

Harcharan Singh vs Mohinder Singh & Ors on 1 May, 1968

Equivalent citations: 1968 AIR 1500, 1969 SCR (1) 198, AIR 1968 SUPREME COURT 1500

Author: J.C. Shah

Bench: J.C. Shah, Vishishtha Bhargava

PETITIONER:
HARCHARAN SINGH

Vs.

RESPONDENT:
MOHINDER SINGH & ORS.

DATE OF JUDGMENT:
01/05/1968

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
BHARGAVA, VISHISHTHA

CITATION:
1968 AIR 1500 1969 SCR (1) 198
CITATOR INFO :
R 1975 SC 290 (8)

ACT:
Representation of the People Act (43 of 1951), ss. 33(5) and 36(4)--Certified copy of certificate filed by candidate who is a voter in different constituency fails to set out age, and house number--If defect substantial to reject nomination.

HEADNOTE:
The appellant filed his nomination paper for a seat to the Vidhan Sabha of a constituency different from the one in which his name was included as a voter. With his nomination paper, the appellant had produced an application for a certified extract on the reverse of which was recorded a certificate, containing relevant entries from the Voters' list. The entries in certificate did not tally in all respects with the entries in the voters' list, in that it

failed to set out the age of the appellant and his house number. No objection to the nomination paper was raised before the returning officer. The returning officer accepted the nomination and held that the particulars were correct, and that the appellant was over 25 years of age. The appellant was declared elected. The first respondent, an unsuccessful candidate, challenged the validity of the election of the appellant on the ground that the appellant had failed to produce before the scrutiny of nomination paper, the electoral roll or a certified copy of the relevant entries in the roll in which his name was included as voter as required by s. 33(5) of the Representation of the People Act. The High Court set aside the election. In appeal, this Court :

HELD: The appeal must be allowed.

The copy of the relevant entries from the electoral roll relating to the appellant was defective. But under s. 36(4) the returning officer is entitled to accept the nomination paper even if it be defective, if the defect is not of a substantial character : indeed he is enjoined not to reject the nomination paper unless the defect is of a substantial character. The details for identifying the appellant as an elector were duly furnished. His age was mentioned in the nomination paper, though it was not to be found in the certified copy produced by the appellant. No objection was raised to the acceptance of the nomination paper on behalf of the contesting candidate and his agents present at the scrutiny. The returning officer satisfied himself by personal inquiry that the appellant was above the age of twenty-five and competent to stand for election. It was true that he did not come to the conclusion that the defect in the copy of the electoral roll was of a substantial character. [204 G-H; 205 A-B]

The decision of the returning officer in the matter is not final and in appropriate cases it is open to the Court to reach a different conclusion in an election petition. In this case, the appellant was not negligent nor was the purity of election process likely to be affected on account of the defects in the COPY produced by the appellant. The defects in the certificate were not of a substantial character. Therefore the returning officer did not err in not rejecting the nomination paper.

[204 B-C]

Sri Baru Ram v. Shrimati Prasanni & Ors. [1959] S.C.R. 1403, referred to.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1554 of 1967.

Appeal from the judgment and order dated September 1, 1967 of the Punjab and Haryana High Court in Election Petition No. 4 of 1967.

S. V. Gupte, Mehra Singh Chaddah and Harbans Singh, for the appellant.

A. K. Sen, R. L. Kohli and J. C. Talwar, for respondent No.1.

The Judgment of the Court was delivered by Shah, J. At the general elections held in February 1967 the appellant polled the largest number of votes and was declared elected to the Punjab Vidhan Sabha from the Zira Constituency. The first respondent S. Mohinder Singh, who was a candidate at the election, applied to the High Court of Punjab for setting aside the election of the appellant on the ground that the nomination of the appellant who was not a voter in the Zira Constituency was improperly accepted by the Returning Officer, for the appellant had failed to file before the scrutiny a copy of the electoral roll or the relevant part thereof or a certified copy of the relevant entries of the poll pertaining to the constituency to which he belonged, and that the result of the election to the Zira Constituency insofar as it concerned the appellant was materially affected by improper acceptance of his nomination. The High Court upheld the contention and set aside the election of the appellant and declared the election of the appellant void under s. 100(1)(d)(1) of the Representation of the People Act, 1951. Against that order the appellant has appealed to this Court.

The name of the appellant is included as a voter in the Gid- derbha Constituency, and his name is not included in the list of electors in the Zira Constituency. But on that account he was not disqualified from standing for election from the Zira Constituency. The validity of the election of the appellant was challenged only on the ground that the appellant had failed to produce before the scrutiny of nomination papers, the electoral roll, or a certified copy of the relevant entries in that roll concerning him. By sub-s. (4) of s. 33 of the Act the returning officer is directed to satisfy himself when the nomination paper is prescribed that the names and electoral numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls. Sub-section (5) provides that where the candidate is an elector of a different constituency a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination papers, be produced before the returning officer at the time of scrutiny. The appellant not being an elector in the Zira Constituency, he had to produce either with the nomination paper or at the time of scrutiny the relevant part of the electoral roll, or a certified copy of the relevant entries in the electoral roll. Section 36 deals with the scrutiny of nomination. By sub-s. (2) of s. 36 it is provided :

"(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination, and may, either on such objections, or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds :

(a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely : Articles 84, 102, 173 and 191.

(b) that there has been a failure to comply with any of the provisions of section 33 or section 34; or

(c)

By sub-s. (4) the returning officer is enjoined not to reject any nomination paper on the ground of any defect which is not of a substantial character. Sub-section (7) of S. 36 provides :

"For the purposes. of this section, a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in section 16 of the Representation of the People Act, 1950."

This Court in *Sri Baru Ram v. Shrimati Prasanni & Ors.*(1) observed at p. 141 8 :

"Sub-section (5) of s. 33 deals with the stage of the scrutiny of the nomination papers and it provides that where a candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or the relevant part thereof or a certified copy of the relevant entry of such roll shall, unless it is filed along with the nomination paper, be produced before the returning officer at the time of the scrutiny. It is thus clear that when the stage of scrutiny is reached the (1) [1959] S.C.R. 1403.

returning officer has to be satisfied that the candidate is an elector of a different constituency and for that purpose the statute has provided the mode of proof. Section 36, sub-s. (7) lays down that the certified copies which are required to be produced under s. 33 (5) shall be conclusive evidence of the fact that the person referred to in the relevant entry is an elector of that constituency. In other words, the scheme of the Act appears to be that where a candidate is an elector of a different constituency he has to prove that fact in the manner prescribed and the production of the prescribed copy has to be taken as conclusive evidence of the said fact."

The appellant concedes, that with his nomination paper he did not produce the electoral roll or a copy of the relevant part thereof of the Gidderbha Constituency. He, however, pleaded that at the time of the scrutiny of the nomination papers he had produced before the returning officer copies of the electoral roll. and had requested that officer to keep the copies of the roll on his file if he needed them, and the returning officer had said that he did not need the copies of the electoral roll. This case was not set up by the appellant in his reply to the election petition. The returning officer Sher Singh Sindhu was summoned to appear before the High Court to produce certain documents in his custody. Sher Singh Sindhu personally appeared in Court and tendered the documents called for, but the appellant did not ask the Trial Judge to administer him oath and to examine him as a witness. There is no written record about the production of the electoral roll before the returning officer. In the order passed by the returning officer dated January 21, 1987, the returning officer has referred to the production of a certificate, but not to the production of the electoral roll'. We therefore agree with the High Court that the case set up by the appellant that he had produced

copies of the electoral roll or relevant parts thereof before the returning officer at the time of the scrutiny of nomination papers cannot be accepted as true.

The appellant contends that he had produced with the nomination paper a certified extract from the electoral list of the Gidderbha Constituency supplied to him by the Tahsildar Muktsar, who also held the office of Electoral Registration Officer, and the requirements of s. 33(5) were satisfied. With his nomination paper the appellant had produced an Ext. P.W. 1/4 to the following effect:

"Certified that the names of Harcharan Singh s/o Teja Singh and Gurdial Singh s/o Harcharan Singh are there on the voters list of V. Badian H.B. No. 24, Tehsil Muktsar, in the voters' list of Lambi Constituency; for the year 1965.

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S.	No.	Name	of	the	voter
					Vote No.
1.	Harcharan	Singh	s/o	Teja	Singh
2.	Gurdial	Singh	s/o	Harcharan	Singh

Sd. Illegible
19.1.67"

The circumstances in which this document was obtained may first be set out. On January 18, 1967, the appellant submitted an application before the Sub-Divisional Magistrate, Muktsar, to the following effect:

"The applicant begs to submit as under:

It is submitted that I want to contest for Punjab Assembly seat from Zira Constituency. My name is entered as a voter in the voters' list of village Badian. I have received a voters' list from the Panchayat of the village and another list from the candidate of Gidderbha circle. One list of voters is (part) 20 and in the other (part) 31 is written in red ink.

Both of them relate to year 1966. Kindly certify after verification from the election qanungo, whether there is also another voters list for the year 1966. If there is one, what is my voter No. therein.

My son Gurdial Singh, is my covering candidate. Kindly verify Voters Nos. of both (of us)."

On this application it was recorded by the Sub-Divisional Magistrate on January 19, 1967--"Allowed certified copy today". On the reverse of the application is recorded a certificate of the Tahsildar, Muktsar, which is marked P.W. 1/4. The entries in the voters' list relating to the appellant may be set out:

Voters' list of Gidderbha Assembly --Village Badian (Continued).

Constituency				
1825	211	Harcharan Singh	Male	60
		Teja Singh		

Below this entry and at the end of the page of the electoral roll, this note appears:

Serial House Name of the voter Father's/ No. No. Male/Age /other's/Female/
Husband's name.

The entries in P.W. 1/4 do not tally in all respects with the entries in the voters' list. P.W. 1/4 purports to be an abstract from the voters' list of Lambi Constituency whereas the voters' list in which the name of the appellant is entered is of the Gidderbha Circle. But it appears that in transcribing the name of constituency a clerical mistake was made. The electoral roll it appears was prepared in 1965, and since then the original Lambi general constituency was named Gidderbha constituency as a result of delimitation of constituencies. But in Ext. P.W. 1/4 the house number and the age of the voter which are found in the voters' list are not set out. There can be no doubt that the copy supplied is defective and it does not comply with the requirements of s. 33(5). Under s. 36(2)(b) the returning officer has to hold a summary inquiry on objections raised; or on his own motion, whether constitutional requirements are prescribed in cl.

(a) or the statutory requirements in el. (b) have been fulfilled. No objection to the nomination paper was raised before the returning officer. Apparently, the returning officer held some inquiry and recorded the following order:

"I have examined the nomination paper in accordance. with section 36 of the Representation of the People Act, 1951, and decide as follows :-

'Particulars correct. The candidate's age is not shown in the certificate. But the candidate is an old man and is certainly above the age of 25 years and as such he is fully qualified. No objection is raised. Fee deposited. Oath taken. Valid. Accepted.'"

By s, 36(4) the returning officer is enjoined not to reject any nomination paper on the ground of any defect which is not of a substantial character. Exhibit P.W. 1/4 which accompanied the nomination paper was defective in two respects, but it still remains to be determined whether the defects were of a substantial character. The appellant had produced a document which certified his roll number, his name, his father's name, his village, H.B. number of Tahsil Muktsar, but did not certify his house number and his age. On the application submitted by the appellant the returning officer had asked the Tahsildar to make a report. Niranian Singh who was the Sub-Divisional Officer Muktsar, and also the Electoral Registration Officer of Gidderbha Assembly Constituency at the relevant time deposed that the application Ext. R.W. 1/5 was presented before him and that he had ordered that the application be referred for disposal to the Tahsildar who held the office of the Assistant Electoral Registration Officer. In cross-examination the witness stated that he had "desired the Tahsildar to supply a certified copy of the electoral roll" and that he had never asked him to submit a report like

the one endorsed on the reverse of the application. But the Tahsildar purported to make a report and the application with that report was delivered to the appellant in pursuance of his application. We see no reason to disbelieve the statement of Niranjana Singh. The answer

referred to earlier is elicited in cross-examination by counsel for the respondent, and no reason has been suggested as to why the witness should bear false testimony. The recitals in the application filed by the appellant are somewhat obscure. It was written in Punjabi and the official translation and the translation made by the learned Judge in the High Court did not wholly tally. The order passed by the Electoral Registration Officer which he has deposed to is not amongst the papers. But at the foot of the application it is recorded that a certified copy was allowed on January 19, 1967. If the story of the Electoral Registration Officer is to be believed, he had directed that a certified copy of the electoral roll be furnished and by some mischance the Tahsildar made a report in which there was first a clerical mistake with regard to the name of the Constituency, and again the two entries relating to the house number and the age of the appellant were omitted. Exhibit P.W. 1/4 was filed with the nomination papers, and the returning officer was apparently satisfied that the requisite details were duly furnished. Exhibit P.W. 1/4 was also before the returning officer at the time of the scrutiny of the nomination papers. The contesting candidate and his agents were present and no objection was raised to the validity or the sufficiency of the document produced with the nomination paper in purported compliance with s. 33(5). The returning officer, however, thought it necessary to make an inquiry as to the age of the appellant and recorded that he was satisfied that the appellant was above the age of twenty-five. Absence of the number of the house in which the appellant lived from the copy produced does not appear to have been regarded as of any consequence. It was not suggested in the High Court, nor is it suggested before us that the appellant was not competent to stand as a candidate for the Zira Constituency either on account of any disqualification or on the ground that he was not an elector of any constituency; it is only urged that Ex. P.W. 1/4 was not a certified copy of the relevant entries in the electoral roll.

The statutory requirements of election law must be strictly observed. An election dispute is a statutory proceeding unknown to the common law: it is not an action at law or in equity. As a copy of the relevant entries from the electoral roll relating to the appellant it was indisputably defective. But under s. 36(4) the returning officer is entitled to accept the nomination paper even if it be defective, if the defect is not of a substantial character: indeed he is enjoined not to reject the nomination paper unless the defect is of a substantial character. The details for identifying the appellant as an elector were duly furnished. His age was mentioned in the nomination paper, though it was not to be found in the certified copy produced by the appellant. No objection was raised to the acceptance of the nomination paper on behalf of the contesting candidate and his agents present at the scrutiny. The returning officer satisfied himself by personal enquiry that the appellant was above the age of twenty-five and therefore competent to stand for election. It is true that he did not apply his mind to the absence of house number entered in the electoral register. But he did not come to the conclusion that even though the copy produced was defective the defect was of a substantial character. The decision of the returning officer in the matter is not final and in appropriate cases it is open to the Court to reach a different conclusion in an election petition. But on a careful review of the proceedings of the Returning Officer we are of the opinion that the returning officer did not err in not rejecting the nomination paper; the defects in Ex. P.W. 1/4 were not of a substantial

character.

The primary purpose of the diverse provisions of the election law which may appear to be technical is to safeguard the purity of the election process, and the Courts will not ordinarily minimise their operation. If there was any reason to think that the appellant was negligent, or that on account of defects which were found in the copy produced by the appellant the purity of the election process was likely to be affected, we would have been loath to disagree with the High Court. But in this case the appellant moved the Electoral Registration Officer for a copy certifying the correctness of the entries in the list which had been supplied to him, and the Electoral Registration Officer supplied to him a copy which though defective, did include sufficient particulars for identifying the appellant. No objection was raised before the returning officer and that officer after holding an inquiry was apparently of the view that there was no defect which could be regarded as of a substantial character. We do not think that any ground is made out for disagreeing with the view of the returning officer.

The order passed by the High Court is set aside and the petition filed by the first respondent S. Mohinder Singh stands rejected. The appeal is allowed: there will be no order as to costs throughout.

Appeal allowed.