

DILIP KUMAR GON

v.

DURGA PRASAD SINGH

November 4, 1974

[A. ALAGIRISWAMI AND R. S. SARKARIA, JJ.]

Election—Contest from a general Constituency to seat in State Legislative Assembly—Omission to strike off 'Scheduled Caste/Tribe' and to fill in candidate's caste in nomination paper—If defective justifying rejection of nomination paper.

In relation to an election to the State Legislative Assembly from a general constituency, one candidate had not in the nomination paper (a) filled his specific caste in the blank meant for that purpose, and (b) he had, left the words 'Scheduled Caste' unscored. The Returning Officer rejected his nomination paper on the ground that his failure to delete the words 'Scheduled Caste' meant that he belonged to the scheduled caste which was not true, and consequently, the nomination paper was not filled up properly. The respondent was declared elected. The High Court, holding that the candidate, whose nomination paper was rejected by the Returning Officer, had not properly filled his nomination paper, upheld the rejection and dismissed the election petition challenging the respondent's election.

Allowing the appeal to this Court.

HELD: (1) The seat for which the candidates contested was not a reserved seat. There is no statutory provision in the Representation of the People Act, 1951, or elsewhere which enjoins a candidate who is contesting the election for a general seat, and not for a reserved seat, to specify in his declaration his caste or tribe. [571G]

(2) The Returning Officer admitted in his evidence that at the time of the scrutiny of the nomination papers he was aware that the candidate, whose nomination paper he rejected, was not a member of the scheduled caste and that he had deposited Rs. 250/- as security. Therefore, the omission to strike off scheduled caste/tribe in the form did not amount to a defect in the eye of law, much less was it a defect of a substantial character, warranting the rejection of the nomination paper. [571H]

Amolak Chand v. Raghuvver Singh [1968] 3, S.C.R. 246 followed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 602 of 1973.

From the Judgment & Order dated the 6th February, 1973 of the Patna High Court in Election Petition No. 6 of 1972.

R. K. Garg, S. C. Agarwala, S. S. Bhatnagar and V. J. Francis, for the appellants.

D. Goburdhan, for the respondent.

The Judgment of the Court was delivered by

SARKARIA, J. Durga Prasad Singh, respondent herein, Khatir Ali and Abdul Hamid, filed their nomination papers before the Returning Officer for contesting the election to the Bihar Legislative Assembly from 147-Jamtara Assembly Constituency (General). The date for scrutiny of the nomination papers was February 9, 1972. The Returning Officer rejected the nomination papers of Khatir Ali and Abdul Hamid ignoring the objections that were raised on their behalf. Durga Prasad Singh was declared duly elected.

A The appellant, an elector of the Constituency, filed an Election Petition challenging the election of Durga Prasad Singh *inter alia* on the ground that the nomination papers of Abdul Hamid and Khatir Ali had been improperly rejected. A learned single Judge of the High Court, who tried the Petition decided that issue against the petitioner, and in consequence, dismissed the Petition. Hence this appeal.

B Before us, Mr. R. K. Garg, learned Counsel for the appellant has confined his arguments to the rejection of the nomination paper of Abdul Hamid, only. It is submitted that the defect on the basis of which the Returning Officer rejected Abdul Hamid's nomination papers, was not a 'defect' in the eye of law. At any rate, proceeds the argument, it was not a defect of a substantial character which could justify rejection of the nomination papers.

C There is merit in this contention.

What happened was that in the column of the printed nomination form, meant for making a declaration of the candidates' of the Scheduled Caste/Tribe contesting for a Reserved Seat, Abdul Hamid had not (a) filled his specific caste in the bank meant for that purpose and further, (b) he had in that column, left the words 'Scheduled Caste' unscored. The Returning Officer rejected the nomination papers on the ground that the failure of the candidate to delete the words 'Scheduled Caste' means that "he belongs to Scheduled Caste which is not true" said consequently, "the nomination papers are not filled up properly".

E The learned Judge of the High Court upheld this rejection, holding that "the candidate's filling of these entries were on the face of it, not proper and did not comply with the requirements of law on this subject" and further that this defect was not "trivial or technical" but of a substantial character.

F In our opinion, in the circumstances of the case, the rejection of the nomination papers of Abdul Hamid was manifestly erroneous. The High Court's view that in scoring out only the word 'Jan-Jati' (Tribe) and leaving the word 'Jati' (caste) untouched in the aforesaid column of the nomination form, Abdul Hamid had failed "to comply with the requirement of the law on the subject" was entirely misconceived. It overlooked the fact that the Jamtara Constituency was a 'General' Constituency, and the seat for which the candidates wanted to contest the election was not a Reserved seat. Section 33(2) of the Representation of the People Act, 1951, or any other statutory provision does not enjoin upon a candidate who is contesting the election for a General Seat, and not for a Reserved seat, to specify in his declaration his caste or tribe. Further, the Returning Officer appearing as R. W. 2, had clearly admitted that at the time of the scrutiny of the nomination papers, he was aware that Abdul Hamid was not a member of the Scheduled Caste and that he had deposited Rs. 250/- as security. The omission to strike off the column in the printed nomination form relating to Scheduled Caste/Tribe did not amount to a defect in the eye of law, much less was it a defect of a substantial character, warranting rejection of the nomination paper.

In *Amolak Chand v. Raghuvveer Singh*,⁽¹⁾ the nomination papers of two candidates contesting for a General Constituency were rejected on a similar ground. Holding that the rejection was improper, Ramaswami J. speaking for the Court stated the law on the point thus :

“The printed form 2-A is meant both for General and Reserved Constituencies but while it is obligatory for candidates in the reserved constituency to make a declaration in the proper column that he is a member of a particular caste or tribe, there is no such rule with regard to General Constituency. Section 33(2) of the Act imposes an obligation on the candidate in the reserved constituency to make a declaration in the proper column, but there is no such direction in the statute with regard to the General Constituency. In our opinion, the mention of the caste of the candidate in the nomination form was a clear superfluity because it was not necessary for the candidate to fill in the column when he was contesting in a General Constituency. .”

In the light of what has been said above, we would, reverse the finding of the High Court and hold that the nomination papers of Abdul Hamid were improperly rejected by the Returning Officer.

In the result, we would on this short ground, allow this appeal and the Election Petition and declare the election of Durga Prasad Singh, Respondent herein to be void. The appellant shall have his costs throughout.

V. P. S.

Appeal allowed.

(1) [1968] 3 S.C.R. 246.