

ANIL BALUNI
v.
SURENDRA SINGH NEGI

JULY 14, 2005

[R.C. LAHOTI, C.J., G.P. MATHUR AND P.K. BALASUBRAMANYAN, J.J.]

Representation of the People Act, 1951—Section 100(1) (c)—Rejection of nomination papers of appellant by Returning Officer on the ground that they were filed after the closing time on last date fixed—High Court dismissing the Election Petition—Correctness of—Held, on facts and evidences, nomination papers have been filed before the expiry of due date fixed—Returning Officer has committed fraud by making interpolations in the nomination papers of the appellant—Hence, allowing the appeal, the election of the respondent declared void—Election Symbols (Reservation and Allotment) Order, 1968.

Election Commission of India issued a notification for holding elections in State Legislative Assembly. Appellant and respondent filed their nominations for contesting election in a particular Constituency. The appellant filed four sets of nomination papers. The nomination papers were rejected by the Returning Officer on the ground that they were submitted by the appellant at 4.10 pm on 23.1.2002 i.e. beyond the closing time of 3.00 pm fixed on the last date for filing of the nomination papers. The appellant could not contest the election and the respondent was declared to be elected from the Constituency.

The appellant filed an Election Petition under sections 80 and 81 of the Representation of the People Act, 1951 challenging the election of the respondent to the State Legislative Assembly contending that he filed four sets of nomination papers along with Forms A and B as prescribed by the Election Symbols (Reservation and Allotment) Order, 1968 before the Returning Officer on 22.1.2002 itself i.e. a day prior to the last date fixed for filing nomination papers; that the Returning Officer, after scrutiny of the nomination papers, informed the appellant that the same were valid and passed orders in Hindi on all the nomination papers to the effect “after scrutiny found valid”; that while he was on his way back to his Constituency from the office

A of the Returning Officer, when he was informed that the Returning Officer has rejected his nomination papers, he immediately returned and found the office of the Returning Officer closed; that, thereafter, he immediately made complaints to Observer, Chief Election Commissioner and other authorities about the illegal and improper rejection of his nomination papers by the Returning Officer; and that he later received an official communication from B the Returning Officer intimating him that his nomination papers were rejected on the ground that Forms A and B were filed at 4.10 pm on 23.1.2002. The appellant stated in his pleadings that the Returning Officer had made interpolations by adding the Hindi word "Aa" before the word "vaidh".

C The respondent contended before the High Court that the Returning Officer rightly rejected the nomination papers of the appellant on the ground that Forms A and B were filed after the closing time of the last date fixed for filing nominations. The High Court, after appraisal of oral and documentary evidence, dismissed the election petition of the appellant. Hence this appeal.

D Allowing the appeal, the Court

HELD: 1.1. The specific statement of PW-1 and PW-2 is that the appellant had been declared to be the official candidate of the political party on 17.1.2002 and Forms A and B were given to the appellant on 19.1.2002. Form B, which was issued in favour of the appellant also bears the date E 19.1.2002. The respondent has lead absolutely no evidence to show that there was any doubt or dispute in the Party high command regarding the candidature of the appellant on account of which Forms A and B could not have been given to the appellant on 19.1.2002 or till the time when he filed his nomination papers on 22.1.2002. In such circumstances, it does not appeal to reason that F though he had been declared as the official candidate of the political party and had been given Forms A and B on 19.1.2002, yet he would not file the same along with his nomination papers on 22.1.2002 and would choose to file the same subsequently on 23.1.2002, which was the last date. [603-D, E, F]

1.2. In the List of Nominated Candidates prepared according to G Paragraph 30.1 of Handbook for Returning Officers and sent to the Election Commission on 23.1.2002 under the signature of the Returning Officer, it was clearly mentioned against the name of the appellant that Forms A and B have been received by 3.00 P.M. on the last date for making nomination regarding his candidature. This contemporaneous document, which had been prepared on 23.1.2002 itself fully establishes that the appellant had submitted H Forms A and B by the prescribed time. [604-B, C]

1.3. The outer time limit for acceptance of nomination papers and Forms A and B was 3.00 p.m. on 23.1.2002 and, therefore, the Returning Officer could not have received any such Forms if the same were presented after 3.00 p.m. If the appellant had really presented the aforesaid Forms at 4.10 p.m., the Returning Officer should have declined to receive the same. The Handbook does not lay down that the Returning Officer can physically receive such documents even if they are presented after 3.00 p.m. on the last date for making nominations and thereafter to mention the time and date of filing. Paras 12.1 and 12.2 of the Handbook clearly state that the Returning Officer should not accept any document after 3.00 p.m. The statement of the Returning Officer that he accepted Forms A and B submitted by the appellant even though they were filed at 4.10 p.m. on 23.1.2002 and then noted the time and date of their filing is not worthy of credence on account of the clear prohibition contained in the Handbook not to receive any such document after 3.00 p.m. This shows that Forms A and B had already been filed along with nomination papers before the last date and time fixed for the purpose. [607-C, D, E, F]

1.4. According to the Report of the Forensic Science Laboratory, the Hindi word "vaidh" was originally written and the word "Aa" appears to have been added subsequently to the word "vaidh" in a different operation of writing making it to be read as "avaidh" in the first line of all the endorsements. The Report further says that the further addition of the lines wherein it is written in Hindi that the candidate has submitted Forms A and B on 23.1.2002 at 4.10 pm before the Returning Officer was also subsequently written. Nothing much was put to the members who made the Report and there is hardly any reason not to place reliance upon the said Report. [607-A, B]

1.5. It looks not only doubtful but also highly improbable that though the Returning Officer did not perform a very important official duty which was cast upon him namely, of himself sending the list of nominated candidates as prescribed in para 30.1 of Chapter V of the Handbook and after signing the blank forms he left it to his Assistant to make the necessary entries therein and to send to the Election Commission and Chief Electoral Officer, etc. on the supposed ground that his wife was ill, yet he took pains to issue a notice on the same day, i.e., 23.1.2002 to his Assistant to show cause as to why disciplinary action may not be taken against him. There was hardly any urgency in the matter and the show cause notice could have been issued later at any point of time. Anyone who has been assigned the important work of Returning Officer would first perform his official duty of sending the list of nominated candidates to the concerned authorities and would not waste time

A in issuing show cause notice to a subordinate employee regarding the proposed disciplinary action. The issuance of show cause notice on the same day, i.e., 23.1.2002 creates a serious doubt on the *bonafides* of the Returning Officer and in fact shows that evidence was being manufactured in order to justify the interpolations made in the nomination papers whereby they were rejected.

[610-B, C, E]

B

1.6. The election petition has been filed on the ground that the appellant's nomination papers had been improperly rejected, which is a ground contemplated by section 100(1) (c) of the Representation of the People Act, 1951. On consideration to the evidence on record, the appellant has succeeded in establishing that he had filed his nomination papers along with Forms A and B on 22.1.2002 and his nomination papers were improperly rejected. The election of the respondent is declared to be void. [611-E, F, G]

C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6521 of 2004.

D

From the Judgment and Order dated 3.9.2004 of the Uttaranchal High Court in E.P.No. 1 of 2002.

Subodh Markandeya, R.P. Goel, Ms. Vibha Arora, Rahul Batra, Ms. Rekha Dahkhar, Rama Mohan P.B. and Mrs., Chitra Markandey with him for the Appellant.

E

V.A. Mohta, A.S. Rawat, Nilakanta Nayak and Anil Nag with him for the Respondent.

The Judgment of the Court was delivered by

F

G.P. MATHUR, J. 1. This appeal under Section 116-A of the Representation of the People Act, 1951 (hereinafter referred to as the 'Act') has been preferred by a candidate against the judgment and order dated 3.9.2004 of the High Court of Uttaranchal by which the election petition filed by him challenging the election of the respondent Surendra Singh Negi was dismissed.

G

2. The Election Commission of India issued a notification calling upon the electors of Uttaranchal to elect members of Uttaranchal Vidhan Sabha including those from 29 Kotdwar Legislative Assembly Constituency. According to the notification the schedule of the election was as under:

H

(i) Last date for filing of nomination paper 23.1.2002

(ii)	Date of Scrutiny of nomination paper	24.1.2002	A
(iii)	Date for withdrawal of nomination	28.1.2002	
(iv)	Date of poll, if any	14.2.2002	
(v)	Date for counting of votes and Declaration of result	24.2.2002	B

The appellant filed four sets of nomination papers, which were rejected by the Returning Officer on the ground that Forms 'A' and 'B' were submitted by the appellant at 4.10 p.m. on 23.1.2002, i.e., after the time fixed for filing of the nomination papers. On account of rejection of his nomination papers, the appellant could not contest the election and the respondent Surendra Singh Negi was declared to have been elected from the 29 Kotdwar Constituency.

3. The appellant then filed an Election Petition under Sections 80 and 81 of the Act challenging the election of the respondent Surendra Singh Negi to the Uttaranchal Legislative Assembly from 29 Kotdwar Legislative Assembly Constituency of District Pauri Garhwal. The election petition was filed on the grounds *inter alia* that the appellant was official candidate of Bhartiya Janata Party (for short 'BJP') and as the decision in that regard had been taken by the high command of the party on 17.1.2002, he was handed over duly filled in Forms 'A' and 'B' as prescribed by the Election Symbols (Reservation and Allotment) Order, 1968 (for short 'Symbols Order'). Form 'A' was issued by Shri Jana Krishnamurti, National President of BJP authorizing Shri Puran Chandra Sharma, the President of Uttaranchal State BJP to intimate the name of the candidate to be set up by the Party. Form 'B' was issued by Shri Puran Chand Sharma and was addressed to the Returning Officer of 29 Kotdwar Assembly Constituency notifying the appellant to be the official candidate of the Party from the aforesaid Constituency in the said election. The appellant in person filed four sets of nomination papers on 22.1.2002 as a candidate of BJP along with aforementioned Forms 'A' and 'B' issued under the Symbols Order before the Returning Officer of 29 Kotdwar Assembly Constituency. The nomination papers were duly filled up and fully complied with all the requirements and formalities prescribed by Section 33 of the Act and the Rules made thereunder. Similarly Forms 'A' and 'B', which had been filed along with the nomination papers were duly filled up and contained the requisite signatures and thus complied with all the requirements of law. The Returning Officer commenced the scrutiny of the nomination papers in his office at about 11.30 A.M. on 24.1.2002 where the appellant along with his

A proposer Shri Mohan Singh was present. The appellant's nomination papers, which had been placed at serial numbers 18 to 21, were taken up for scrutiny at about 11.45 A.M. The Returning Officer, after careful scrutiny of the nomination papers, found them to be valid and after stating orally that the same were valid he passed orders in Hindi on all the nomination papers to the effect "after scrutiny found valid". After some time the appellant left the office of the Returning Officer and proceeded to his Constituency, which is approximately 100 kilometers from Pauri Garhwal where the scrutiny had been done. While on way to Kotdwar the appellant contacted his election office on phone and came to know that subsequent to his leaving the office of the Returning Officer, his nomination papers had been rejected. The appellant immediately returned but by the time he reached the office of the Returning Officer, it had been closed. The appellant then approached the Observer appointed by the Election Commission on 24.1.2002 and apprised him of the illegal and improper rejection of his nomination papers. He also sent written complaints to the Chief Election Commissioner and other authorities. It was specifically pleaded that the Returning Officer had made interpolations by adding the Hindi word "Aa" before the word "vaidh". Subsequently on 25.1.2002 the appellant received a communication dated 24.1.2002 from the Returning Officer intimating him that his nomination papers, which had been filed on 22.1.2002 had been rejected on the ground that Forms 'A' and 'B' were filed at 4.10 P.M. on 23.1.2002. Certain other pleas were also taken which are not very relevant for the decision of the appeal.

4. The respondent Surendra Singh Negi contested the election petition by filing a written statement on the ground *inter alia* that the appellant had filed his nomination papers before the Returning Officer on 22.1.2002 but Forms 'A' and 'B' issued under the Symbols Order were not submitted on the said date. He was informed by his party workers and associates that the appellant had not submitted Forms 'A' and 'B' till 3.00 P.M. on 23.1.2002 and had submitted the same at 4.10 P.M. on the said date before the Assistant Returning Officer. Since Forms 'A' and 'B' were not submitted by the appellant till 3.00 P.M. on 23.1.2002 his nomination papers were rejected by the Returning Officer. Subsequently, the appellant tried to pressurize the Returning Officer for declaring the nomination papers submitted by him as valid. It was further pleaded that the respondent had polled more than double number of votes than those secured by Shri Bhuvnesh Khakral, who was a BJP supported candidate.

5. On the pleadings of the parties the High Court framed several issues

and issue Nos. 1 and 3, which are the principal issues, read as under: - A

- “(1) Whether the nomination paper of the petitioner was improperly rejected as alleged by the petitioner? If so, its effect?”
- (3) Whether any manipulation in the nomination paper of the petitioner has been made as alleged? If so, its effect?” B

After appraisal of oral and documentary evidence produced by the parties the High Court held that no interpolation had been done in the appellant’s nomination papers and consequently there was no merit in the case set up by him. It was further held that as the Forms ‘A’ and ‘B’ of the Symbols Order had been submitted by the appellant at 4.10 P.M. on 23.1.2002, which was beyond the time prescribed by the relevant statutory provisions and the order of the Election Commission, the same were rightly rejected. The election petition was accordingly dismissed. C

6. We have heard Shri Subodh Markandey, learned Senior Advocate for the appellant and Shri V.A. Mohta, learned Senior Advocate for the contesting respondent. Before examining the contentions raised by the learned counsel for the parties it will be convenient to set out the relevant statutory provisions. Para 13 of the Symbols Order reads as under: - D

“13. *When a candidate shall be deemed to be set up by a political party.*—For the purpose of an election from any parliamentary or assembly constituency to which this Order applies, a candidate shall be deemed to be set up by a political party in any such parliamentary or assembly constituency, if and only if E

- (a) the candidate has made the prescribed declaration to this effect in his nomination paper; F
- (b) a notice by the political party in writing, in Form B, to that effect has, not later than 3 P.M. on the last date of making nominations, been delivered to the Returning Officer of the constituency;
- (c) the said notice in Form B is signed by the President, the Secretary or any other office-bearer of the party, and the President, Secretary or such other office-bearer sending the notice has been authorized by the party to send the notice; G
- (d) the name and specimen signature of such authorized person are communicated by the party, in Form A, to the Returning Officer of the constituency, and to the Chief Electoral Officer of the State H

A or Union Territory concerned, not later than 3 p.m. on the last date for making nominations; and

(e) Forms A and B are signed, in ink only, by the said office-bearer or person authorized by the party:

B Provided that no facsimile signature or signature by means of rubber stamp etc. of any such office-bearer or authorized person shall be accepted and no form transmitted by fax shall be accepted.”

7. The evidence adduced by the appellant may be noticed in brief. The appellant Anil Kumar Baluni examined himself as PW-1 and deposed that he was declared the official candidate of Bhartiya Janata Party on 17.1.2002 and had been given Forms ‘A’ and ‘B’ by the State President of the Party Shri Puran Chandra Sharma on 19.1.2002. Thereafter, he had filed his nomination papers accompanied with Forms ‘A’ and ‘B’ at 2.57 P.M. on 22.1.2002 in the Office of the Collector at Pauri Garhwal. The scrutiny of the nomination papers commenced at 11.30 A.M. on 24.1.2002 and after scrutiny the Returning Officer had orally announced that all the four nomination papers filed by him were valid and had also made an endorsement thereon that the same were valid. After some time he left the office for his constituency, which is about 100 kilometers from there. While on the way he rang up his election office in Kotdwar and then came to know that his nomination papers had been declared as invalid. He immediately returned but by the time he reached the office of Returning Officer, the same had been closed. He then met the Observer in the Circuit House to whom he gave a written complaint and also gave a written complaint to the Assistant Returning Officer. PW-2 Mohan Singh Rawat, who was election agent of the appellant Anil Kumar Baluni, has corroborated the version of the appellant and has deposed that Forms ‘A’ and ‘B’ had been filed along with the nomination papers of the appellant on 22.1.2002. He has further deposed that after scrutiny the Returning Officer had orally announced that the same were valid and had made an endorsement to that effect with his own hand. After some time they had left the office for going to Kotdwar. PW-3 M.L. Sharma, Deputy Government Examiner in the Forensic Science Laboratory of Government of India at Shimla has proved his report. The report has considerable bearing in the case and we will advert to it later on.

8. The respondent examined Anil Kumar Yadav, who was Deputy Collector, Kotdwar, District Pauri Garhwal and had performed the duties of Returning Officer of Kotdwar Assembly Constituency. He has deposed that the appellant had filed four nomination papers on 22.1.2002, but Forms ‘A’ and ‘B’ had not

been filed along with them on that day. The Forms 'A' and 'B' were filed by the appellant at 4.10 P.M. on 23.1.2002 on which he had mentioned the time and date of filing. He has further deposed that after scrutiny on 24.1.2002 he passed the order whereby the nomination papers of the appellant were declared to be invalid. Another witness examined by the respondent is DW-2 Bhagwati Prasad Ghildiyal, who was Revenue Ahalmad in the Office of Deputy Collector, Kotdwar. He deposed that the appellant filed Forms 'A' and 'B' at 4.10 P.M. on 23.1.2002, which he placed before the Returning Officer and had made an endorsement to that effect. DW-3 Mahendra Prasad, SDM Lensdown has deposed that he had performed the duties of Returning Officer of Lensdown Assembly Constituency. On 23.1.2002 he had seen DW-1, Anil Kumar Yadav in his office till about 5-5.30 P.M. and thereafter he had left for Kotdwar as his wife was ill. The respondent did not appear in the witness box nor examined anyone else, who may have actually witnessed the filing of the nomination papers by the appellant.

9. There is no dispute that the appellant filed his nomination papers on 22.1.2002. In their depositions the appellant Anil Baluni and also his election agent Mohan Singh Rawat have categorically stated that Forms 'A' and 'B' were filed along with the nomination papers on 22.1.2002. The appellant has further deposed that he had been declared as the official candidate by the party high command on 17.1.2002 and he had been given Forms 'A' and 'B' by the State President Shri Puran Chandra Sharma on 19.1.2002. This part of the statement of the appellant has not been shaken in any manner in his cross-examination. Shri Mohta has submitted that one Shri Bhuvnesh Kharkwal had also submitted his nomination paper as a candidate of BJP and this shows that there was a dispute as to who would be the official candidate of the said party and, therefore, Forms 'A' and 'B' had not been given to the appellant till 22.1.2002. It is not possible to accept the contention as the specific statement of both PW-1 Anil Baluni and PW-2 Mohan Singh Rawat is that the appellant had been declared to be the official candidate of BJP on 17.1.2002 and Forms 'A' and 'B' had been given to the appellant on 19.1.2002. In fact Form 'B', which was issued in favour of the appellant also bears the date 19.1.2002. The respondent has lead absolutely no evidence to show that there was any doubt or dispute in the Party high command regarding the candidature of the appellant on account of which the Forms 'A' and 'B' could not have been given to the appellant on 19.1.2002 or till the time when he filed his nomination papers on 22.1.2002. In such circumstances it does not appeal to reason that though he had been declared as the official candidate of the BJP and had been given Forms 'A' and 'B' on 19.1.2002 yet he would not file

A the same along with his nomination papers on 22.1.2002 and would choose to file the same subsequently on 23.1.2002, which was the last date.

10. Chapter V of *Handbook for Returning Officers* relates to 'NOMINATIONS'. Paragraphs 30.1 and 30.3 of said Chapter, which are relevant for the purpose of present case, are being reproduced below: -

B

“Preparation of consolidated list of nominated candidates

30.1 Immediately after 3.00 p.m. on the last date for making nominations, or as soon as possible after you have received all the nomination papers from the specified Assistant Returning Officer(s) under para 28 above, you should prepare a consolidated list of all the nomination papers, presented either before you or before the specified Assistant Returning Officer(s). Such consolidated list of nominated candidates shall be prepared in the following form: -

C

D

LIST OF NOMINATED CANDIDATES

Name of the State.....

Name of Parliamentary/Assembly

Constituency.....

Sl. No	Name of candidate	Address of candidate	Symbols chosen in order of preference by the candidate	Name of Political party (National)/ State or registered) by which the candidate claims to have been set up/Independent candidate.	Whether Forms 'A' and 'B' have been received by 3.00 p.m. on the last date for making nominations in respect of the candidate	Whether main candidate or substitute candidate of the party (as per party's intimation in Form B)
1	2	3	4	5	6	7

- A (i) Candidates of recognized National and State Political Parties
 (ii) Candidates of registered political parties (other than recognized National and State Political Parties).
 (iii) Other candidates (Independent candidates)

B Place.....

Date.....

Returning Officer”

- C “30.3. Even if more than one candidate has claimed to be set up by the same party, the names of all such candidates should be included in the relevant category, i.e., category (i) or (ii), as may be relevant. However, suitable remarks should be given in respect of each such candidate in columns 6 and 7 of the above list, taking into consideration the intimation received, if any, from the party concerned in the prescribed Forms A and B by 3.00 P.M. on the last date for making nominations. This will facilitate your task at the time of scrutiny of nomination papers of the concerned candidates.”
- D

- E Paragraph 30.6 of the *Handbook* enjoins that the list has to be prepared in triplicate and copies thereof are to be sent to Election Commission, Chief Electoral Officer and Manager of the State Government Press forthwith. A certified copy of the consolidated list of all the candidates of Kotdwar Assembly Constituency sent under the signature of the Returning Officer Shri Anil Kumar Yadav to the Election Commission of India in accordance with para 30.6 of the *Handbook*, has been placed on record and has been marked as Ex.-5. This list has been prepared strictly according to para 30.1 of the
- F *Handbook* and the name of the appellant Anil Baluni has been shown under the heading “Candidates of Recognised National and State Political Parties”. Against the name of the appellant in column 5 “Bhartiya Janata Party” is written and in column 6 “Yes” word has been written. Thus, in the list, which was sent to the Election Commission on 23.1.2002 under the signature of the
- G Returning Officer, it was clearly mentioned against the name of the appellant that Forms ‘A’ and ‘B’ have been received by 3.00 P.M. on the last date for making nomination regarding his candidature. This contemporaneous document, which had been prepared on 23.1.2002 itself fully establishes that the appellant had submitted Forms ‘A’ and ‘B’ by the prescribed time.

- H 11. The specific case of the appellant is that at the time of the scrutiny

the Returning Officer had not only orally announced that his nomination papers were valid but had also made an endorsement to the same effect by his own hand and had signed the same. But, subsequently interpolation has been done by which Hindi word 'Aa' was added to the word 'vaidh' making it 'avaidh' and it was further written that the Forms 'A' and 'B' had been filed at 4.10 P.M. on 23.1.2002 before the Assistant. Paragraphs 12.1 and 12.2 of Chapter V of the *Handbook* read as under: -

“Time and place of filing Nomination Papers

12.1. Nomination papers may be presented either before you or before any of your Assistant Returning Officers specified by you in the public notice, on any of the notified days at the place or places specified in the notice at any time between 11.00 a.m. and 3.00 p.m. and not at any other hours at any other place. If a candidate or his proposer seeks to present a nomination paper either before 11.00 a.m. or after 3.00 p.m., you should not accept the nomination paper saying that under the provisions of the law neither the candidate has the right to deliver, nor the Returning Officer has the right to accept, a nomination paper outside the hours prescribed for the purpose. You may, however, point out that if he so desires, he may present it within the prescribed hours on the following day, provided it is one of the days notified for presenting nomination papers.

12.2. It may so happen that some intending candidates and/or their proposers are physically present in the Returning Officer's office at 3.00 p.m. for presenting their nominations, but because of their large number and because of the reason that nominations are to be received one by one, it may not be possible for the Returning Officer to physically receive all such nominations before 3.00 p.m. In such cases, the Returning Officer shall accept nominations of all intending candidates who are present in the office of the Returning Officer at 3.00 p.m. for filing nomination and treat these nomination papers to have been delivered within the prescribed time under the law. For this purpose, if considered necessary, you may close the entry to your office room exactly at 3.00 p.m. and distribute slips to those present at that time.”

Paragraph 29 of the *Handbook* clearly says that only such Forms 'A' and 'B', which are submitted by 3.00 p.m. on the last date for making nomination, shall be accepted and not thereafter. DW-1, Anil Kumar Yadav has deposed that

- A the appellant submitted Forms 'A' and 'B' before his Revenue Assistant Shri Bhagwati Prasad Ghildiyal at 4.10 p.m. on 23.1.2002. He immediately came on the dias and after noting the time and date of filing, put his signature thereon. It is not possible to accept this statement of the witness in view of paras 12.1, 12.2 and 29 of the *Handbook*. The outer time limit for acceptance of nomination papers and Forms 'A' and 'B' was 3.00 p.m. on 23.1.2002 and, therefore, the
- B Returning Officer could not have received any such Forms if the same were presented after 3.00 p.m. If the appellant had really presented the aforesaid Forms at 4.10 p.m., the Returning Officer should have declined to receive the same. The *Handbook* does not lay down that the Returning Officer can physically receive such documents even if they are presented after 3.00 p.m.
- C on the last date for making nominations and thereafter to mention the time and date of filing. In fact paras 12.1 and 12.2 clearly state that the Returning Officer should not accept any document after 3.00 p.m. and if the number of candidates is large, the entry to the office room should be closed exactly at 3.00 p.m. The statement of the Returning Officer that he accepted the Forms 'A' and 'B' submitted by the appellant even though they were filed at 4.10
- D p.m. on 23.1.2002 and then noted the time and date of their filing is not worthy of credence on account of the clear prohibition contained in the *Handbook* not to receive any such document after 3.00 p.m. This shows that Forms 'A' and 'B' had already been filed along with nomination papers before the last date and time fixed for the purpose.
- E 12. The specific case of the appellant is that at the time of the scrutiny the Returning Officer, after examination of the Forms, orally announced that his nomination papers were valid and then made an endorsement to the same effect and put his signature thereon. The appellant and also his witness PW-2 Mohan Singh Rawat have deposed to that effect in their oral testimony.
- F According to the appellant after he and his election agent had left the office of the Returning Officer interpolation was done and 'valid' was made 'invalid' by writing Hindi word 'Aa' before the word 'vaidh'. The nomination papers were sent to the Laboratory of the Government Examiner of Questioned Documents, Shimla, of the Directorate of Forensic Science, Ministry of Home Affairs, Government of India. According to the report of the Laboratory the
- G Hindi word 'vaidh' was originally written and the word 'Aa' appears to have been added subsequently to the word 'vaidh' in a different operation of writing making it to be read as 'avaidh' in the first line of all the endorsements. The report further says that apart from the letter 'Aa' the further addition of the lines wherein it is written in Hindi that the candidate has submitted Forms
- H 'A' and 'B' on 23.1.2002 at 4.10 p.m. before the Assistant was also subsequently

written "for the manifest reason that the shade and luster of ink of the letters of the subsequently executed lines appear intense and different *vis-a-vis* those in the originally written first line and the signatures". In the final conclusion the report says that the endorsement in each case along with the signature was originally written as 'vaidh', which was subsequently altered by addition of letter 'Aa' to the original word 'vaidh' and also by addition of subsequent lines in different operation of writing as are present in each of the endorsement marked Q1 to Q4 contained in part '5' of the nomination papers. The report has been signed by two persons, viz., Shri Amar Singh, Government Examiner of Questioned Documents and P.W. 3 Shri M.L. Sharma, Deputy Government Examiner of Questioned Documents, who appeared as a witness and proved the report. Shri M.L. Sharma is also an experienced person having put in 33 years of service. The report is a fairly long one and contains reasons for arriving at the conclusion that the word 'Aa' and the last two lines were written subsequently. Nothing much was put to him in his cross-examination and there is hardly any reason not to place reliance upon the said report. A look at the enlarged photographs, which form part of the report of the laboratory, with the help of a magnifying glass shows that horizontal line above the Hindi word 'Aa' is not only separate but is at some distance from the horizontal line, which has been placed over the word 'vaidh'. Had there been no interpolation, the horizontal line over the word 'avaidh' would have been drawn in one stroke. The manner in which the sentence "Forms 'A' and 'B' have been submitted at 4.10 p.m. on 23.1.2002 before the Assistant receiving the nomination papers" has been written, creates a serious doubt that they were originally not there but were written subsequently.

13. As mentioned earlier the list of nominated candidates (Ex.-5) was sent to the Election Commission and Chief Electoral Officer under the signature of the Returning Officer on the same day, i.e., on 23.1.2002 in accordance with paragraph 30.1 of the *Handbook*, which clearly mentioned that Forms 'A' and 'B' of the appellant had been received by 3.00 p.m. In his cross-examination Shri Anil Kumar Yadav admitted that the entries made in Ex.-5 are correct. However, he has given a very strange explanation to get over the obvious contradiction between this list (Ex.-5) and the endorsement made by him on the nomination papers of the appellant that Forms 'A' and 'B' were submitted at 4.10 p.m. on 23.1.2002. He himself volunteered towards the end of his cross-examination and stated that he handed over blank forms after putting his signatures thereon to his Revenue Assistant Bhagwati Prasad Ghildiyal and left for Kotdwar as his wife was ill and was admitted in a nursing home there

A and later on Shri Ghildiyal filled in the forms and sent the same to the concerned authorities. However, Bhagwati Prasad Ghildiyal has not deposed a single word about making the relevant entries in the form or sending the same to the Election Commission or the Chief Electoral Officer. In his cross-examination he has admitted that he had not sent any information to any authority in accordance with para 30.1 of Chapter V of the *Handbook*. The person who made the necessary entries and filled in the forms, which had already been signed by the Returning Officer Shri Anil Kumar Yadav, as per his statement, has not been examined nor his name has been disclosed. He would have been the best person to depose that Shri Anil Kumar Yadav had given him a blank signed form for the purpose of filling in the relevant columns. DW-3 Shri Mahendra Prasad, SDM, who was performing the duty of Returning Officer of another constituency, has merely stated that he saw Anil Kumar Yadav in the office up to 5-5.30 p.m. and thereafter the latter left for Kotdwar as his wife was ill. His testimony does not lend any kind of assurance to the case put forward by Shri Anil Kumar Yadav that he had put his signature on a blank form and had then left for Kotdwar. If he was present in his office upto 5-5.30 p.m. there was enough time available to him for filling in the forms.

14. There is another piece of evidence, which creates serious doubt regarding the conduct of the Returning Officer. Ex. C-1 is a copy of notice which Shri Anil Kumar Yadav issued to Shri Bhagwati Prasad Ghildiyal on 23.1.2002 calling his explanation within three days to show cause as to why disciplinary action be not taken against him for having received Forms 'A' and 'B', which were submitted by the appellant at 4.10 p.m. on 23.1.2002. It is a fairly long notice running into about 16 lines. A reply of this notice was given by Shri Bhagwati Prasad Ghildiyal on 24.1.2002, which is Ex.-C-2 on the record. It looks not only doubtful but also highly improbable that though Shri Anil Kumar Yadav did not perform a very important official duty which was cast upon him by virtue of being the Returning Officer, namely, of himself sending the list of nominated candidates as prescribed in para 30.1 of Chapter V of the *Handbook* and after signing the blank forms he left it to his Assistant to make the necessary entries therein and to send to the Election Commission and Chief Electoral Officer, etc. on the supposed ground that his wife was ill and he had to rush to Kotdwar, yet he took pains to issue a notice on the same day, i.e., 23.1.2002 to Shri Bhagwati Prasad Ghildiyal to show cause as to why disciplinary action may not be taken against him. There was hardly any urgency in the matter and the show cause notice could have been issued later at any point of time. Anyone who has been assigned the important

work of Returning Officer would first perform his official duty of sending the list of nominated candidates to the concerned authorities and would not waste time in issuing show cause notice to a subordinate employee regarding the proposed disciplinary action. The issuance of show cause notice on the same day, i.e., 23.1.2002 creates a serious doubt on the bonafides of Shri Anil Kumar Yadav and in fact shows that evidence was being manufactured in order to justify the interpolations made in the nomination papers whereby they were rejected.

15. Shri V.A. Mohta, learned counsel for the respondent has submitted that Shri Anil Kumar Yadav would not have had the courage to make interpolations in the nomination papers as at the relevant time it was the Bhartiya Janata Party, which was in power in the State of Uttaranchal. Shri Yadav has admitted in his cross-examination that he is an officer of U.P. cadre and he had not opted for Uttaranchal State. It is, therefore, obvious that he was bound to come back to U.P. and was not to serve in the State of Uttaranchal.

16. Shri Mohta has also submitted that the result of the election should not be lightly interfered with and the election petitioner must lead strong and cogent evidence to establish his case for setting aside the election of a returned candidate. This principle is not of universal application. This is not a case where the election petition may have been filed on the ground of corrupt practice or improper acceptance or rejection of ballot papers or any error in counting of votes. The election petition has been filed on the ground that the appellant's nomination papers had been improperly rejected, which is a ground contemplated by Section 100(1)(c) of the Act. In such a case the only issue before the Court is to examine the correctness and propriety of the order by which the nomination papers of a candidate are rejected and the scope of inquiry is limited to the said consideration.

17. Having given our careful consideration to the evidence on record and the submission made by the learned counsel for the parties we have no hesitation in holding that the appellant has succeeded in establishing that he had filed his nomination papers along with Forms 'A' and 'B' on 22.1.2002 and his nomination papers were improperly rejected. In view of this finding the election of the respondent Surendra Singh Negi has to be declared as void.

18. In the result the appeal is allowed with costs throughout. The

A election petition filed by the appellant is allowed and the election of the respondent Surendra Singh Negi is declared to be void. The Election Commission of India shall hold a fresh election for 29 Kotdwar Assembly Constituency of Uttaranchal Legislative Assembly at the earliest.

B.S.

Appeal allowed.