

Supreme Court of India

Ganu Ram vs Rikhi Ram Kaundal And Ors on 17 July, 1984

Equivalent citations: 1984 AIR 1513, 1985 SCR (1) 63

Author: V B Eradi

Bench: Eradi, V. Balakrishna (J)

PETITIONER:

GANU RAM

Vs.

RESPONDENT:

RIKHI RAM KAUNDAL AND ORS.

DATE OF JUDGMENT 17/07/1984

BENCH:

ERADI, V. BALAKRISHNA (J)

BENCH:

ERADI, V. BALAKRISHNA (J)

BHAGWATI, P.N.

CITATION:

1984 AIR 1513

1985 SCR (1) 63

1984 SCC (3) 649

1984 SCALE (2) 1

ACT:

Representation of the People Act , 1951-s. 33(2)
Requirements of valid nomination paper-Candidate filing
nomination paper without making declaration prescribed by s.
33(2) on the nomination form but annexing there to a
certificate to the effect that he belonged to scheduled
caste-Whether requirements of s. 33(2) satisfied-Whether
nomination paper valid.

Representation of the People Act 1951-s. 33(2) Must be
given liberal and benevolent interpretation.

HEADNOTE:

S. 33(2) of the Representation of the People Act
requires that when a nomination paper is filed in respect of
a reserved seat in any constituency there must be a clear
specification by the candidate of the particular caste or
tribe to which he belonged and the area in relation to which
that caste or tribe was a scheduled caste or scheduled tribe
of the State. The appellant, in order to contest State
assembly election filed his nomination paper without making
the declaration in the nomination paper itself but filed as
annexure thereto a certificate issued by the Sub Divisional
Magistrate certifying that the appellant belonged to a
scheduled caste namely 'Lohar'. The nominating paper was

accepted by the Returning Officer and the appellant successfully contested the election. The respondent, who lost in the election, challenged the election of the appellant on the ground inter alia that in the absence of the requisite declaration prescribed by s. 33(2), the nomination paper of the appellant was invalid and was wrongly accepted. The High Court took the view that since s. 33 of the Act required that the nomination paper must be in the prescribed form the filing of any enclosure or certificate along with form was not contemplated. Hence this appeal.

Allowing the appeal,

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HELD: When the nomination paper has been made in the prescribed form, there is no legal prohibition against the other requisite particulars being furnished in a separate paper appended to the form instead of

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writing them out in the form itself. The annexure appended to the form should be treated as part of the nomination paper.

[67 B-C]

While dealing with nomination papers pertaining to candidates belonging to scheduled castes and scheduled tribes, who, for well known historical reasons, are unfortunately, extremely backward socially, economically and educationally in comparison with other sections of our people, the Court has to place a liberal and benevolent interpretation on the provisions contained in s. 33(2) of the Act rather than adopt a narrow, rigid, technical and purely literal construction. [67 E-F]

S. Sivaswami v. V. Malalkannan and other, [1984] 1 SCC 296, referred to.

In the instant case the requirement of s. 33(2) is fully satisfied. The certificate which was produced by the appellant as an annexure to the nomination paper has to be treated as forming part of the nomination paper and the declaration contained therein that the appellant belongs to the 'Lohar' caste which is admittedly a scheduled caste in the entirety of the area concerned, must be understood and treated as a declaration by the appellant in the nomination form within the meaning of sub-s. (2) of s. 33. Therefore the High Court was in error in holding that the nomination paper filed by the appellant was not valid and its acceptance by the Returning officer was improper. [68D-E; G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 515 (NCE) of 1983.

From the Judgment and Order dated the 7th January, 1983 of the Himachal Pradesh High Court in Election Petition No. 6 of 1982.

V. K.Chitre and B. R. Agrawala for the Appellant. Dr. N. M. Ghatate for the Respondent.

The Judgment of the Court was delivered by BALAKRISHNA ERADI, J. This being an election appeal filed under section 116A of the Representation of the People Act, 1951 (hereinafter called 'the Act') calling for urgent determination, as soon as the hearing of arguments in the appeal was completed we announced our decision by passing the following order:

"We are of the view that for reasons which we shall state later, the nomination paper of the appellant was validly accepted by the Returning Officer and we accordingly allow the appeal and set aside the order of the High Court invalidating the election of the appellant. There will be no order as to costs of the appeal."

We now proceed to set out our reasons for reaching the aforesaid conclusion.

General Elections to the Himachal Pradesh Vidhan Sabha were held in May, 1982. Ganu Ram, the appellant herein, Rikhi Ram Kaundal (first respondent) and three others had contested the 23 Gehrwin Assembly Constituency seat which is a seat reserved for scheduled caste candidates only. The nominations filed by all these five candidates had been accepted as valid by the Returning Officer and the polling took place on May 19, 1982. The result of the election was announced on May 22, 1982 and the appellant was declared elected from the said reserved constituency by reason of his having secured 7477 votes as against his nearest rival Rikhi Ram Kaundal (first respondent) who had polled only 6901 votes.

On July 3, 1983 Rikhi Ram Kaundal filed an election petition in the High Court under sections 81, 100 and 101 of the Act challenging the validity of the election of the appellant on three grounds. The first ground urged was that the nomination paper filed by the appellant was not in order inasmuch as it did not contain any declaration by the appellant specifying the particular caste of which he is a member and the area in relation to which the said caste has been declared to be a scheduled caste in the State. On this basis it was contended that the nomination paper of the appellant had been improperly accepted by the Returning Officer. The second ground of objection raised was that since the appellant had not made any declaration in the nomination paper regarding the particular scheduled caste to which he belonged, he should be deemed to be disqualified for being chosen to fill the seat in question 23 Gehrwin reserved constituency-in view of the mandatory provisions contained in sub-section (2) of section 33 of the Act. The third ground of objection put forward was that the appellant did not as a matter of fact, belong to any of the castes which had been declared as scheduled castes in relation to the State of Himachal Pradesh and hence he was not qualified to stand as a candidate from the aforesaid reserved constituency.

The High Court upheld the first two objections raised by the election-petitioner which related to the question of validity of the nomination paper and set aside the election of the appellant holding that the nomination paper of the appellant could not be regarded as valid in view of the fact that it did

not contain a declaration by the appellant specifying the particular caste of which he is a member and the area in relation to which he said caste is a scheduled caste in the State. The third contention by the respondent- election petitioner was however, rejected by the High Court since the Court found on a consideration of the evidence adduced in the case that the appellant did, in fact, belong to the 'Lohar' caste which has been declared as a schedule caste in the State of Himachal Pradesh. Aggrieved by the judgment of the High Court setting aside his election and unseating him, the appellant has come up to this Court with this appeal.

Section 33 of the Act deals with the topic of presentation of nomination paper and requirements for a valid nomination. Sub-section (2) of the said section which alone is relevant for our present purpose reads:

"(2) In a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste or, as the case may be, a Scheduled Tribe of the State."

It is not disputed that in the nomination form filed by the appellant and his proposer, no written declaration had been made specifying the caste to which the appellant belongs and the area in relation to which that caste is a scheduled caste of the State. But it is common ground that along with the nomination paper the appellant had filed as annexure thereto a certificate issued by the Sub-Divisional Magistrate, Ghumarwin certifying that the appellant belonged to a scheduled caste namely 'Lohar'. The said certificate was appended to the nomination paper obviously with the sole purpose and intention of making it known to the Returning Officer and all others concerned that the appellant is filing his nomination as a candidate belonging to a scheduled caste namely 'Lohar' and it was in proof of that assertion and for eliminating doubt or controversy in the matter that the Sub Divisional Magistrate's certificate was produced. The High Court has taken the view that since section 33 of the Act requires that the nomination paper must be in the prescribed form and Form 2B is a self-contained one, the filing of any enclosure or certificate along with the Form is not contemplated. We are unable to agree with this view. When the nomination paper has been made in the prescribed form there is no legal prohibition against the other requisite particulars being furnished in a separate paper appended to the form instead of writing them out in the form itself. This is very often done in the matter of filing returns of Income-tax, Wealth- tax etc. In such cases the annexure appended to the form should be treated as part of the nomination paper. We are therefore of opinion that the certificate which was produced by the appellant as an annexure to the nomination paper has to be treated as forming part of the nomination paper and the declaration contained therein that the appellant belongs to the scheduled caste of 'Lohar' must be understood and treated as a declaration by the appellant in the nomination form within the meaning of sub-section (2) of section 33. We have to remember that we are dealing with nomination papers pertaining to candidates belonging to scheduled castes and scheduled tribes, who, for well known historical reasons, are unfortunately, extremely backward socially, economically and educationally in comparison with other sections of our people. In such a context we consider that the Court has to place a liberal and benevolent interpretation on the provisions contained in section 33 (2) of the Act

rather than adopt a narrow, rigid, technical and purely literal construction In *S. Sivaswami v. V. Malaikannan and others*, which was also a case arising under the Act, one of us speaking on behalf of a three Judge Bench of this Court had occasion to make the following observations which are apposite to the present context also:

"In this context it is necessary to remember that nearly 90 per cent of the electorate in this country consists of illiterate and uneducated rural folk totally unacquainted with the intricacies of the rules & technicalities of procedure pertaining to elections. Even if the best of endeavour is made explain to them such complicated rules and procedures they may not be capable of grasping and fully understanding all the implications and actually carrying them into effect while exercising their franchise. If the right conferred on the people to choose their representatives to the State Legislatures and the Parliament through the process of free and fair elections is to be meaningful the will of the illiterate and unsophisticated voter expressed through a marking on the ballot paper which though not strictly inside the column of the particular candidate is clearly indicative of the identity of the candidate for whom the vote is cast has to be respected and given its full effect."

It is manifest that the legislative purpose underlying subsection (2) of section 33 of the Act is that when a nomination paper is filed in respect of a reserved seat in any constituency there must be a clear specification by the candidate of the particular caste or tribe to which he belongs and the area in relation to which that caste or tribe is a scheduled caste or scheduled tribe of the State. This requirement is fully satisfied in the present case because by producing the certificate of the Sub-Divisional Magistrate as an annexure to his nomination paper the appellant had clearly made it known that he was filing the nomination as a candidate belonging to the 'Lohar' caste, which is admittedly a scheduled caste in the entirety of the area of the State of Himachal Pradesh. It is also significant that no objection whatever was raised against the nomination filed by the appellant at the time of scrutiny. The Returning Officer had published a notice of nominations under section 35 of the Act and in the said notice it was expressly stated that the appellant had filed his nomination as a candidate belonging to the scheduled caste namely 'Lohar'. Having regard to all the facts and circumstances of the case and the legal position as explained above, we consider that the High Court was in error in holding that the nomination paper filed by the appellant was not valid and its acceptance by the Returning Officer was improper.

A faint attempt was made before us by the learned counsel appearing on behalf of the first respondent to make out that the finding entered by the High Court that the appellant does, in fact, belong to the scheduled caste 'Lohar' is erroneous and unsupported by the evidence but we see no merit at all in the said contention.

The said finding recorded by the High Court is hereby confirmed.

The conclusion that emerges from the foregoing discussion is that the High Court was not justified in setting aside the election of the appellant on the ground that the nomination paper filed by the appellant was invalid. It follows that this appeal has to be allowed and the order of the High Court

invalidating the election of the appellant has to be set aside.

H.S.K.

Appeal allowed.