

HIRA SINGH PAL

v.

MADAN LAL

January 15, 1968

[M. Hidayatullah and K. S. Hedge, JJ.]

Representation of the People Act, 1951, ss. 36 and 100—Clerical mistake in nomination papers—Duty of Returning Officer—Nomination papers must not be lightly rejected even in the case of dummy candidate—Election to be set aside if papers of such a candidate wrongly rejected.

The respondent filed two nomination papers for election to the Legislative Assembly from a constituency in Himachal Pradesh in the 1967 general election. Both his nomination papers were rejected at the scrutiny. The first nomination paper was rejected on the ground that the proposer's name was wrongly mentioned as being at serial No. 380 of Part 13 of the Electoral Roll of the constituency whereas it was actually at serial No. 380 of Part 23 of the Roll. The second nomination paper was rejected on the ground that the respondent was shown as the elector at Serial No. 504 of Part 2 of 9—Arki Assembly constituency but really his name was found at serial No. 504 of Part 12 of that constituency. At the election subsequently held the appellant was the winning candidate. The respondent filed an election petition challenging the appellant's election on the ground that his (the respondent's) nomination papers had been wrongly rejected. The High Court allowed the petition whereupon, by special leave, the appellant came to this Court. It was urged on behalf of the appellant, *inter alia*, that the respondent was only a dummy candidate who was not even present at the time of the scrutiny and had filed the petition only because the candidate representing his party had been defeated.

HELD: The respondent's nomination papers were wrongly rejected in a manner impermissible under s. 36 of the Representation of the People Act and the election must be set aside under s. 100 of the Act. [785 A]

It may be that while scrutinising the first nomination paper the Returning Officer had no material before him to find out whether the proposer of the candidate was really an elector in the constituency or not but in the second nomination paper the proposer's name as well as place in the electoral roll was correctly mentioned. It was improper on the part of the Returning Officer to have rejected the second nomination paper merely on the ground that the part of the electoral roll in which the respondent's name was recorded was wrongly mentioned because the correct number of the electoral roll was mentioned in the first nomination paper. All the required information was before the Returning Officer and the mistake was only clerical. Obviously he rejected the nomination paper for the reason that the respondent was a dummy candidate but that was not a matter for him to decide. [784 D-H]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1112 of 1967.

Appeal under s. 116-A of the Representation of People Act 1951 from the judgment and order dated July 14, 1967 of the Delhi High Court, Himachal Bench at Simla in C.O.P. (Election) Petition No. 3 of 1967.

A *H. R. Gokhale, S. K. Khanna, S. K. Mehta and K. L. Mehta,*
for the appellant.

R. K. Garg, Naunit Lal and B. P. Singh, for the respondent.

The Judgment of the Court was delivered by

B **Hegde, J.** This appeal is directed against the order of the High Court of Delhi and Himachal Pradesh in Election Petition No. 3 of 1967. That petition related to the election to the Himachal Pradesh Legislative Assembly during the last General Election, from 9-Arki Assembly Constituency.

C The only ground taken in the petition was whether the nomination of the respondent was improperly rejected. The respondent had filed his nomination for the election in question on January 20, 1967. He had filed two nomination papers. The scrutiny took place on January 21, 1967. At the time of the scrutiny, the respondent was not present; his nomination papers were rejected by the Returning Officer. The election took place in February, 1967. The two contesting candidates were the appellant and Hari Das the Congress nominee. The appellant succeeded by a margin of about 8000 votes. After the results of the election were announced, the respondent filed an election petition with which we are now concerned.

D The only ground taken in the election petition as mentioned earlier was that his nomination papers were improperly rejected. In rejecting the nomination papers of the respondent, the Returning Officer observed as follows :

E 'Shri Madan Lal, resident of Village Parchech, P.O. Ghanahatti District Mahasu filed two nomination papers before me on 20th January, 1967 which bear serial Nos. 5 and 6. According to the entry in the nomination paper serial No. 5 Shri Anant Ram proposer has been shown to be entered at serial No. 383 of 13 of the electoral rolls for 9-Arki Assembly Constituency. From the comparison with the final copy of electoral rolls for this constituency, at serial No. 383 of part 13 the name of Shrimati Phullu wife of Shri Nirjal Singh has been entered. As such this entry in this nomination paper is wrong.

F As regards nomination paper bearing serial No. 6 the candidate has shown his name to be entered at serial No. 504 of part 2 of the Electoral rolls for 9-Arki Assembly Constituency. From the comparison with the aforesaid entry in the final copy of the electoral rolls at the aforesaid serial No. of the aforesaid part one Shrimati Darshnoo wife of Shri Ghanaya Ram has been

entered. Hence this entry in the nomination paper bearing serial No. 6 is incorrect. A.

At the time of scrutiny neither Shri Madan Lal nor his proposer or election agent nor any one authorised on his behalf was present so that he could be given an opportunity for correcting these entries. This candidate while presenting his nomination papers claimed to be the substitute candidate of the Indian National Congress who have put up Shri Hari Dass as their only candidate. B

In view of the aforesaid circumstances it cannot be ascertained whether Shri Madan Lal is an elector in any Assembly Constituency of Himachal Pradesh or that his proposer Shri Anant Ram is an elector in the 9-Arki Assembly Constituency. Shri M. R. Gupta, Advocate the person authorised on behalf of Shri Hari Dass was informed to convey to Shri Madan Lal that he can approach me any time upto 3.00 p.m. today for correcting these entries. Shri Madan Lal has not turned up as yet. It is now 15 minutes past 3.00 p.m. C

In these circumstances there is no alternative but to reject both these nomination papers as the candidate does not seem to be interested in correcting these entries and filing proper and valid nomination papers. These orders are passed *ex-parte* since Shri Madan Lal has not cared to turn up. D

Announced. E

Sd/- R. C. Gupta, 21-1-1967.

Returning Officer.

9-Arki Assembly Constituency." F

The two nominations filed by the respondent are marked as annexures A and B. They read as follows :

ANNEXURE 'A'

Form 2-B G

(See rule 4)

Nomination paper.

Election to the Legislative Assembly of Union territory of Himachal Pradesh (State). H

1. Nomination as candidate for election to the Legislative Assembly from the 9-Arki assembly constituency.

A Candidate's name Madan Lal
His postal address. Village Parhech P.O. Ghana-
hatti District, Mahasu.

His name is entered at serial No. 504 of the Electro-
ral Roll for the 9-Arki in part No. 12.

B Assembly Constituency

My name is Anant Ram and it is in Part No. 13
entered at serial No. 380

Electoral Roll of the Assembly Constituency
for the 9-Arki

Date : 20-1-1967.

C Sd./- Anant Ram
Signature of Proposer.

"Decision of Returning Officer accepting or reject-
ing the Nomination paper.

D I have examined this nomination paper in accord-
ance with section 36 of the Representation of the People
Act, 1951, and decide as follows: Rejected.

Shri Anant Ram proposer is not entered at Sl. No.
380 of Part No. 13 of the Electoral Roll of 9-Arki
Assembly constituency. Despite opportunity this entry
has not been corrected.

E Sd./ R. C. Gupta 21-1-1967
Returning Officer
3-15 P.M., 9-Arki Assembly
Constituency.

Date : 21-1-1967.

F ** 1. the above mentioned candidate assent to this nomination and hereby
declare:—

- (a) that I have completed 49 years of age;
(b) that I am sponsored at this election by the Indian National Cong-
ress Party;
(c) that the symbols I have chosen are, in order of preference
(i) Two Bullocks with yoke on (ii) and
(iii) × ×

G * Score out this paragraph, if not applicable.
** Score out the word not applicable.

(to be filled by the returning officer)

Serial No. of nomination paper

5.

H This nomination was delivered to me at my office at 1.20 P.M. (hour) on
20/1/67 (date by the *candidate/

Sd. R.C. Gupta 20/1/67
Returning Officer,

9—Arki Assembly Constituency.

ANNEXURE 'B'

A

Form 2-B
(See rule 4)
Nomination paper.

Election to the Legislative Assembly of Himachal Pradesh (State)

B

I nominate as a candidate for election to the legislative Assembly from the 9-Arki assembly constituency
Candidate's name Madan Lal

His postal address Village Parhech P.O. Ghanahati
District Mahasu

C

His name is entered at Serial No. 504, in part No. 2 of the Electoral Roll for the 9-Arki Assembly Constituency.

My name is Hari Nand and it is entered at serial No. 799 in Part No. 13 of the Electoral roll for the 9-Arki Assembly Constituency.

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Date : 20-1-1967.

Sd./ Hari Nand
Signature of proposer.

E

Decision of Returning Officer accepting or rejecting the Nomination paper.

I have examined this nomination paper in accordance with section 36 of the Representation of the People Act, 1951, and decided as follows :—Rejected.

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1. The above-mentioned candidate, assent to this nomination and hereby declare :—

- (a) that I have completed 49 years of age ;
 - (b) that I am sponsored at this election by the Indian National Congress party;
 - (c) that the symbols I have chosen are, in order of preference.
 - (i) Two bullocks with yoke on (ii) and (iii)
- *Score out this paragraph, if not applicable.
**Score out the word not applicable.

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(to be filled by the Returning Officer)

Serial No. of nomination paper 6

This nomination was delivered to me at my office at 1.20 P.M. (hour) on 20-1-67 (dated) by the* candidate/

H

Sd. R.C. Gupta, Returning Officer,
9-Arki Assembly Constituency

Date :20-1-67

A The name of the candidate is not entered at Sl. No. 504 of Part No. 2 of Arki Assembly Constituency Electoral roll; despite opportunity he has not cared to correct the entry.

Sd./ R. C. Gupta

Date : 21-1-1967. Returning Officer, 21-1-67 3-15 P.M.
9-Arki Assembly Constituency.

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C In the first nomination paper, the proposer was one Anant Ram. It was mentioned in the nomination paper that he is the elector shown at serial No. 380 of Part 13 of the Electoral Roll of Arki Assembly Constituency. This was clearly a mistake. His name is really found at serial No. 380 of Part 23. In the second nomination paper the candidate is shown as the elector at serial No. 504 of Part 2 of 9-Arki Assembly Constituency; but really his name is found at serial No. 504 of Part 12 of that Constituency. Hence the question is whether the grounds on which the Returning Officer rejected the nomination papers of the respondent were substantial grounds as contemplated by s. 36 of the Representation of the People Act, 1951.

E Before we deal with that question, it is necessary to set out few more facts. According to the appellant the respondent was not a genuine candidate; he was a dummy Congress candidate; he never intended to contest the election. There is basis for this contention. The respondent was the General Secretary of the Mahasu District Congress Committee. He never applied for any Congress ticket; nor his name was considered either by the District Congress Committee or by the Pradesh Congress Committee. He did not give the contribution required to be given by the candidates to the party; nor did he give the security prescribed by the party.

F The Congress had selected Mr. Hari Dass, one of the then Ministers in the Himachal Pradesh Government for contesting the constituency in question. His name had been recommended by the District Congress Committee as well as by the Pradesh Congress Committee. It had been accepted by the Parliamentary Board. He had paid the necessary subscription. He had also deposited the prescribed security. It is found from the evidence of the appellant that both Mr. Hari Dass as well as the respondent went together to the Returning Officer for filing their nominations. In fact it is clear from the order of the Returning Officer that the appellant had told him that he was only a covering candidate for Mr. Hari Dass. It may also be noted that the respondent had declared that he was a Congress nominee. He had also asked for the Congress symbols namely a pair of bullocks. It may further be noted that on the date of the scrutiny, the respondent was absent and there was nobody to represent him. The Advocate

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who represented the Congress organisation did not object to the rejection of the nomination of the respondent presumably because no one was interested in his nomination as the nomination of Mr. Hari Dass had been accepted. Possibly he is now challenging the election because his party's candidate has been defeated. At this juncture, we may notice that the respondent did not even apply for a copy of the order of the Returning Officer rejecting his nomination till the election results were announced. He admitted during his cross-examination that he had acted as the counting agent of Mr. Hari Dass. It is proved from the evidence of the appellant that he actively canvassed for Mr. Hari Dass. From the facts and circumstances established in this case we have no doubt in our mind that the respondent was at no time a genuine candidate. He is merely availing himself of the opportunity of the rejection of his nomination paper for undoing the result of the election.

That, however, is not the end of the matter. All that we have to consider in this appeal is whether the Returning Officer was right in rejecting the nomination of the respondent. As mentioned earlier, the errors found in the nomination papers are purely clerical errors. The Returning Officer had the duty to scrutinise the nomination papers when they were presented for finding out whether there were any clerical mistakes in the same. Under that provision he was required to find out whether the names of the candidates as well as their proposers and seconders were correctly mentioned in the nomination papers. He was also required to see whether their place in the electoral roll was correctly mentioned in the nomination papers. Evidently the Returning Officer failed in his duty. Further, when he scrutinised the nomination papers on January 21, 1967, he had before him all the required information. It may be that while scrutinising the first nomination paper (marked as No. 5) he had no material before him to find out whether the proposer of the candidate was really an elector in the constituency or not; but when he came to the second nomination paper where the proposer's name as well as his place in the electoral roll is correctly mentioned, it was improper on his part to have rejected that nomination paper. It is true that in that nomination paper, it had been mentioned that the candidate's name is found at serial No. 504 of part 2 of 9-Arki Assembly Constituency, though in fact it is found at serial No. 504 in part 12 of that constituency; but from the first nomination paper, the Returning Officer could have easily found out the correct part of the electoral roll. All the required information was before him. Obviously he rejected the nomination papers for the reason that the respondent was only a dummy candidate but that was not a matter for him to decide. If he was a dummy candidate there was occasion for him to withdraw his candidature after the scrutiny of the nomination papers. Therefore it is quite clear that the respondent's

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A nomination papers were improperly rejected. Such a rejection was impermissible under s. 36 and the same is a ground for setting aside the election under s. 100 of the Representation of the People Act.

B For the reasons mentioned above, we dismiss this appeal but in the circumstances of the case, we direct that the parties shall bear their own costs throughout.

G.C.

Appeal dismissed.