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KRIPA SHANKAR CHATTERJI  
v.  
GURUDAS CHATTERJEE AND ORS.

JULY 12, 1995

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[G.N. RAY AND FAIZAN UDDIN, JJ.]

*Election Law:*

*Representation of People Act, 1951:*

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*Election to Assembly Constituency—Election petition by defeated candidate—Findings of fact—Disinclination to interfere where it is established by cogent, convincing and unimpeachable evidence that the finding is unjustified and against weight of evidence—Reiterated.*

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The appellant was the returned candidate from Nirsa Assembly Constituency. He had lost by a margin of 1450 votes to Respondent no. 1 and filed an election petition challenging the election of respondent no. 1 on the grounds that (i) improper rejection of the nomination paper of one of the candidates viz. 'C' although he was above 25 years of age, (2) improper acceptance of nomination papers of two candidates who were not voters in that constituency. (3) the returned candidates and two other candidates namely Respondents No. 20 and 21 were at the time of election, employees of Eastern Coal Field Limited, a subsidiary of Coal India Ltd. which was a Government of India Undertaking and as such were public servants under Section 21 of Indian Penal Code and were accordingly disqualified to contest the said election and (4) the election of the returned candidate was invalid on account of irregularities in counting ballot papers.

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Respondent No. 1 contested the Election Petition and denied the contentions. The Single judge of the High Court dismissed the election petition by rejecting all the contentions of the election petitioner. On the question of improper rejection of the nomination paper of 'C' it was found that there was no evidence that he was not less than 25 years age at the time of scrutiny.

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Aggrieved against the High Court judgment, the election petitioner preferred the present appeal. A

Dismissing the appeal, this Court

HELD : 1. It was open to the election petitioner to move the court for taking appropriate steps to ensure appearance of 'C', one of the candidates. The *ex-parte* affidavit without affording opportunity to the Respondent No. 1 to test the veracity of the statements made in the affidavit by cross examining him cannot be held to be sufficient proof of the correct age of 'C'. Thus, there is no reason to interfere with the finding of the High Court on the question of rejection of nomination paper of 'C'. C

[31-G]

2.1. Although an appeal lies to this Court from a decision of the High Court in an election petition filed under the Representation of People Act and although in such appeal this Court can interfere with the finding of fact by making its own assessment of evidence, as a rule of prudence, this Court has always shown disinclination to interfere with the finding of fact unless it can be established by cogent, convincing and unimpeachable evidence that the finding of fact by the High Court is unjustified and against the weight of the evidence. [32-G] D

2.2. In the instant case, the High Court has rightly come to the finding by indicating reasons that the election petitioner has failed to establish by any convincing evidence that in view of contest of the election by the two candidates who were allegedly not the voters from that constituency, the polling prospect of the election petitioner was materially affected. [32-F] E

*N.I. Singh v. L.O. Singh*, [1977] 1 SCR 573 and *Mohd. Yunus v. Shiv Kumar*, [1974] 3 SCR 738, referred to. F

3. The question as to whether an employee of Eastern Coal Fields Ltd. was holding an "office of profit" so as to be disqualified to contest election under the Representation of People Act need not be gone into, in view of the finding that the Respondent No. 1 had in fact resigned from his service at the relevant period and his resignation was accepted by the concerned authority. [33-C] G

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A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2503 of 1994.

From the Judgment and Order dated 3.2.94 of the Patna High Court in Election Petition No. 3 of 1990.

B Gobinda Mukhoty, V.J. Farancis and V. Subramanian for the Appellant.

The Judgment of the Court was delivered by

C G.N. RAY, J. This appeal is directed against the judgment dated February 3, 1994 passed by Patna High Court (Ranchi Bench) in Election Petition No. 3 of 1990. The appellant challenged the result of the election of 285 Nirsa Assembly Constituency in the State of Bihar held in February 1990 by presenting an election petition before the High Court under the Representation of People Act 1951 (hereinafter referred to as the Representation Act).  
D The appellant Sri Kripa Shankar Chatterjee was a candidate for the said election from Nirsa Constituency. He, however, lost to the returned candidate namely respondent no. 1 Gurudas Chatterjee by a margin of 1450 votes. There were 22 other candidates contesting for the said Nirsa Constituency.

E It may be stated here that during the pendency of the Election Petition before the Ranchi Bench, the election petitioner moved an application in the High Court for inspection of ballot papers but such application being dismissed the petitioner moved a Special Leave Application before this Court but the said petition was also dismissed by this Court  
F with the observation that dismissal of special leave petition would not preclude the High Court from inspecting the ballot papers if it deemed necessary to satisfy the court's conscience. Although the petitioner thereafter made prayer for such inspection but the High Court did not accede to such prayer.

G The election result was challenged inter alia on the grounds of (i) improper rejection of the nomination paper of one of the candidates Sri Chunmun Singh although he was above 25 years of age, (2) improper acceptance of nomination papers of two candidates namely Sri Sanjib Baxi and Sri Shivlal Manjni who were not voters in the Nirsa Assembly Constituency, (3) the returned candidates and two other candidates namely  
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Respondent No. 20 and 21 were at the time of election employees of Eastern Coal Field Limited, a subsidiary of Coal India Ltd. which was a Government of India undertaking and as such public servants under Section 21 of Indian Penal Code and accordingly were disqualified to contest the said election and (4) the election of returned candidate was invalid on account of irregularities in counting ballot papers, particulars of such irregularities being mentioned in paragraph 30 of Election Petition.

The Respondent No. 1 Sri Gurudas Chatterjee contested the Election Petition and denied all the contentions of the Election petitioner by filing a written statement. The learned Judge by the impugned judgment dismissed the election petition by rejecting all the said contentions of the election petitioner. Coming to the question of improper rejection of the nomination paper of Sri Chunmun Singh, the learned Judge inter alia came to the finding that there was no evidence from the side of election petitioner that Sri Chunmun Singh was not less than 25 years at the time of scrutiny. The election petitioner filed an affidavit affirmed by Sri Chunmun Singh stating that he was above 25 years at the time of scrutiny of nomination papers. In the absence of oral deposition, the High Court was not inclined to accept the said affidavit. Mr. Mukhoty learned senior counsel appearing for the appellant has contended at the hearing of the appeal that the said Sri Chunmun Singh was summoned but he failed to appear in court. Sri Chunmun Singh filed an affidavit stating therein that his date of birth was March 5, 1962. Mr. Mukhoty has contended that the appellant was keen in examining the said Chunmun Singh but as he did not appear despite summons issued to him, his affidavit filed by him in court in answer to the summons ought to have been accepted by the Court. We are, however, not inclined to accept the said submission of Mr. Mukhoty. It was open to the election petitioner to move the court for taking appropriate steps to ensure appearance of Sri Chunmun Singh. The ex parte affidavit without affording opportunity to the Respondent No. 1 to test the veracity of the statements made in the affidavit by cross examining him cannot be held to be sufficient proof of the correct age of Sri Chunmun Singh. We, therefore, do not find any reason to interfere with the finding of the High Court on the question of rejection of nomination paper of Sri Chunmun Singh.

Coming to the question of improper acceptance of nomination papers of Sri Sanjib Baxi and Sri Shiv Lal Manjhi the High Court has held

A that the election petitioner did not file the certified copy of the voters list of the constituency from which he was an elector. The Respondent No. 1 in his deposition has categorically stated that both Sri Baxi and Sri Manjhi were voters in the Nirsa Constituency. He has also stated that both Sri Baxi and Sri Manjhi had shown the relevant entries showing their names in the voters list to the Returning Officer at the time of scrutiny. It has been held by the learned Judge that there is no documentary evidence from the side of the petitioner to establish that the certified copies of the relevant entries in the voters list were not filed by the said candidates with their nomination papers or at the time of scrutiny. there is also no evidence that any objection against acceptance of nomination papers of the said candidates was raised by election petitioner or by any other candidate at the time of scrutiny. the learned Judge has not placed reliance on the deposition of P.W. 2 Srilal because of contradiction in his statement in examination in chief and cross examination about examination of relevant entries in the voters' list at the time of acceptance of his nomination paper for Sindri Constituency. The High Court has indicated that there is evidence on the side of the Respondent No. 1 vide deposition of RW 1, RW 10, RW 14 and RW 15 that Sri Baxi and Sri Manjhi had produced and shown the voters' list to the Returning Officer. The learned judge has also held that the presumption of proper performance of duties by Returning Officer in accepting nomination papers on scrutiny of relevant records has not been rebutted by any convincing evidence adduced by the election petitioner. It has also been held by the High Court that even if it is assumed that the said nomination papers were improperly accepted, in view of Section 100(d) of the Representation Act, unless the petitioner was able to establish that such improper acceptance of nomination papers had materially affected the election result, the same is not liable to be quashed. The High Court has come to the finding by indicating reasons that the election petitioner has failed to establish by any convincing evidence that in view of contest of the election by Sri Baxi and Sri Manjhi, the polling prospect of the election petitioner was materially affected, we agree with the said finding of the High Court. It may indicated here that although an appeal lies to this Court from a decision of the High Court in an election petition filed under the Representation Act and although in such appeal this Court can interfere with the finding of fact by making its own assessment of evidence, as a rule of prudence this Court has shown disinclination to interfere with the finding of fact unless it can be established by cogent, convincing and unimpeachable evidence that the finding of fact by the High Court is unjustified and against the weight of the evidence. In this connection reference may be made to the decisions of this Court in *N.I. Singh v.*

*L.O. Singh*, [1977] 1 SCR 573 and *Mohd. Yunus v. Shiv Kumar*, [1974] 3 SCR 738. A

So far as the question of disqualification of the returned candidate to contest the election in view of the fact that at the relevant time he held office of profit being employee of Eastern Coal Fields Ltd. is concerned, the High Court has held that there is satisfactory evidence adduced on behalf of Respondent no. 1 that he had resigned from service at the relevant period and such resignation was accepted. The High Court however, held that as the Respondent No. 1 did not hold any "office of profit" as contemplated under the Representation Act, the other question about his resignation was immaterial. In our view, the question as to whether an employee of Eastern Coal Field Ltd. was holding an "office of profit" so as to be disqualified to contest election under the Representation Act need not be gone into, in view of the finding that the Respondent No. 1 had in fact resigned from his service at the relevant period and his resignation was accepted by the concerned authority. Such finding, in our view, in the facts and circumstances does not warrant any interference. We may indicate here that the hearing of this appeal was concluded shortly before the general election of Bihar State Assembly in 1995 and general election having been held in the meantime, this appeal for all practical purpose has lost its importance and has become infructuous. As all the contentions of the appellant have been held not acceptable, we dismiss this appeal without any order as to costs. B  
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G.N.

Appeal dismissed.