
(1998) 12 OHC CK 0013
In the Orissa High Court
Case No : Election Petition No. 13195 of 1995

Shri Somnath Rath

APPELLANT

Vs

Shri Bikram Keshari Arukh and Others

RESPONDENT

Date of Decision : 23-12-1998

Acts Referred:

Constitution of India, 1950 — Article 329

Representation of the People Act, 1951 — Section 100, 100(1), 36, 80, 81

Citation : AIR 1999 Ori 119

Hon'ble Judges : A. Pasayat, J

Bench : Single Bench

Advocate : Bipin Behari Ratho, Biswanath Ratho Manoj Misra, R.P. Mahapatra, K.R. Mohapatra, S. Ghose, S.K. Jethi, R. Ratha, B.N. Misra, D. Sarangi, S.N. Mohapatra, M.K. Panda and B. Senapati, for the Appellant; D.C. Mohanty, D.K. Biswal, Manas Ranjan Panda, R.B. Mohapatra, S. Sarkar, N.R. Routray, B. Nath and B. Misra, for the Respondent

Final Decision : Dismissed

Judgement

A. Pasayat, J.—This election petition has been filed by Shri Somnath Rath challenging election of Shri Bikram Kashari Arukh (hereinafter referred to as the "elected candidate") to the Orissa State Legislative Assembly, 1995 in respect of 66-Bhanjanagar Assembly Constituency. Though nomination papers submitted by the petitioner, the ejected candidate (respondent No. 1) and respondent Nos. 2 to 4 were accepted, nomination papers submitted by respondents Nos. 5 to 7 were rejected. In other words, petitioner and respondents 1 to 4 were in the election field, and respondent No. 1 was declared elected by the Election officer. Nomination papers of respondents 5 and 6 were rejected on the ground that they were defective. Nomination paper of respondent No. 7 was rejected on the ground that he was a dealer under the Public Distribution Systems (in short, "PDS") and as such was ineligible. Though originally election of respondent No. 1 was challenged on the ground of alleged corrupt practice, same was given up at the threshold before the issues were framed, and ultimately the following Issues

were framed.

(1) Whether the nomination of any one of the candidates namely Shri Pratap Chandra Swain, Shri Rajendra Kumar Sahu and Shri Sanchanan Das has been improperly rejected by the Returning Officer and as such the election of Bikram Keshari Arukh, the returned candidate (respondent No. 1) for the 66-Bhanjanagar assembly constituency is void?

(2) Whether the petition as laid is maintainable?

2. Evidence was led by the parties in support of the first issue and various contentions were raised, which shall be dealt with in detail. Respondent No. 1 raised question of locus standi of Election Petitioner to question rejection of nomination papers of others, when they had not raised any protest. Additionally it is submitted that copy of the election petition supplied to him was not exact copy of the petition and it did not contain copies of the oath attestation and it was not signed by the petitioner in each page.

3. Under the Representation of the People Act, 1951 (in short, the "Act") which governs the dispute, the election petition can be presented by a candidate or any elector in terms of Section 81(1) of the Act. No election can be called in question except by an election petition as provided in Section 80 of the Act. Section 100 of the Act provides the grounds on which an election can be called in question. Section 80 is couched almost in same language as Article 329(b) of the Constitution of India, 1950 (in short, the "Constitution") and provides that no election shall be called in question except by an election petition presented in accordance with the provisions of Part VII of the Act. It is well recognised that where right of liability is created by a statute which gives a special remedy for enforcing it, only the remedy provided by that statute must be availed of. The expression "candidate" used in Section 81(1) means a person who has been or claims to have been duly nominated as a candidate at any election. Section 79(b) of the Act is relevant in this context. As indicated above, even an elector can present an election petition. Undisputedly the election petitioner was a candidate. That being the position, there is no substance in the plea taken by respondent No. 1 that the election petitioner has no locus standi to present the petition.

4. The next question that is to be examined is whether the nomination papers of respondents 5 and 6 have been rejected rightly or otherwise. It is the case of election petition that the defects pointed out are very nominal in nature and cannot be considered to be of substantial character and therefore, the rejection is bad. It is stated that the description of respondent No. 5 and/or his proposer as Pratap Swain and Bhajarao Barad respectively is not fundamentally wrong description as to warrant rejection. It is stated that there is no other electorate bearing similar names in the village and had the Election Officer taken little pain, he would have found out that mere wrong mention of the name was not so fatal as to warrant rejection. At this juncture it is relevant to take note of names of respondents 5 and 6 and their respective proposers. Two sets of nomination

papers were submitted by respondent No. 5. One was in Oriya language and the other was in English. He was described as Pratap Chandra Swain in the nomination paper, and his proposer's name was indicated to be Bhajaram Barad. Similar was the position in respect of nomination papers filed in English. It is claimed that there was no such person as Pratap Swain as indicated in the electoral roll at Serial 164 of Booth No. 50, and the entry related to respondent No. 5. Similarly there was no person named Bhaja Barad, but the entry at Serial 316 of booth No. 77 relates to Bhajaram Barad, who is proposer of Pratap Chandra Swain. Similarly in respect of Rajendra Kumar Sahu, respondent No. 6, the proposer was Naryana Panda. The proposer's name is indicated at Serial 265 of booth No.53, in the nomination paper filed in English. It is stated that with minimum effort the Returning Officer could have found out the defect and the nomination papers should not have been so casually rejected. The defect if any could have been corrected then and there but the Returning Officer did not grant such opportunity and rejected the nomination papers.

5. The question that falls for consideration is whether the defects were of such substantial character as to warrant rejection. A primary stand was taken to the effect that had the Returning Officer taken little pain he could have noticed that there was no person of the names as indicated in the electoral roll, and the entries in fact related to respondents 5 and 6. Mere clerical error in mentioning the booth No. could have been corrected. It was pleaded that though respondents 5 and 6 and their proposers were present at the time of scrutiny, the defects were not pointed out. On scanning the evidence of witnesses it is seen that respondents 5 and 6 have stated that they were present when the scrutiny was done. According to respondent No. 5 (P.W. 1), he and his proposer stood up. But the Election Officer did not point out any defect in the nomination paper; but intimated him about rejection of his nomination paper. Interestingly, he has admitted in his cross-examination that the scrutiny officer pronounced that his nomination paper was rejected being defective. But, he did not lodge any protest.

The Election Officer (witness No. 3 for respondent No. 1 has clearly stated that neither respondent No. 5 nor his proposer were present at the time of scrutiny. Announcement was made by the Public Announcement System requiring the candidate and/or his agent to rectify the defects. But none turned up to do it. That is how the rejection was done. Similar was the case with Rajendra Kumar Sahoo (respondent No. 6). The evidence of the Returning Officer is significant.

His evidence is clear to the effect that neither respondents 5 and 6 nor their respective proposers were present at the time of scrutiny. There is no reason as to why he would make a false statement.

6. 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. 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. To cast an obligation on the Returning Officer to look through the entire electoral roll of a particular part with a view to finding out the identity of the candidate or proposer is not the requirement of the law.

Where the candidate was not identified as per electoral roll and neither the candidate nor any representative on his behalf were ready to assist the Returning Officer in curing the defect, and in proving the correct identity of candidate and in fact they did not remain present when the nomination paper was taken up for scrutiny, it cannot be said that the Returning Officer committed any error in rejecting the nomination paper of the candidate. This position was highlighted by the Apex Court in almost identical facts situation in Mathura Prasad Vs. Ajeem Khan, . Similarly was the situation in Brij Mohan Vs. Sat Pal, . The fact situation in the said case was as follows :

One Dog Ram had filed his nomination papers for contesting election to the Haryana Legislative Assembly from Jind Constituency. His name was proposed by Ram Pratap, an elector of the constituency. Dog Ram was registered as an elector at serial No. 177 and house No. 57 in part 39 of the electoral roll of the constituency whereas his proposer Ram Pratap was registered as elector at serial No. 313 and house No. 6 in part 39 of the same constituency. The name and postal address of Dog Ram were correctly given in the nomination papers but 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 papers. Similarly in the case of the proposer the serial number of the elector and the members of the constituency were given correctly but the number of the house was wrongly entered in the column meant for the part of the electoral roll. At the time of scrutiny no other candidate or proposer objected to the acceptance of the nomination paper of Dog Ram but the Returning Officer of his own rejected the nomination paper on the ground that particulars of the candidate and the proposer had been wrongly entered in the nomination papers.

The High Court considered the question as to whether the nomination paper of Dog Ram was improperly rejected. It was held that it had been improperly rejected. On an appeal the Apex Court reversed the conclusion. It was held that the Returning Officer was not guilty of tripping the candidate and the proposer by any assertion on his part into anyone believing that there was nothing wrong in the nomination paper. It was observed as follows :

"It is not possible to say generally and in the abstract that all errors in regard to electoral rolls or nomination papers do not constitute 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 in 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.

xxx xxx xxx 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 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 or 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."

7. In view of the position of law as stated by: the Apex Court in almost an identical facts situation, the inevitable conclusion is that the Re-| turning Officer rightly rejected the nomination papers of respondent Nos. 5 and 6.

8. So far as rejection of nomination papers of respondent No. 7 is concerned, the reason which weighed with the Returning Officer in rejecting the nomination was that he was a dealer under the Public Distribution System. According to the Returning Officer, he had a subsisting contract with the Government, and therefore, he had incurred disqualification under the Act. The accepted position is that the Returning Officer had indicated Wrong Ward No. i.e., 13 in respect of respondent No. 7, though in reality he was a dealer in respect of Ward No. 9. The stand of the election petitioner that respondent No. 7 was not a dealer in respect of Ward No. 13, and rejection by indicating the same to be the basis is not sustainable. Merely because he was admittedly a dealer in respect of another Ward, that does not make a difference. Secondly, it is submitted that even if he is a dealer under the Public Distribution System, it cannot be said that he had a subsisting contract with the Government. This plea needs careful consideration. But mere wrong description of the Ward does not take away the effect of the fact that respondent No. 7 was a dealer under the Public Distribution System. According to the elected candidate he was acting as an agent of the Government on the basis of an agreement, and was the custodian of the articles for distribution under the Public Distribution System. He was receiving commission for effecting the sales, and the accounts maintained by him were periodically checked. That being the position, the irresistible conclusion, it is urged, is that he had a subsisting contract with the Government. Mere mention of a wrong Ward No. is not mistake of such substantial character as to take away effect of conclusion arrived at by the Returning Officer about respondent No. 7 being a

dealer under the Public Distribution System. In the aforesaid background, it has to be only gauged as to whether respondent No. 7 had any subsisting contract with the State.

9. For the purpose of Section 9A of the Act it is only to be seen that the candidate has undertaken to do some work for the Government. For being disqualified u/s 9A of the Act in respect of contract with the Government which is subsisting on the date of nomination, two categories of cases are there, i.e., (i) when the contract is one for supply of goods to the appropriate Government; and (ii) where the contract is for execution of any work undertaken by that Government. The provision reads as follows :

"9A. Disqualification for Government contracts, etc.-

A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by that Government.

Explanation.-- For the purpose of this Section, where a contract has been fully performed by the person by whom it has been entered into with the appropriate Government, the contract shall be deemed not to subsist by reason only of the fact that the Government has not performed its part of the contract either wholly or in part."

10. In order to invoke the provisions of Section 9A of the Act the following ingredients have to be conclusively established :--

(a) There must be a contract between the person against whom Section 9A is being invoked, and the State.

(b) Such contract must be for execution of any works undertaken by the Government.

(c) Such contract must have been entered into with such person in the course of his trade or business for the supply of goods to the State.

(d) Such contract must be subsisting on the date of filing of nomination paper.

Analysing scope of Section 9A, it is seen that whatever may be said about other, contracts, Section 9A does not cover a contract for the performance of any services undertaken by the Government. Section 7(d) of the Act, as it stood prior to the amendment in 1958, was in the following terms :--

"A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly of legislative Council of a State-

(d) if, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account he has any share or interest in a contract for the supply of goods to, or for the execution of any works or the performance of any

services undertaken by the appropriate Government."

In 1958 this Section was amended and the words "or the performance of any services" are omitted. It can be seen that after amendment in 1958, the language of Section 7(d) is the same as appears in Section 9A as renumbered in 1966. The Legislature has deliberately omitted the words "or the performance of any services" which is very significant. Prior to the amendment a contract with the Government to carry on certain services undertaken by the Government came within the mischief of Section 7(d) as it stood then. The amendment clearly throws much light on the effect of the amendment and makes it clear that only such contracts to supply goods or to execute the works undertaken by the Government and covered by Section 9A. *A. J. Arunachalam v. Election Tribunal* (1954) 9 ELR 471 was a case where an objection was raised to the candidature of the petitioner on the ground that he was disqualified for standing for election u/s 7(d) (before amendment) as he had entered into a contract with the State Government-whereunder he was appointed as a State nominee for the distribution of bales of yarn. The High Court held that the candidate had an interest in the contract for the performance of the services undertaken by the Government of Madras, within the meaning of Section 7(d).

The legislative intent in enacting Section 9A is that candidates must be free to perform their duties without any personal motive being attributed to them. Existence of a subsisting contract raises a possibility that such a person after his successful election may get concessions for him self in the performance of his contract. (See *Ratnakar Mohanty Vs. Jugal Kishore Patnaik*, . The expression "execution of any works" means and implies carrying out of some act or acts or course of conduct to the commencement and completion of works. It is of significance that the word used is not the singular "work" but the plural "works". The plural is always used in the sense of "operations", "projects", "scheme", "plan" such as building works, irrigation works and defence works, etc. In *N. Satyanathan Vs. K. Subramanyan and Others*, the appellant had entered into a contract with the Government in the Postal Department to carry mail bags and postal articles which was based on mutual promise--by the permit-holder to carry the mail bags etc., and by the Postal Department to pay him suitable remuneration for the services rendered. After an analysis of the terms of the contract, it was held by the Apex Court that it was a straightforward illustration of the kind of contract contemplated by original Section 7(d) (the provision replaced by Section 9A of the Act). In *Ram Padarath Mahto Vs. Mishri Singh and Another*, , it was held that the contract to stock and store foodgrains in pursuance of the Grain Supply Scheme of the Government constituted only contract of bailment and did not attract original Section 7(d). The contract of bailment which imposed on the bailee the obligation to stock and store the foodgrains in his godowns could not be said to be a contract for the purpose of the service of sale of grain which the State Government had undertaken. In *Yugal Kishore Sinha Vs. Nagendra Prasad Yadav*, , the allegation against the respondent was that he held benami in the name of his wife a stage carriage

permit for plying a bus undertaking transport of postal articles and mail bags and so he attracted disqualification under original Section 7(d). It was held that it was neither a contract for execution of works nor the respondent held an office of profit under the Government. In *Brahma Dutt Vs. Paripurna Nand Family and Others*, , the question that arose for consideration was whether a person having subsisting contract with a Government organising for printing advertisements of the organisation in his newspaper attracted disqualification u/s 9A of the Act. Relying upon the decisions reported in the cases of *Satya Prakash Vs. Bashir Ahmed Qureshi*, and *Yugal Kishore Sinha's case (supra)*, it was held that printing of advertisements did not amount to execution of any works and so disqualification u/s 9A was not attracted. In *B. Lakshmikantha Rao Vs. D. Chinna Mallaiah and Others*, it was held that contract entered into by the returned candidate with the State Government to sell toddy and arrack did not come within the mischief of Section 9A as they were neither for supply of goods to the Government nor for the execution of any works undertaken by the Government. *Cheekati Parasuram Naidu Vs. Mariserla Venkatarami Naidu and Another*, involved an almost identical dispute. The point for consideration as whether an authorised fair price retail dealer attracted disqualification u/s 9A of the Act. Relevant observations made read as follows :

"Secondly the authorisation is clearly an unilateral document, and casts no obligation whatever on the part of the Government or on any authority on behalf of the Government. Thirdly the authorisation totally lacks mutuality and finality. The person holding the authorisation cannot enforce the so called contract against the Government and compel them to provide the scheduled commodities for distribution among the card holders. It is impossible to treat the authorisation as a contract as no finality is attached to it, as the said authorisation can be carried, amended suspended or cancelled and thus, the essential ingredients of a contract with the Government are wholly lacking."

It was accordingly held that authorisation to a, fair price retail dealer is in the nature of a licence or a permit but not a contract within the meaning: of Section 9A of the Act.

11. A bare reading of the provision makes it clear that the subsisting contract must be between the concerned person and the State for supply of goods to the Government (underlined for emphasis). In other words, the contract must be for supplying goods to the Government. The word "supply" is defined in the Standard Dictionary as "that which is or can be supplied; available aggregate of things needed or demanded". In the Imperial Dictionary it has been stated to be "that which is supplied, a quantity of something furnished or on hand". The word "supply" means "to give", or "to provide or to afford something that is necessary". In the context of its use in the provision, it has to be construed as a form of sale and despatch. The conception of supply of goods must be interpreted in the conception of sale. For the purpose of Section 9A, there can be no supply of goods unless there is a sale to the State. As observed in *West*

Survey Water Co. v. Chertsey (1894) 3 Ch 519: "To "supply" anything --e.g., water -- means passing it from one who has it to those who want it; you may "provide" a thing for yourself, but that is not "supplying it"" Supply of articles by State to a person in the latter's course of trade or business does not bring in application of Section 9A. The transaction between the State and respondent No. 7 do not constitute supply by the latter to the State. Therefore, it cannot be said that respondent No. 7 disqualified in terms of Section 9A.

12. The second issue to be considered is whether the election petition as laid is maintainable.

It has been urged by the learned counsel for elected candidate that the copy of election petition supplied was not a true copy of the affidavit supplied to him was without attestation by the prescribed authority and therefore, cannot be considered to be a true copy of the election petition. "The learned counsel for the election petitioner disputed this stand and stated that even if it is accepted that the copy of the affidavit was not supplied to the respondent No. 1 that is of no consequence as the principle of substantial compliance can be applied to the facts of the case. It is submitted that only where allegations of corrupt practice are made, copy of affidavit has to be supplied and not in all cases. In the instant case, though allegations of corrupt practice were originally made in the election petition, they were given up at the threshold of trial before settlement of issues and no issue relating to corrupt practice has been raised. The allegation that there was no signature in each page is also not correct.

At this juncture it is necessary to take note of the decision of the Apex Court in Dr. (Smt.) Shipra etc. etc. v. Shantilal Khoiwal etc. AIR 1996 SC 1691, where it was held that copy of the affidavit supplied to the respondent without attestation by the prescribed authority was not considered as a true copy of the election petition. The concept of substantial compliance with statutory provisions cannot be extended to overlook serious or vital mistakes which shed the character of a true copy so that the copy furnished to the elected candidate cannot be said to be true copy. Verification by a Notary or any other prescribed authority is a vital act which assures that the election petitioner had affirmed before the Notary etc. that the statement containing imputation of corrupt practices was duly and solemnly verified to be correct statement to the best of his knowledge or information as specified in the election petition the affidavit filed in support thereof; that reinforces the assertions. Thus affirmation before the prescribed authority in the affidavit and the supply of its true copy should also contain such affirmation so that the elected candidate would not be misled in his understanding that imputation of corrupt practices was solemnly affirmed or duly verified before the prescribed authority. For that purpose, Form 25 mandates verification before the prescribed authority. The objection appears to be that the elected candidate is not misled that it was not duly verified. The concept of substantial compliance of filing the original with the election petition and the omission thereof in the copy supplied to the elected candidate as true copy

cannot be mind to be a curable irregularity. Therefore, compliance of the statutory requirement is an integral part of the election petition and true copy supplied to the elected candidate should as a sine qua non contain the due verification and attestation by the prescribed authority and certified to be true copy by the election petitioner in his/her own signature. The principle of substantial compliance cannot be accepted in the fact situation. This view was elaborately stated in the case of Dr. (Smt.) Shipra (supra).

Though, as contended by the election petitioner, allegations of corrupt practice were not seriously pressed, the pleadings remained and were not struck off. This position is fairly accepted by learned counsel for the election petitioner. But as observed in paragraph 13 of the judgment in Dr. (Smt.) Shipra's case (supra) only those parts of the petition which contain allegations of corrupt practices and which are not pleaded in conformity with Form 25 read with Rule 94-A and Section 83(1) alone are required to be struck off and other independent issues are required to be tried and decided on merits.

13. It is, however, no necessary to take note of the stand of the learned counsel for the elected candidate with reference to evidence of respondent No. 7 Panchanan Das. It is stated that he is not a serious contestant and in fact if the votes polled by him at various polling stations are taken into consideration, it would be apparent that even if respondent No. 7 would have been in the field of election, it would not have mattered much. He himself has stated that he would not have polled more than 300 votes. It may be repeated for the sake of emphasis that the margin of success is more than 4,000 votes. In essence the plea is that his contest would not have materially affected the result of election.

14. For appreciating the stand it is necessary to take note of the evidence of Panchnan Das, examined as P.W. 5. He is respondent No. 7 in the election petition. His evidence is to the effect that he contested the Parliament Election in 1991 from Phulbani Parliamentary Constituency. Bhanjanagar is one of the assembly constituencies of the said Parliamentary constituency. Again he contested the Parliament election in the year 1996. He had received 4,607 votes in the Parliament election held in the year 1991. The situation was not sufficient in 1996. He has specifically stated that he contested the elections with a view to win, but sufficient number of voters did not cast their votes for him. In his examination-in-chief he has said that had he really contested the election, he would have received 200 to 300 votes, because he had no real means to fight the election.

15. The question in such a circumstances is whether the election is to be set aside keeping in view the margin of difference between the successful candidate and respondent No. 1. For that purpose it is necessary to take into account the position in law. The words "the result of the election has been materially affected" indicate that the result should not be judged by the mere increase or decrease in the total number of votes secured by the elected candidate but by proof of the fact that the wasted votes would be distributed in such a manner

between the contesting candidates as would have brought about the defeat of the elected candidate. (See Vashit Narain Sharma Vs. Dev Chandra and Others, .) The following principles were laid down by the Supreme Court in the said case, which was the case of improper acceptance of a nomination :--

(a) if the nomination accepted was that of the elected candidate, the result must be materially affected;

(b) if the difference between the number of votes is more than the wasted votes the result cannot be affected at all;

(c) if the number of wasted votes is greater than the margin of votes between the elected candidate and the candidate securing the highest number of votes it cannot be presumed that the vested votes might have gone to the latter and that the result of the election has been materially affected.

This is matter which has to be proved and, though it must be recognised that the petitioner in such a case is confronted with the difficult situation, he cannot be relieved of the duty imposed upon him by Section 100(1)(c)(old) now Section 100(1)(d)(i) and if the petitioner fails to adduce satisfactory evidence to enable the Court to find in his favour on this point, the inevitable result would be that the tribunal would not interfere in his favour and would allow the election petition. In an election petition, the burden is upon the petitioner to show affirmatively that the result of the election has been materially affected by non-compliance with statutory provisions. In other words, the petitioner has to demonstrate, positively -- or at least reasonably -- the poll would have gone against the elected candidate if the requirements in law had been complied with.

16. The election of an elected representative of the people should not be normally set aside unless the very process of election is found to be vitiated. Right to elect and right to be elected are statutory rights. The statutory requirements of election law are to be strictly observed. The election contest is not an action at law or a suit in equity, but is a purely statutory proceeding unknown to the common law. The well recognised principle of election law, is that the election should not be held up and the person aggrieved should not be permitted to ventilate his individual interest in derogation of the general interest of the people.

17. Improper rejection of nomination and improper acceptance of nomination have been placed in different footing. Prior to amendment by Act 27 of 1956, Section 100(1)(c) provided :

"If the Tribunal is of the opinion that the result of the election had been materially affected by the improper acceptance or rejection of any nomination, the Tribunal shall declare the election to be wholly void."

By the amendment, improper rejection by itself without anything more has been retained as a ground to invalidate the election, but, in the case of improper acceptance of any nomination, it is necessary that it should be further proved

that the result of the election, in so far as it contains an elected candidate, has been materially affected. This is apparent from Section 100(1) (c) and (d) of the Act. Even prior to amendment by Act 27 of 1956, in many cases it was held that in case of improper rejection of any nomination there was a presumption that the result of election had been materially affected. Before the Act itself this also appeared to have been held in many cases. This view was given statutory form in the present Section 100(1)(c). Now all that is to be established is that the nomination of the candidate was improperly rejected.

18. In the view of the legal position there can be no doubt that improper rejection nullifies the election. But some of the peculiar feature as highlighted above need to be carefully analysed. No doubt an election dispute can be raised by a candidate or an electorate of the constituency, because the election involves each of the electorates as well as the contestants. Judged in that background, the election petition has been held to be maintainable as discussed above.

Improper rejection of a nomination affects the election. But the person who is really affected is the person whose nomination paper has been rejected. In the case at hand, he himself states that his presence in the field of contest would have hardly made any difference and would not have materially affected the election of elected candidate. He has stated with reference to his past performance in various elections that he would not have polled more than 200 to 300 votes. A candidate is the best person to say about his election prospects. When the candidate himself stated that he would have got about 200 to 300 votes had he contested, it would be not proper to accept the version of the election petitioner that his presence in the election contest would have materially affected the result. It is his stand that even if it is accepted the person whose nomination paper has been rejected improperly would have polled about 200 to 300 votes, yet in view of clear provision in the Act the election has to be nullified. Result of an election symbolizes the decision and will of the voters.

19. Democracy is a concept, a political philosophy an ideal practised by resorting to governance by representatives of the people. Results of an election should not be lightly tinkered with. The peculiar features of the present case are that stands of the person really affected and the election petitioner are distinctly contradictory. It would be appropriate to accept version of the person really affected. Voters have chosen one to be their representative in the Legislative Assembly. Respondent No. 7 Panchanan Das, whose nomination has been rejected, has stated that he did not think it proper to file election petition as he was satisfied that his presence in the field of contest would not have made the position different.

20. In the peculiar background and the circumstances highlighted above, I am of the view that the election petition is not to be entertained. In the result, the petition fails and is dismissed with cost of Rs. 1,000/- (one thousand).