disqualifications for registration in an electoral roll under three heads, namely, (a) that the person is not a citizen of India; (b) that he is of unsound mind and stands so declared by a competent Court, or (c) that he is for the time being disqualified from voting under the provisions of any law relating to corrupt and illegal practices and other offences in connection with elections. The objections raised by the appellant to the validity of the respondent No. 1's nomination are clearly not based on any of these disqualifications. The position, therefore, is that the Returning Officer could not have embarked upon an enquiry into the question of the status of Shri Mani as an elector when his name was entered in the electoral roll of the Bhopal constituency, and when it was not alleged that he was subject to any of the disqualifications mentioned in Section 16 of the Representation of the People Act, 1950. The Returning Officer had no other alternative but to accept the nomination paper of Shri Mani when it could not be rejected u/s 36(2) and when Section 62(1) of the Act of 1951 prescribes that every person who is for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency. If the Returning Officer had no power u/s 36(2) of the Act of 1951 to reject the nomination paper of the respondent No. 1 on the grounds put forward by the learned counsel for the appellant, it follows that the Tribunal also had no power to hold u/s 100(1)(d)(i) an enquiry into these objections and hold on the basis of any one of them that the nomination paper of Shri Mani had been improperly accepted.

The appellant's objections to the acceptance of the respondent No. 1's nomination paper do not also come within Section 100(1)(d)(iv) of the Act. The alleged illegality in the inclusion of the respondent's name in the electoral roll of Bhopal constituency is founded on non-compliance with the provisions of Sections 21 to 23 of the Representation of the People Act, 1950, and Rules 25 and 26 of the Representation of the People (Preparation of Electoral Rolls) Rules, 1956, and was said to be in violation of Section 17 of the Act of 1950. But under Sub-clause (iv) of Clause (d) of Section 100(1), the non-compliance must be with the provisions of the Constitution or of the Representation of the People Act, 1951, or of any rules or order made under that Act. Non-compliance with the

provisions of the Act of 1950 or of the rules there-under does not fall within the scope and ambit of Sub-clause (iv). Section 100 was amended in 1956. The section as it stood prior to the amendment, gave to the Tribunal the power to declare the election of a returned candidate to be void if there was any non-compliance with the Constitution or with the Representation of the People Act, 1951, or with the rules made thereunder or with any other Act or the rules relating to elections. By the amendment made by Act No. 27 of 1956, the scope of Section 100 was narrowed down and NOW sub-clause (iv) of Clause (d) of Section 100(1) is confined only to non-compliance with the provisions of the Constitution or of the Representation of the People Act, 1951, or of any rules or orders under that Act. That Sub-clause (iv) is of no avail to the appellant."

Our conclusion is that the fact that the name of Abdul Rehman Farooqui finds place in the electoral roll of Seoni constituency does not affect his position as an elector in the Parasja constituency and that fact is also not relevant for considering whether his nomination was not improperly rejected.

12. Shri B. R. Mandlekar has attacked the Tribunal's order dated 12th September 1962 whereby it refused leave to Shanti Swaroop Sharma to give the following particulars:

(a) On 27th December 1961, Abdul Rehman Farooqui had applied for being enrolled as an elector in the Seoni constituency.

(b) He secured from the electoral registration officer an order in his favour.

(c) He did not file a certified copy of the electoral roll of the Seoni constituency to support his nomination, as required by Section 33(5) of the Act.

(d) He did not have the requisite residence qualification for being registered as an elector in any other constituency.

Two other orders, one declining to review the order dated 12th September 1962 and another rejecting certain documents tendered in support of the abovementioned contentions, have also been challenged. Having regard to the consideration that Abdul Rehman Farooqui sought nomination on the basis of his being an elector in the Parasja constituency, we are of opinion that the Tribunal rightly held the aforesaid contentions to be unavailable for supporting the rejection of his nomination. For the same reason, we reject Shanti Swaroop Sharma's application dated 1 October 1962 for admitting in appeal the documents therein mentioned.

13. This brings us to the main point whether the Tribunal was right in taking the view that the nomination of Abdul Rehman Farooqui was improperly rejected. Having regard to the provisions of Rule 2(f) and Rule 4 of the Conduct of Election Rules and Form 2-B prescribed by those Rules for presenting nomination papers for election to a Legislature Assembly, it is not disputed that, in columns 2 and 5 of the two nomination papers filed by Abdul Rehman Farooqui, he had to give the electoral roll numbers, meaning the following particulars:

- (i) The serial number of the entry in the electoral roll in respect of that person.
- (ii) The serial number of the part of the electoral roll in which such entry occurs.
- (iii) The name of the constituency to which the electoral roll relates.

It is also accepted that, while the name of the constituency was, as required, clearly mentioned at the top, the only defect in each of the two nomination papers was that, in columns 2 and 5, the name of the constituency was not stated. Since the two nomination papers were not thus, completed exactly as required by the prescribed form, the point is whether, on that account, they had to be rejected. The relevant provisions having a bearing on the point are Sections 33(4) and 36(4) of the Act which are reproduced:

"33(4). 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 the returning officer shall permit any clerical or technical error in the nomination paper in regard to the said names or numbers to be corrected in order to bring them into conformity with the corresponding entries in the electoral rolls; and, where necessary, direct that any clerical or printing error in the said entries shall be overlooked."

"36(4). The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character."

Section 33(4) casts a duty on the returning officer to satisfy himself that the names and electoral roll numbers of the candidate and the proposer as entered in the nomination paper agree with those entered in the relevant electoral roll and empowers him to permit any clerical or technical errors in the nomination paper about the said names and number to be corrected so as to bring them in conformity with the corresponding entries in the electoral rolls. Section 36(4) inhibits rejection of any nomination paper on the ground of any defect which is not of a substantial character. The question which arises in such cases is stated by the Supreme Court in *Brijendralal Gupta and Another Vs. Jwalaprasad and Others*, at p. 1053-1054) in this way:

"If the nomination paper of respondent 5 did not comply with the provisions of Section 33, the case fell squarely u/s 36(2)(b), and the only question which can arise in such a case is whether or not the defect arising from the failure to comply with the provisions of Section 33 is of a substantial character or not. If the defect is not of a substantial character, the returning officer shall not reject the nomination paper on the ground of the said defect; if, on the other hand, the defect is of a substantial character, the returning officer has to reject the nomination paper on the ground of the said defect. That is the effect of the provisions of Section 36 (2)(b) and (4) read together."

14. Speaking generally, the question whether, a defect in a nomination paper is or is not of a substantial character depends upon the nature of the defect and the facts and circumstances of the case. For example, if the nomination paper does not disclose at all the name of the constituency for which nomination is sought, the defect would be of a substantial character. On the other hand, if there are only clerical or technical errors in the names and electoral numbers of the candidate and his proposer, they are, we think, of unsubstantial character. One indication supporting this view is found in Section 33(4) of the Act which empowers the returning officer to permit such defects to be corrected. We are also of opinion that where, as in this case, the name of the constituency is clearly stated elsewhere in the nomination papers, the omission to mention the name of the constituency in columns 2 and 5 of the nomination papers is, where there is no difficulty in checking that the names of the proposer as well as the candidate are entered as voters in the electoral rolls, a defect of an unsubstantial character. We may at this stage point out that the evidence of the Assistant Returning Officer and Abdul Rehman Farooqui clearly shows that there was no difficulty in applying the check and the names of the candidate and his proposers were actually pointed out from the relevant parts of the electoral roll at the time of filing the nomination papers as well as the time of scrutiny.

15. The Tribunal has examined at some, length the cases bearing on the point and concluded that the defect is of an unsubstantial character. In taking that view, it has distinguished *Dhanraj Deshlehra v. Vishwanath Yadav* 15 Ele LR 260 (MP). *Netram Vs. Lakshman Prasad and Another*, and *Ramayan Shukla Vs. Rajendra Prasad Singh and Another*, and relied upon *Ajayab Singh v. Karnail Singh* 6 Ele LR 368 (Ele. Tri. Hissar), *Karnail Singh v. Election Tribunal, Hissar* 10 Ele LR 189 (SC), *Dev Kanta Barooah Vs. Kusha Ram Nath and Another*, , *Dahu Sao Vs. Ranglal Chaudhary and Others*, and *Rangilal Choudhury Vs. Dahu Sao and Others*, . We do not consider it necessary to examine all these cases because, in our opinion, the last case decided by Supreme Court covers the case before us. In that case, this is what the Supreme Court stated:

"As we have already said, this was the only ground on which the nomination paper was challenged as defective before the returning officer; but before the election tribunal the appellant also contended that the nomination paper was defective as columns 2 and 5 of the part which has to be filled in by the proposer were not properly filled in and were defective; and it was urged that the defect there was substantial and therefore even if the reason for the rejection of the nomination paper as given by the returning officer was not substantial, these defects were substantial and the rejection should be upheld on the ground of these defects. Column 2 requires the electoral roll number of the proposer and column 5 of the candidate to be filled in there. Further according to the directions" given in the form columns 2 and 5 should contain the name of the constituency, the part of the electoral roll and the serial number in that part. The purpose of this provision is that the returning officer should be able readily to check that the proposer and, the candidate are voters on the electoral roll. In the

present case only the serial number and the house number are mentioned in columns 2 and 5 and not the name of the constituency and the number of the part. Undoubtedly therefore there was a defect in these two columns. Apparently the constituency was the same, viz., Dhanbad, as will appear from the address given in column 4. No part number could be given as the electoral roll in this particular case was not numbered by Parts. The question is whether in these circumstances this defect can be called a defect of a substantial character. In this connection, we cannot ignore the provisions of Section 33(4) of the Act, which casts a duty on 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 roll and gives him the power to permit the removal of any defect in this connection. The returning officer does not seem to have noted this defect in the form for if he had done so he would have given an opportunity to the proposer to make the corrections. It is true that failure of the returning officer to give this opportunity for correction does not mean that the defect can be ignored, if it is of a substantial character. But considering the purpose for which the electoral roll numbers are given, it seems that the returning officer found no difficulty in checking that the proposer as well as the candidate was a voter on the electoral rolls. The High Court in this connection referred to the evidence of the respondent who stated that when his nomination paper was taken up for scrutiny, the returning officer compared the names in the nomination paper with those in the electoral rolls. It seems therefore that in this case the returning officer found no difficulty in tracing the names of the proposer and the candidate in the electoral rolls and that is why no objection was raised before him as to the defect in columns 2 and 5. In the circumstances it must be held that the defect was of an unsubstantial character and would not result in the rejection of the nomination paper. We may in this connection refer to 10 Ele LR 189 (SC) where this Court observed that it was quite clear on the evidence that there was no difficulty in identifying the candidate and the candidate himself pointed out to the returning officer his own name in the electoral rolls. Therefore the defect in columns 2 and 5 was in the circumstances held to be a technical one and not of a substantial character. The principle of that case in our opinion applies to the present case also, for there is no doubt here that the returning officer found no difficulty in identifying the proposer as well as the candidate and as a matter of fact the evidence is that the candidate himself pointed out the place in the electoral rolls where his name was entered. We therefore agree with the High Court that in the circumstances of this case the defects in columns 2 and 5 were of an unsubstantial character and the rejection of the nomination paper cannot be upheld on this further ground, which, was not even urged before the returning officer."

16. It is true that, when, upon receipt of the two nomination papers, the Assistant Returning Officer pointed out the defect in column 5," it was not corrected. It is also true that the two nomination papers were challenged as

defective. We are however, of opinion that a defect, which is not substantial, does not become substantial merely because it is not removed or because it is relied, upon as a ground for challenging the nomination papers. Referring to the earlier case, 10 Ele LR 189 (SC), the Supreme Court stated in Rangilal Choudhury Vs. Dahu Sao and Others, :

"The principle of that case in our opinion applies to the present case also, for there is no doubt here that the returning officer found no difficulty in identifying the proposer as well as the candidate and as a matter of fact the evidence is that the candidate himself pointed out the place in the electoral rolls where his name was entered."

17. It is next urged that this was not a case of improper rejection of nomination falling u/s 100(1)(c) of the Act, but a case of non-compliance with the provisions of Section 33 of the Act and the rules made thereunder leading to rejection of nomination papers falling u/s 100(1)(d)(iv) of the Act and the election of the returned candidate could not be declared void unless it was also shown that the result of the election, so far as it concerned the returned candidate, was thereby affected. We are unable to accept this contention. As we have found, the returning officer, in disregard of Section 36(4) of the Act, rejected the nomination papers for defects of an unsubstantial character. Since the election of the returned candidate is challenged on this ground, we are of opinion that it is a case of improper rejection of nomination and not a case of non-compliance with the rules. Hidayatullah C. J. (as he then was) and Bhutt J, expressed a similar opinion in Ramakant Kesheorao Vs. Bhikulal Laxmichand and Others, though, in that case, this point did not directly arise for consideration. In N.T. Veluswami Thevar Vs. G. Raja Nainar and Others, , the Supreme Court observed:

"In the context, it appears to us that the improper rejection or acceptance must have reference to Section 36(2) and that the rejection of a nomination paper of a candidate who is qualified to be chosen for election and who does not suffer, from any of the disqualifications mentioned in Section 36(2) would be improper within Section 100(1)(c), and that, likewise, acceptance of a nomination paper of a candidate who is not qualified or who is disqualified will equally be improper u/s 100 (page 188). (of Ele. L R) : (at p. 426 of AIR). In our opinion, Sub-section (4) of Section 36 is in the nature of a proviso to Sub-section (2) of that section, that both operate in the same field and that Sub-section (4) is intended to soften the rigour of some of the provisions of Sub-section (2) which reads:

"(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination, and may, either on such objections or on his own motion, after such summary inquiry, if any as he thinks necessary, reject any nomination on any of the following grounds :

(a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely--Articles 84, 102, 173 and

191, and Part II of this Act,

(b) that there has been a failure to comply, with any of the provisions of Section 33 or Section 34; or

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine."

It will be readily seen that rejection of nominations for failure to comply with any of the provisions of Section 33 is covered by Clause (b). We may also add that we are unable to accept that there can now be a case of unsustainable rejection of nomination in which the person challenging the election of the returned candidate would be required to prove that the result of the election was thereby materially affected, Before Section 100 of the Act was amended by Act 27 of 1956 it required proof of the result of the election being materially affected by the improper acceptance as well as by improper rejection of any nomination. That section was specially amended to dispense with such proof in all cases in which any nomination was improperly rejected. So, in *Surendra Nath Khosla Vs. Dalip Singh*, , the Supreme Court observed:

"It appears that though the words of the section are in general terms with equal application to the case of improper acceptance, as also of improper rejection of a nomination paper, case law has made a distinction between the two classes of cases. So far as the latter class of cases is concerned, it may be pointed out that almost all the Election Tribunals in the country have consistently taken the view that there is a presumption in the case of improper rejection of a nomination, paper that it has materially affected the result of the election. Apart from the practical difficulty, almost the impossibility, of demonstrating that the electors would have cast their votes in a particular way, that is to say, that a substantial number of them would have cast their votes in favour of the rejected candidate, the fact that one of several candidates for an election had been kept out of the arena is by itself a very material consideration. Cases can easily be imagined where the most desirable candidates from the point of view of electors and the most formidable candidate from the point of view of the other candidates may have been wrongly kept out from seeking election. By keeping out such a desirable candidate, the officer rejecting the nomination paper may have prevented the electors from voting for the best candidate available. On the other hand, in the case of an improper acceptance of a nomination paper proof may easily be forthcoming to demonstrate that the coming into the arena of an additional candidate has not had any effect on the election of the best candidate in the field. The conjecture therefore is permissible that the legislature realising the difference between the two classes of cases has given legislative sanction to the view by amending Section 100 by the Representation of the People (Second Amendment) Act, XXVII of 1956, and by going to the length of providing that an improper rejection of any nomination paper is conclusive proof of the election being void" (Pages 185-6) (of SCR): (at p.. 245 of AIR).

18. We would now take up the question whether Shanti Swaroop Sharma committed, as found by the Tribunal, the corrupt practices mentioned in paragraph 4. The pamphlet Ex. P-3 shows that Shanti Swaroop Sharma published it. In his written statement, he did not dispute that fact. Even so, in the course of the trial, he sought to wriggle out of that position. The Tribunal considered the entire evidence bearing on the point and concluded in paragraph 88 of its order that Shanti Swaroop Sharma published it. That finding has not been challenged in the grounds of appeal and it must be accepted. We may also add that the evidence led on the point leaves no manner of doubt about its correctness. Further, Shanti Swaroop Sharma did not dispute in his written statement, and also specifically admitted in his evidence, that he published the pamphlet Ex. P-4.

19. According to Vishwanath Datta P. W. 6, in a meeting held at Dongar Chikhli on 17 February 1962, Shanti Swaroop stated that, ever since K. P. Verma became a member of the Legislative Assembly, he had purchased property worth Rs. 40,000/- and had also taken another Rs. 40,000/- from the Company for his election. Ramprasad P. W. 7 stated that, in a meeting held at Parasia 2 or 3 days before the election, Shanti Swaroop Sharma said that K. P. Verma had taken, for his election Rs. 40,000/- from Messrs. Shaw Wallace and Co. and also acquired by unfair means property worth Rs. 40,000/-. Shaniram P. W. 11 disclosed that, in a meeting held 2 or 3 days before the election at Eklahara, Shanti Swaroop Sharma praised himself and said that K. P. Verma had acquired by unfair means property worth Rs. 40,000/-, Umashanker P. W. 15 stated that, in a meeting held on 16th (February 1962) at Eklahara, Shanti Swaroop Sharma said that K. P. Verma had unfairly collected Rs. 40,000/- and taken from the Company Rs. 40,000/- for fighting the election. According to Kasul P. W. 26, Shanti Swaroop Sharma disclosed in a meeting at Datta that K.P. Verma had collected Rs. 40,000/- by taking money partly from the labourers and partly from the Company-owners and he had further taken Rs. 40,000/- from Messrs. Shaw Wallace and Co. for fighting the election. K. P. Verma P. W. 34 deposed that, in the meetings held at Eklahara, Badkuhi, Gudi, Datla West, Rawanwara, Bhamori, Chandameta and Parasia, Gumansingh and Shanti Swaroop Sharma stated, one after another, that he (K. P. Verma) had taken Rs. 40,000/- from the employers and was fighting the election and that he had also earned by unfair means, by strangulating the labourers, Rs. 40,000/- which he had invested in property. Finally, Anirudha Okte P. W. 35 also said that, in a meeting at Chandameta held 10 or 12 days before the election, Shanti Swaroop Sharma gave out that K. P. Verma had taken for his election Rs. 40,000/- from the Company and had made property worth Rs. 40,000/- by collecting subscription and taking money from the labourers.

Before us, the learned counsel for the appellant made no endeavour to show by all this evidence should not be accepted. The Tribunal recorded the statements of these witnesses and watched them in the witness-box when they gave evidence. As pointed out by the Supreme Court in *Sri Baru Ram Vs. Prasanni and Others*, ,

when the finding of the Tribunal rests solely on appreciation, of oral evidence, importance should be attached to it. In our opinion, unless the appellant is able to show that, upon a consideration of the evidence as a whole, there is a substantial balance in his favour, the Tribunal's appraisal should not be reversed. We think that the appellant was likely to have made the statements because it is stated in Ex. P-3 and Ex. P-4, which he had published, that he compelled the labourers to pay subscriptions, charged them for Rakhi Bandhai and filled his pocket in every way. In conclusion, we affirm the Tribunal's finding that Shanti Swaroop Sharma stated in the election meetings at several places that K. P. Verma had collected by unfair means property worth Rs. 40,000/-.

20. The Tribunal found that the following statements relate to tie personal character of K. P. Venna :

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^^dEiuh ds lkFk feydj cgqr etnwjksa dks dEiuh dh HkykbZ ds fy;s fcuk vjtuk fn;s NVuh djkbZA**

^^txg txg tq, ds QM+] "kjkc ds vMMksa dk fuekZ.k vkSj xqMkfxjh dks izksRlkgu fd;k x;kA**

tq?kjinso dkyjh [knkuh ds cUn gksus ij ekfydksl feydj etnwjksa ,oa tkebZ "kgj ds O;kikfj;ksa ls nxkckth djukA ekfydk ds i{k esa fy[ks gq, bdjkukeksa ij gLrk{kj dj "?? etnwjksa dh jksVh Nhuuk vkSj mlh [knku dks dqN vjls ds ckn "kkokfyl vaxzst dEiuh dks fnyokukA**

^^;s "kkokfyl dEiuh ds pkanfeVk odZ"kki esa osYMj ds dk;Z ij fu;qDr gS] ysfdu tc ls ,e- ,y- ,- cus gS ?kj cSBs ru[kk ikrs gS vkSj dHkh osfYMax ds uke ij ugha x;sA ftlls ;g iw.kZr% izekf.kr gksrk gS fd ;s dEiuh ls iwjh rjg fey x;s vkSj vius LokFkZ ds fy;s etnwjksa dk xyk ?kksVrsa jgs vkSj eqQr dh ru[kk ikrs jgsA**

^^ftUgksaus dEiuh ls feydj [kqys vke etnwjksa ij tqYe fd; gS] "&" :i;s tcju pUnk olwy fd;k] jk[kh ca/kkbZ yh] dEiuh;ksa ds erkuqlkj etnwjksa dk InSo gd Nhuk gS] LFkkukarj ?V?UIQj? djf;k] pktZ"khV fnykbZA ykyp o"k Hkkjr ?tq?jnsc? dkyjh rFkk nakryk dkyjh vkfn ds cUn djkus ds fy;s ekfydksa dh gka esa gka feykdj ,xzhesaV ?le>kSrk? fd;k gS] ftlls vk; vusdksa etnwj cs?kjckj ds vkSj csjkstxkj ds gksdj [kkd Nkurs fQj jgsa gSA**

ORAL STATEMENTS

K. P. Verma collected by unfair means property worth Rs. 40,000/-.

(as shown in the last paragraph.)

21. The question whether the above-mentioned statements, are statements of fact and the further question whether they relate to the personal character or conduct of K. P. Verma were debated at some length and we were referred to M. R. Meganathan v. K. T. Kosalram 9 Ele LR 242 (Ele Tri Tanjore), Parasuram Naidu

v. V. C. Chudamani Dev 13 Ele LR 66 (Ele. Tri Rajah Mundry), Kanhaiyalal Tiwari v. S. N. Mushran 15 Ele LR 284 (MP), Sudhir Laxman Hendre Vs. Shripat Amrit Dange and Others, , Dharanidhar Mohapatra v. Pradipta Kishore Das 17 Ele L R 427 (Ori), Abdul Rahiman Khan Vs. Radha Krushna Biswas Roy, , Smt. Sarla Devi Vs. Birendra Singh and Others, , Gangi Reddy v. Anjaneya Reddy 22 Ele L R 261 (SC) and Inder Lal Vs. Lal Singh, . We do not consider it necessary to examine these cases because in our opinion, the law is now well settled.

In order to attract Section 123(4) of the Act, there must be a false statement of fact by a candidate or his agent, which is made in relation to the personal character or conduct of any other candidate. The statement would not come within the mischief of the section if it is a false statement of opinion or if it amounts to merely a criticism of the political views, position, reputation or action of a rival candidate. But the section would be attracted if the person beneath the politician is attacked and his honour, integrity or veracity is falsely challenged. We may also in this connection state that there is no sharp dividing line separating what is personal from what is political. It may well be that a given statement involves both imputations and this may be so if the statement about political character affects the honour, integrity or veracity of the candidate. About this aspect of the matter, the Supreme Court observed in Inder Lal Vs. Lal Singh, at p. 1159-60 as follows :

"Though it is clear that the statute wants to make a broad distinction between public and political character on the one hand and private character on the other, it is obvious that a sharp and clear-cut dividing line cannot be drawn to distinguish the one from the other. In discussing the distinction between the private character and the public character, sometimes reference is made to the "man beneath the politician" and it is said that if a statement of fact affects the man beneath the politician, it touches private character and if it affects the politician, it does not touch his private character. There may be some false statements of fact which clearly affect the private character of the candidate. If, for instance, it is said that the candidate is a cheat or murderer there can be no doubt that the statement is in regard to his private character and conduct and so if the statement is shown to be false, it would undoubtedly be a corrupt practice. Similarly, if the economic policy of the party to which the candidate belongs or its political ideology is falsely criticised and in strong words, it is suggested that the said policy and ideology would cause the ruin of the country, that clearly would be criticism, though false, against the public character of the candidate and his political party and as such it would be outside the purview of the statute. But there may be cases on the borderline) where the false statement may affect both the politician and the man beneath the politician and it is precisely in dealing with cases on the borderline that difficulties are experienced in determining whether the impugned false statement constitutes a corrupt practice or not. If, for instance, it is said that in his public life, the candidate had utilised his position for the selfish purpose of securing jobs for his relations, it may be argued that it is criticism against the candidate in his public character and it may also be

suggested that it nevertheless affects his private character. Therefore, it is clear that in dealing with corrupt practices alleged u/s 123 where we are concerned with border-line cases, we will have to draw a working line to distinguish private character from public character and it may also have to be borne in mind that in some cases, the false statement may affect both, the private and the public character as well."

22. In the light of the principles we have broadly indicated in the last paragraph, we would now consider whether the above-mentioned statements relate to the personal character or conduct of K. P. Verma. In paragraphs 2, 4, n and 13 of Ex. P-3, it is stated that K. P. Verma, who represented the labourers employed in collieries, sacrificed their interests by colluding with the mine-owners. In so far as these statements attribute to K. P. Verma the conduct of colluding with the mine-owners and thereby sacrificing the interests of the labourers, we are of the view that they are statements of fact attacking his personal character. As stated by Schofield, any false statement, whether charging dishonesty or bringing the candidate into contempt comes within the meaning of the corresponding provision of English Act Local Government Elections, Third Edition, page 316; We are also of the same opinion about the further statement in paragraph 13 that K. P. Verma did so for his selfish ends. In paragraph TO of Ex. P-3, it is stated that K. P. Verma opened at several places gambling and drinking dens and also encouraged goondaism. We have no hesitation in holding that this is an attack on his personal character. In our opinion, the portion from Ex. P-4 reproduced in paragraph 20 and the oral statements to the effect that K. P. Verma collected by unfair means property worth Rs. 40,000/- also relate to his personal character.

23. In paragraphs 129 to 161, 165 and 169, the Tribunal closely examined the evidence led by the parties on the question whether the abovementioned statements were false and whether Shanti Swaroop Sharma believed them to be false or did not believe them to be true. K. P. Verma examined himself, stated that those statements were false and also suggested what led Shanti Swaroop Sharma to make those false statements. In such a situation, when the Tribunal believes, as in this case, the evidence of the candidate who was maligned, the burden to prove that the statements were not false or were bona fide believed to be true shifts on the person who made those statements 22 Ele. L R 261 (SC). The Tribunal has, for the reasons given by it, not accepted the evidence of Shanti Swaroop Sharma or his witnesses led to discharge this burden and the learned counsel for the appellant did not address to us any argument to show that different conclusions should have been reached. In these circumstances, we agree with the Tribunal that these statements were false and Shanti Swaroop Sharma either believed them to be false or did not believe them to be true.

24. In our opinion, dissemination of the above-mentioned false statements on the eve of the election, which showed K, P. Verma in adverse light and which he could not meet in proper time, were reasonably calculated to prejudice the prospects of his election. As pointed out by the Supreme Court in Inder Lal Vs.

Lal Singh, at p. 1159, circulation of false statements about private or personal character of the candidate during the period preceding elections is likely to work against the freedom of election itself inasmuch as the effect created by false statements cannot be met in proper time and so the constituency has to be protected against the circulation of such false statements which are likely to affect the voting of the electors.

25. The last point urged in this connection is that the election could not be declared void on account of the corrupt practices without proving that, in so far as it concerned Shanti Swaroop Sharma, the result was materially affected. This contention is easily met by pointing out that when any corrupt practice is committed by the returned candidate or his election agent, such proof is, as provided by Section 100(1)(b) of the Act, not required; *Jayalakshmiddevamma v. Janardhan*, AIR 1959 Andh Pra 272, *Madan Lal v. Syed, Zargham Haider, Madan Lal Vs. Zargham Haider and Others*, , *Ghayar Ali Khan Vs. Keshav Gupta*, and *Sudhir Laxman Hendre Vs. Shripat Amrit Dange and Others*, .

26. In the view we have taken, the Tribunal rightly held Shanti Swaroop Sharma to be guilty of the corrupt practice of publishing the false statements mentioned in paragraph 177 of its order relating to the personal character or conduct of K. P. Verma, which Shanti Swaroop Sharma believed to be false or did not believe to be true.

27. Since no other point was argued before us, these two appeals fall and are dismissed. The appellant shall bear his own costs and pay those incurred by the contesting respondent. Hearing fee in each case Rs. 300/-.