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RAJENDRA KUMAR MESHARAM

v.

VANSHMANI PRASAD VERMA AND ANR.

(Civil Appeal No.3797 of 2015)

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OCTOBER 03, 2016

[**RANJAN GOGOI AND PRAFULLA C. PANT, JJ.**]

Election Laws:

Representation of People Act, 1951 – ss.33(5), 36(2)(b), 87, 100(1)(a) and 100(1)(d) – Election of appellant to a constituency of Madhya Pradesh Legislative Assembly – Election petition filed by respondent No.1 – High Court held that appellant had not filed the electoral roll (or certified copy thereof) of his constituency, therefore the returning officer had committed an illegality in accepting the nomination of appellant – High Court came to the conclusion that election of appellant was liable to be declared void u/s.100(1)(a) along with s.100(1)(d)(i) – On appeal, held: High Court ought to have found out whether improper acceptance of the nomination had materially affected the result of the election – Without dealing with that question/issue, it was not empowered to declare the election of appellant-returned candidate as void – To declare election void u/s.100(1)(a), it must be established that the returned candidate is not a voter of any assembly constituency of the State – Election petition filed by the respondent-election petitioner itself stated that the appellant-returned candidate was a registered voter of a constituency – There was no pleading at all to the effect that appellant was not a voter – Therefore, order of High Court unsustainable – Election of appellant-returned candidate was valid.

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Allowing the appeal, the Court

HELD: 1. The election of the appellant-returned candidate is declared to be valid in law. [Para 17] [82-G]

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2. Under s.100 (1)(d) of Representation of People Act,1951, an election is liable to be declared void on the ground of improper acceptance of a nomination if such improper acceptance of the nomination has materially affected the result of the election. This is in distinction to what is contained in s.100(1)(c) i.e. improper

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rejection of a nomination which itself is a sufficient ground for invalidating the election without any further requirement of proof of material effect of such rejection on the result of the election. The High Court did not endeavor to go into the further question that would be required to be determined even if it is assumed that the appellant-returned candidate had not filed the electoral roll or a certified copy thereof and, therefore, had not complied with the mandatory provisions of s.33(5) of the 1951 Act. Before setting aside the election on the above ground, the High Court ought to have carried out a further exercise, namely, to find out whether the improper acceptance of the nomination had materially affected the result of the election. The High Court having failed to determine the said issue naturally, it was not empowered to declare the election of the appellant returned candidate as void even if it is assumed that the acceptance of the nomination of the returned candidate was improper. [Para 9] [79-F-H; 80-A-C]

3.1 Under s.100(1)(a), the election of the returned candidate is liable to be declared void if, *inter alia*, he was not qualified for membership of Parliament or the State Legislature as may be. S.5 of the 1951 Act deals with qualifications for membership of a Legislative Assembly of a State which, *inter alia*, requires a candidate to be an elector of any Assembly constituency of the State. To declare an election void u/s.100(1)(a), it must, therefore, be established that the returned candidate is not a voter of any assembly constituency of the State. [Para 11] [80-E-F]

3.2 No objection to the effect that the returned candidate was not qualified to contest the election as he was not a voter of any assembly Constituency of the State was raised in the objection filed in election petition. Neither was any objection taken to the effect that the returned candidate was not eligible to participate in the election as he had not furnished the electoral roll of the Constituency in which he was a voter or a certified copy thereof. However, in the election petition filed, it was pleaded in para 1.11, that the returned candidate had "failed to furnish a certified copy of the voter list to entitle him to contest the election from Devsar constituency as he is registered voter of 80, Singrauli constituency and without filing the certified copy of relevant part of voter list he was not eligible to contest from other constituency."

A **There was no pleading at all to the effect that the appellant is not a voter of any assembly constituency and therefore is not qualified. [Para 12] [80-G-H; 81-A-C]**

B **3.3 The trial of an election petition, as per section 87 of 1951 Act has to be in accordance with the provisions of the Code of Civil Procedure, 1908. When no pleadings that the election of the returned candidate was void on grounds mentioned in section 100(1)(a) were made and no issue on this score was struck and no opportunity to the returned candidate to adduce relevant evidence was afforded, the High Court could not have found that the election of the returned candidate was void under section 100(1)(a). The High Court erred in holding that the respondent-election petitioner had made out a case for declaration that the result of the election in favour of the returned candidate was void u/s.100(1)(a) of the 1951 Act. [Paras 14, 15] [81-E-F; 82-D-E]**

D **CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3797 of 2015.**

From the Judgment and Order dated 31.03.2015 of the High Court of Madhya Pradesh Judicature at Jabalpur in Election Petition No. 2 of 2014.

E Shekhar Naphade, Sr. Adv., C. D. Singh, D. S. Parmar, Ms. Sakshi Kakkar, Ms. Shivali Choudhary, Adv. for the Appellant.

Vivek Tankha, Sr. Adv., Pawanshree Agrawal, Sachin Pujari, Ms. Nikita Shrivastava, Mishra Saurabh, Ankit Kr. Lal, Advs. for the Respondents.

F **The Judgment of the Court was delivered by**
RANJAN GOGOI, J. 1. The election of the appellant to the No.81 Deosar Constituency of Madhya Pradesh Legislative Assembly which was held on 11.05.2013 has been set aside by the High Court in an election petition filed by the respondent No.1 herein. The validity of the said order of the High Court is the subject matter of the present
 G **appeal.**

H **2. On a reading of the election petition filed by the respondent No.1, it would appear to us that several grounds were urged to invalidate the election in question. According to the respondent-election petitioner, one of the nominations filed by him as a candidate of the Indian National Congress Party was wrongly rejected on the ground that the symbol**

allotment letter was submitted by the election petitioner after the stipulated time. However as two other nominations filed by the respondent-election petitioner as an independent candidate was accepted, he contested the election in which he lost. Consequently, he challenges the rejection of his nomination as a Indian National Congress Party candidate as being wrongful. Apart from the above ground, the election petition was also filed alleging that the appellant-turned candidate was a government servant. In addition to the above, it was pleaded that the appellant-turned candidate had failed to furnish, along with the nomination paper, a copy/certified copy of the electoral roll of No.80 Singrauli constituency in which electoral roll his name was claimed to be appearing against serial No.118. According to the election petitioner on account of the aforesaid omission the returned candidate was not eligible to participate in the election. His nomination, therefore, was wrongly accepted.

3. The High Court answered the first two questions in favour of the returned candidate. However, insofar as the third question set forth above is concerned, the conclusion of the High Court is adverse to the returned candidate. In this connection the High Court came to the conclusion that the returned candidate had not filed the electoral roll or certified copy thereof of No.80 Singrauli Constituency and therefore the returning officer had committed an illegality in accepting the nomination of the returned candidate and in not rejecting the same on account of non-compliance of Sections 33(5) and 36(2)(b) of the Representation of People Act, 1951 (For short, "the 1951 Act"). On the said basis the High Court came to the conclusion that the election of the returned candidate was liable to be declared void under Section 100(1)(a) along with Section 100(1)(d)(i) of the 1951 Act. Consequential directions therefore have been issued. Aggrieved this appeal has been filed.

4. We have heard Shri Shekhar Naphade, learned senior counsel appearing for the appellant, Shri Vivek Tankha, learned senior counsel appearing for the respondent No.1 and Shri Mishra Saurabh, learned counsel for the respondent No.2.

5. As no cross appeal has been filed by the respondent-election petitioner challenging the findings of the High Court adverse to him, the scope of the present appeal is confined to the correctness of the order of the High Court insofar as the third question set forth above is concerned.

A 6. At the outset the relevant part of the pleadings contained in the election petition insofar as the said issue is concerned may be set out as hereunder :-

B 1.11 That, the election of the respondent as a member of M.P. Legislative Assembly for Devsar Constituency deserves to be declared as void for the reason that the Returning Officer has wrongly rejected the petitioner's nomination form as candidate sponsored by Indian National Congress and also for wrongly accepting the nomination from the respondent. It is also submitted that the respondent not only failed to submit order by Competent Authority accepting his resignation but also failed to furnish a certified copy of the voter list to entitle him to contest the election from Devsar constituency as he is registered voter of 80, Singrauli constituency and without filing the certified copy of relevant part of voter list he was not eligible to contest from other constituency. Acceptance of respondent's nomination form has materially affected the election result.

D 1.12 That the respondent has been illegally allowed to contest the election while the petitioner has been wrongly denied the right to contest the election and therefore, this petition.

E 1.13 That, the rejection of nomination form of the petitioner was illegal and contrary to election law and rules framed thereunder and as such declaring the respondent No.1 (one) as returned candidate from 81, Devsar constituency deserves to be quashed and deserves to be declared as null and void.

F 1.14 That, the nomination form of the respondent has been wrongly accepted by the Returning Officer ignoring the legal provision. It is submitted that the respondent has not produced any valid documents to prove that he was not in service on the date of filing of his nomination form and he has also not furnished the certified copy of the relevant part of the voter list of the constituency in which he was registered as voter to entitle him to contest election from other constituency i.e. 81, Devsar Constituency.”

G 7. In a written statement filed by the returned candidate, all the aforesaid averments have been denied. On the basis of the pleadings of the parties the following issues were framed by the Court:-

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(1) Whether the returning officer has malafidely rejected the petitioner's nomination form as the candidate sponsored by the Indian National Congress under the influence of the then ruling party? A

(2) Whether respondent No.1 was in government service at the time of acceptance of his nomination form by the returning officer? B

(3) Whether respondent No.2 has committed illegality in accepting the nomination form of respondent No.1?

(4) Whether respondent No.1 has failed to prove that his name was in the voter list of 80 Singrauli Constituency? (if so, effect) C

(5) Whether respondent No.1 has failed to submit valid Caste Certificate for contesting the election from the constituency reserved for scheduled caste category?

(6) Whether result of election of 81 Deosar Constituency was materially affected due to improper acceptance of nomination of respondent No.1? D

(7) Relief and costs?

8. As issue Nos.1 and 2 extracted above, have been answered in favour of the returned candidate and there is no cross appeal, it is only the remaining issues that survive for consideration. All the said issues center round the question of improper acceptance of the nomination form of the returned candidate. In this regard, issue No.6 which raises the question of material affect of the improper acceptance of nomination of the returned candidate on the result of the election may be specifically noticed. E

9. Under Section 100 (1)(d), an election is liable to be declared void on the ground of improper acceptance of a nomination if such improper acceptance of the nomination has materially affected the result of the election. This is in distinction to what is contained in Section 100(1)(c) i.e. improper rejection of a nomination which itself is a sufficient ground for invalidating the election without any further requirement of proof of material effect of such rejection on the result of the election. The above distinction must be kept in mind. Proceeding on the said basis, we find that the High Court did not endeavor to go into the further question that would be required to be determined even if it is assumed that the appellant-returned candidate had not filed the electoral roll or a F
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A certified copy thereof and, therefore, had not complied with the mandatory provisions of Section 33(5) of the 1951 Act. In other words, before setting aside the election on the above ground, the High Court ought to have carried out a further exercise, namely, to find out whether the improper acceptance of the nomination had materially affected the result of the election. This has not been done notwithstanding issue No.6 framed
B which is specifically to the above effect. The High Court having failed to determine the said issue i.e. issue No.6, naturally, it was not empowered to declare the election of the appellant returned candidate as void even if we are to assume that the acceptance of the nomination of the returned candidate was improper.

C 10. An argument has been advanced on behalf of the respondent-election petitioner that the High Court has also found the election to be void on the grounds mentioned in Section 100(1)(a). In this regard it has been submitted that the failure of the returned candidate to furnish the electoral roll of the constituency where his name appears as a voter or
D the certified copy thereof would, by itself, establish that he was not qualified to take part in the election as he had failed to prove that he is a voter. Therefore his election was liable to be declared void under Section 100(1)(a) of the 1951 Act which the High Court had done.

E 11. Under Section 100(1)(a) the election of the returned candidate is liable to be declared void if, *inter alia*, he was not qualified for membership of Parliament or the State Legislature as may be. Section 5 of the 1951 Act deals with qualifications for membership of a Legislative Assembly of a State which, *inter alia*, requires a candidate to be an elector of any Assembly constituency of the State. To declare an election
F void under Section 100(1)(a), it must, therefore, be established that the returned candidate is not a voter of any assembly constituency of the State.

G 12. After the receipt of nomination, the election petitioner has objected to the acceptance of the nomination of the appellant-returned candidate on the ground that the returned candidate was a Government servant and therefore disqualified from contesting the election. This was rejected by the Returning Officer on 11.11.2013 holding that the returned candidate had duly submitted his resignation which was accepted before the date of filing of nomination. No objection to the effect that the returned candidate was not qualified to contest the election as he was
H not a voter of any assembly Constituency of the State was raised in the

objection filed. Neither was any objection taken to the effect that the returned candidate was not eligible to participate in the election as he had not furnished the electoral roll of the Constituency in which he was a voter or a certified copy thereof. However, in the election petition filed, it was pleaded in para 1.11 of the election petition, (extracted above) that the returned candidate had “failed to furnish a certified copy of the voter list to entitle him to contest the election from Devsar constituency as he is registered voter of 80, Singrauli constituency and without filing the certified copy of relevant part of voter list he was not eligible to contest from other constituency.” There was no pleading at all to the effect that the appellant is not a voter of any assembly constituency and therefore is not qualified.

13. From the above, it is clear that it was not the case of the respondent-election petitioner that the appellant-returned candidate was not qualified to contest the election. It is only before this Court, and that too in the oral arguments made, that it has been urged, by relying on the order of the High Court, that the returned candidate was not qualified to contest the election under Section 100(1)(a) of the 1951 Act and therefore his election was rightly set aside by the High Court.

14. The trial of an election petition, as per Section 87 of 1951 Act has to be in accordance with the provisions of the Code of Civil Procedure, 1908. When no pleadings that the election of the returned candidate was void on grounds mentioned in Section 100(1)(a) were made and no issue on this score was struck and no opportunity to the returned candidate to adduce relevant evidence was afforded, the High Court, in our considered view, could not have found that the election of the returned candidate was void under Section 100(1)(a). In fact, from a reading of para 1.11 of the election petition as extracted above, it clearly appears that the election petitioner had stated that the appellant-returned candidate is a voter of No.80 Singrauli constituency but he had omitted to enclose the electoral roll or a certified copy thereof along with his nomination papers which made him ineligible to contest the election. This part of the pleading must be seen in the light of the provisions of Section 33(4) and 33(5) of the 1951 Act. Under Section 33(4) the returning officer must satisfy himself that a candidate’s name and electoral roll numbers is the same as claimed/entered in the nomination paper. If the candidate is a voter of the same constituency from which he seeks election, there is no difficulty the electoral rolls would be readily available with the returning

A officer. But if the candidate is a voter of another constituency, then
Section 33(5) requires him to enclose along with the nomination or at the
time of scrutiny, the electoral roll or certified copy of the same pertaining
to that constituency. The entire case of the election petitioner as pleaded
is that the appellant-returned candidate was a voter of another
B constituency i.e. No.80 Singrauli constituency but he had not enclosed
or produced the electoral roll of that constituency or a certified copy
thereof thereby making him ineligible to contest the election.

15. In view of the state of the pleadings as noticed above; the
issues framed and the evidence led by the parties, we cannot agree with
the High Court that the respondent-election petitioner had made out a
C case for declaration that the result of the election in favour of the returned
candidate was void under Section 100(1)(a) of the 1951 Act. Having
reached our conclusion on above said basis, it is not necessary to go into
the question raised on behalf of the respondent-election petitioner that
failure to produce the copy of the electoral roll of the constituency in
D which a candidate is a voter or a certified copy thereof, by itself, would
amount to a proof of lack of/absence of qualification under Section 5 of
the 1951 Act. All that would be necessary for us to say in this regard is
that any such view would not be consistent with the legislative intent
expressed by the enactment of two separate and specific provisions
E contained in Section 100 (1) (a) and 100 (1) (d) of the 1951 Act.

16. Though a number of precedents have been cited on behalf of
the respondent-election petitioner to sustain the arguments advanced, it
will not be necessary for us to take any specific note of the principles of
law laid down in any of the said cases inasmuch as all the said cases
relate to rejection of nominations on account of failure to comply with
F the provisions of Section 33(5) of the Act of 1951 which is not in issue
before us in the present appeal.

17. Consequently and for the aforesaid reasons, we cannot sustain
the order of the High Court. Accordingly, the same is set aside and the
appeal is allowed. The election of the appellant-returned candidate is
G declared to be valid in law.