

DEVENDRA PATEL

v.

RAM PAL SINGH & ORS.

(Civil Appeal No. 7907 of 2013)

SEPTEMBER 6, 2013

[R.M. LODHA AND MADAN B. LOKUR, JJ.]

Representation of the People Act, 1951 - s.79(b) and 82(b) - Person whose nomination rejected, whether can be considered as a 'candidate' for the purpose of s.82(b) - Held: Where nomination of person is rejected on the ground of such person being disqualified, he is neither a duly nominated candidate nor he can claim to be duly nominated candidate, within the meaning of s.79(b) - Therefore, he cannot be considered as 'candidate' for the purpose of s.82(b).

The question for consideration in the present appeal was whether the person whose nomination was rejected, must be considered as a 'candidate' for the purpose of s. 82(2) of the Representation of the People Act, 1951.

Dismissing the appeal, the Court

HELD: The question whether a person is a 'candidate' for the purpose of Section 82(b) of Representation of the People Act, 1951 would depend on whether he is a 'candidate' within the meaning of Section 79(b). Since nomination of 'J' was rejected as he was disqualified, he cannot be considered to be duly nominated as a candidate at the election. The expression "claims to have been duly nominated as a candidate at any election" in Section 79(b) of the 1951 Act, would not take within its fold a person whose nomination has been rejected as being disqualified. Thus, where the nomination of a person is rejected by the returning officer

A on the ground of such person being disqualified, such
person is neither a duly nominated candidate nor he can
claim to be duly nominated as a candidate. In view of this
position, 'J' is not covered by the expression 'candidate'
in either of the two categories within the meaning of
B Section 79(b). Therefore, 'J' cannot be treated as a
'candidate' for the purpose of Section 82(b) of the 1951
Act. [Paras 5, 8, 9 and 10] [293-E; 294-D-F; 295-B-D]

C *Mohan Raj vs. Surendra Kumar Taparia and Ors.* (1969)
1 SCR 630 - distinguished.

*Mithilesh Kumar Sinha vs. Returning Officer for
Presidential Election and Ors.* AIR 1993 SC 20: 1992 (1)
Suppl. SCR 651 - referred to.

D Case Law Reference:

(1969) 1 SCR 630 distinguished Para 9

1992 (1) Suppl. SCR 651 referred to Para 3

E CIVIL APPELLATE JURISDICTION : Civil Appeal No.
7907 of 2013.

From the Judgment and Order dated 26.08.2010 of the
High Court of Madhya Pradesh, Principal Bench at Jabalpur
in Election Petition No. 16 of 2009.

F Saurabh Suman Sinha, Gaurav Agrawal for the Appellant.

Vikramjit Banerjee, S.S. Shamsery, V.M. Vishnu, R.C.
Kohli for the Respondent.

G The Judgment of the Court was delivered by

R.M. LODHA, J. 1. Leave granted.

H 2. The only argument canvassed by the learned counsel
for the appellant is that Jaswant Singh whose nomination was
rejected must be regarded as a 'candidate' for the purpose

of Section 82(b) of the Representation of the People Act, 1951 (for short, '1951 Act') and since he has not been joined as a party respondent in the election petition although there is allegation of corrupt practice against him, the election petition is liable to be rejected.

3. The High Court has considered this question and, relying upon the decision of this Court in *Mithilesh Kumar Sinha Vs. Returning Officer for Presidential Election & Others*¹, held that Jaswant Singh could not be regarded as a 'candidate' as defined in Section 79(b) for the purpose of Section 82(b) and overruled the objection regarding non-joinder of Jaswant Singh.

4. The admitted fact is that Jaswant Singh's nomination was rejected by the returning officer as he was found to be disqualified. Jaswant Singh challenged the order of the returning officer rejecting his nomination in a Writ Petition before the High Court, but that Writ Petition was not taken to the logical conclusion and it was dismissed.

5. The question is, whether Jaswant Singh is a 'candidate' for the purpose of Section 82(b) ? The answer to this would depend on whether he is a 'candidate' within the meaning of Section 79(b).

6. Section 79(b) reads as follows :-

"79. Definitions.? In this Part and in Part VII unless the context otherwise requires,-

(a) x x x

(b) "candidate" means a person who has been or claims to have been duly nominated as a candidate at any election;

(c) x x x

1. AIR 1993 SC 20.

- A (d) x x x
 (e) x x x
 (f) x x x"

B 7. Section 82(b) reads as under :-

"82. Parties to the petition.? A petitioner shall join as respondents to his petitioner ?

- C (a) x x x

(b) any other candidate against whom allegations of any corrupt practice are made in the petition."

D 8. In our opinion, in view of the admitted position that Jaswant Singh's nomination was rejected as he was disqualified, he cannot be considered to be duly nominated as a candidate at the election. Learned counsel for the appellant submits that his contention is founded on the expression "claims to have been duly nominated as a candidate at any election" in Section 79(b) of the 1951 Act. The expression E "claims to have been duly nominated as a candidate" would not take within its fold a person whose nomination has been rejected as being disqualified. Such person cannot claim to be duly nominated as a candidate when he is not qualified to contest election. In view of this position, Jaswant Singh is not F covered by the expression 'candidate' in either of the two categories within the meaning of Section 79(b).

G 9. Learned counsel for the appellant relies upon a decision of this Court in *Mohan Raj Vs. Surendra Kumar Taparia & Ors.*² in support of his contention. *Mohan Raj*² was a case where one R.D. Periwal who was duly nominated candidate but withdrew his nomination later was not joined as a party in the election petition though allegations of corrupt practice against him were made. This Court held that a candidate who is duly

H 2. (1969) 1 scr 630.

nominated continues to be candidate for the purpose of Section 82(b) in spite of withdrawal. There is an important difference between that case and this case. In that case, R.D. Periwal was duly nominated candidate but he withdrew later, whereas here Jaswant Singh's nomination was rejected as he was found to be disqualified. For this crucial and compelling difference, the statement of law in *Mohan Raj*² has no application. Where the nomination of a person is rejected by the returning officer on the ground of such person being disqualified, in our view, such person is neither a duly nominated candidate nor he can claim to be duly nominated as a candidate.

10. The High Court did not commit any error in not treating Jaswant Singh as a 'candidate' for the purpose of Section 82(b) of the 1951 Act.

11. Appeal is dismissed with no order as to costs.

K.K.T.

Appeal dismissed.