
(1961) 10 MP CK 0002
In the Madhya Pradesh High Court
Case No : M.P. No. 102 of 1961

Shiv Prasad (Pandit) alias Moni Maharaj	APPELLANT
Vs	
State of M.P. and others	RESPONDENT

Date of Decision : 10-10-1961

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1962) MPLJ 209

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : L.P. Sanghi, for the Appellant; J.N. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, C.J.

This is an application under Article 226 of the Constitution for the issue of a direction to the respondents Nos. 1 and 2 to declare the petitioner, being the sole candidate, as duly elected to the Gram Panchayat, Sarragondi, from Ward No. 3 of the Gram Panchayat, and for a direction prohibiting the holding of an election from the ward on the acceptance of the nomination of the respondent No. 3 Nathu for election from the same ward.

The material facts are that according to the election programme approved by the Collector, Durg, the nomination papers were to be filed on 22nd March 1961 between the hours 8 a.m. to 11 a. m. The scrutiny of nomination papers was fixed on the same date at 1 p. m. The petitioner filed his nomination paper for election from Ward No. 3 before 11 a.m. on 22nd March 1961. The respondent No. 3 also intended to file his nomination paper for election from the same ward and with that view he was in the Office of the Election Supervising Officer from about 10-30 a. m. As there were a large number of persons waiting to hand over their nomination papers to the Supervising Officer before the prescribed hour, the respondent No. 3 could not succeed in handing over his nomination paper to the

Supervising Officer before 11 a. m. Besides the respondent No. 3 there were other candidates also who were unable to give in their nomination papers before 11 a. m. on 22nd March 1961. When the respondent No. 3 presented his nomination paper before the Supervising Officer, he refused to take it on the ground that it had been presented after 11 a, m. He accordingly rejected the nomination paper. Thereafter the said respondent preferred an appeal under rule 6 of the Rules regulating nominations for elections u/s 8 of the C. P. and Berar Panchayats Act, 1946. That appeal was heard and accepted by the Sub-Divisional Officer, Khairagarh, on 27th March 1961. The Sub-Divisional Officer held that according to the report of the Supervising Officer himself the respondent No. 3, Nathu, was present before him with his nomination paper from some time before 11 a. m. on 22nd March 1961 but that the Supervising Officer could not receive his nomination paper before 11 a.m. as he was busy issuing acknowledgments for nomination fees which he had received from other candidates whose nomination papers had been taken in, and that the refusal of the Supervising Officer to receive Nathu's nomination paper was unjustified and amounted to rejection of the nomination paper for the purposes of rule 6. The appeal was heard and disposed of without any notice to the petitioner.

The petitioner contends that the order of the Supervising Officer refusing to take the nomination paper of the respondent No. 3 was not an order rejecting a nomination for the purposes of rule 6; that, therefore, the appeal preferred by the said respondent was incompetent; and that in any case the disposal of the appeal without any notice to him was wholly illegal. He prays that the decision of the Sub-Divisional Officer given in appeal against the order of the Supervising Officer be quashed and the relief stated earlier be granted to him.

In our judgment, on the language of the relevant rules, the contentions put forward on behalf of the petitioner are unsustainable. The first rule of the rules regulating nominations inter alia says that the Collector shall draw up a programme specifying the date and place "for the filing of nomination papers of candidates and for the scrutiny of such nomination papers". Rules 5 and 6 are as follows :-

On the date fixed for receiving the Nomination papers the Supervising Officer shall, at 1 p. m., examine the nomination papers and may either accept or reject them. If he decides to reject any nomination paper, he shall immediately record in writing a brief statement of his reasons for so doing.

An appeal shall lie to the Deputy Commissioner or any person authorised by him in this behalf against an order rejecting a nomination. No appeal shall lie unless it is filed within five days of the order of rejection. Appearance by counsel shall not be permitted.

Reading rules 1 and 5 together it is plain that they contemplate that the filing of the nomination papers and their scrutiny should be on one and the same date. The object of this provision is clearly to expedite the holding of the election, Now,

as under rule 5 the scrutiny of the nomination papers has to begin at 1 p.m. the Collector must fix certain hours before 1 p. m. for the filing of the nomination papers. Here, according to the programme drawn up, the nomination papers had to be filed between 8 a. no. to 11 a.m. The Supervising Officer, however, found himself unable to receive the nomination papers of all those persons who were present before him long before 11 a. m., the reason being that the Supervising Officer thought it more important to issue receipts and acknowledgments for nomination fees in these hours than to take in the nomination papers for which a zero hour had been prescribed. The refusal of the Supervising Officer to take the respondent-Nathu's nomination paper on the ground that the 11 hour was past was totally unjustified. That refusal is clearly a rejection of the nomination paper. Rule 5 no doubt deals with the scrutiny of nomination papers after they are received from the candidates presenting and with their acceptance or rejection after scrutiny. That rule presupposes that the Supervising Officer will take in all nomination papers which are presented to him whether before or after the hour fixed for it and that if a nomination paper is presented after the prescribed time he will make the necessary endorsement on it. When a nomination paper is not received at all there is no question of its scrutiny. Nonetheless, an order refusing to take it is an order rejecting it. It is noteworthy that rule 6 provides an appeal "against an order rejecting a nomination". The expression "an order rejecting a nomination" is wide enough to include an order refusing to receive a nomination paper as also an order rejecting a nomination paper after scrutiny. There is nothing in rule 6 to indicate that the appeal provided therein is confined to an order of rejection under rule 5. The contention of the petitioner, therefore, that the appeal preferred by the respondent Nathu under rule 6 was incompetent is unsubstantial.

The objection that the appeal could not be disposed of without giving a notice to the petitioner is also without any merit. The order, which the respondent Nathu prayed might be recalled, was one of refusing to receive and register his nomination paper, and the order which he wished to have substituted in its place by filing the appeal that he did was that the nomination paper be taken, registered and scrutinised along with the nomination papers received for election from the same ward. When the only order sought by the respondent No. 3 was that his nomination paper be received and registered, it cannot be contended reasonably that the petitioner was an "opposite party" who was in fact interested to appear and support the order of the Supervising Officer refusing to take in the nomination paper of Nathu. Until a nomination paper for election from a ward is received and registered and thereafter rejected after scrutiny, any other person whose nomination paper from the same ward has been accepted cannot be regarded as an opposite party in an appeal against the order of rejection. At the stage when the Supervising Officer refuses to receive and register a nomination paper, other persons seeking election from the same ward have no right to object to the reception or rejection of the nomination paper. The right to object to a nomination paper arises only after it is received and registered; and this right

can be exercised as provided by rule 5 at the time of the scrutiny of the nomination papers. An order refusing to receive and register a nomination paper having been made at a stage when there is no opposite party, it can be reviewed or set aside without notice to the person or persons whose nomination papers have been accepted or rejected after scrutiny. In our opinion, in an appeal against an order of the Supervising Officer refusing to take in and register the nomination paper of a person seeking election from a ward other persons who are candidates for election from the same ward cannot be joined as opposite parties and the appeal can be heard and disposed of without notice to them. This is not to say that in an appeal against an order rejecting a nomination paper after scrutiny, other persons whose nomination papers have been accepted or rejected after scrutiny are not necessary parties. The question whether such persons should be made parties to the appeal and whether notices should go to them does not arise for consideration here. It cannot, therefore be contended that the petitioner was entitled to receive notice of the appeal pre ferried by the respondent Nathu and that the disposal of the same without notice to him was illegal.

In our judgment, the order made by the Sub-Divisional Officer in appeal directing the Supervising Officer to receive and register the nomination paper of the respondent No. 3 is right. It is not necessary to add that a revised programme of election from ward No. 3 fixing a fresh date for scrutiny of the nomination papers of the petitioner, respondent Nathu and other candidates whose nominations for election from the same ward have already been received and registered will have to be drawn up. The scrutiny must be of the nomination papers already received and registered including that of the respondent Nathu and not of any new nomination papers, and the election to be held must be on the basis of these nomination papers. It would not, therefore be necessary, and indeed it would be illegal, to appoint a date for the receipt of fresh nomination papers. Rules 1 and 5 no doubt envisage that scrutiny of the nomination papers should be on the same date they are received. This provision which has as its object the speeding up of election, is only directory and not a mandatory one BO as to lead to the conclusion that whenever a fresh scrutiny of nominations becomes necessary in a case the nomination papers must be received afresh and a date should be fixed for the same and for the scrutiny of the nomination papers.

The result is that this petition fails and is rejected. In the circumstances of the case, we leave the parties to bear their own costs. The outstanding amount of security deposit shall be refunded to the petitioner.