Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 888 OF 2009

Balram Singh Yadav@ Balram Yadav ... Appellant

Versus

Abhay Kumar Singh ...Respondent

J U D G M E N T

Dipak Misra, J.

In this appeal, the question that is required to be determined is whether the High Court by the order impugned was justified in invalidating the election of the appellant who was elected as a member of Bihar Legislative Assembly in the election held on 10.7.2003.

2. Bereft of unnecessary details, the facts which are essential to be stated are that the respondent filed his nomination paper along with fifty others to enter into the contest as the member of Bihar Legislative Council from 20-Saharsha-cum-Medhepura-cum-Supaul Local Authority Election Constituency. The Returning Officer, while accepting the nomination papers of all the candidates, rejected the nomination paper of the respondent on the ground that he had

not filed the relevant electoral roll which was required to be done, for he belonged to another constituency.

3. After the election was over, the respondent instituted Election Petition No. 4 of 2003 in the High Court of Patna seeking a declaration that rejection of his nomination paper was incorrect and inappropriate, and hence, the election of the elected candidate was void. Challenge to the rejection was based on two counts, namely, that he had filed the requisite voters' list as contemplated under Section 33(5) of the Representation of the People Act, 1951 (for brevity, 'the Act') and second, the Returning Officer, at the time of scrutiny, had not pointed out the defect to him for which he was deprived of the opportunity of rectifying the mistake.

4. In the election petition it was asseverated that the Returning Officer accepted the electoral roll for other candidates for the year 1998, but as far as the respondent was concerned, there was insistence for production of the valid electoral roll as on 1.1.2002 which was not essential. The stand and stance put forth by the election petitioner was seriously controverted by the present appellant on many a ground including the one that in the absence of any pleadings in the petition to substantiate the fact his contesting in the

election would have materially affected the results of the election, the election petition was totally devoid of any substance.

5. The High Court framed the following four issues for adjudication:

> "(1) Whether this election petition, as framed is maintainable?
> (2) Whether this election petition is vitiated by non-joinder of necessary parties?
> (3) Whether the nomination paper of the petitioner was improperly rejected by the Returning Officer?
> (4) Whether the petitioner is entitled to any relief or reliefs?"

6. Both the parties adduced oral evidence and marked certain documents as exhibits. The High Court treated issue No. 3 as the principal issue and the issue No. 4 as consequential to it. The respondent brought on record the order of rejection passed by the Returning Officer as Ext. P-2. There was no dispute before the High Court that the first respondent did not belong to the constituency and, therefore, he was required to comply with Section 33(5) of Act. The High Court, adverting to the said aspect, observed as follows: -

> "Petitioner does not deny that he had filed an extract of 1995 electoral roll and even in the electoral roll of 1998 the Part and Serial Number where the petitioner's name figured was identical. If the Returning Officer had bothered to turn the pages of 1998 electoral roll at the time of scrutiny then the

above declaration of the petitioner in the nomination paper would have stood verified and corroborated. But then the reason for rejection of the nomination of the petitioner is not that the petitioner had not annexed 1998 electoral roll. The reason assigned is that he did not have the Aharta as on 1.1.2002 and he had not annexed Styapit (certified) extract of the electoral roll in the regard."

7. Thereafter, considering the oral evidence, the High Court opined thus: -

"The Court also decides to have a look at the oral evidences which have been adduced on this score. Five witnesses were produced on behalf of the petitioner. P.W. 1 is the petitioner himself where he has stated that he was one of the candidates for the "Constituency" of the Local Body and was a voter of 110-Raghopur Assembly Constituency. He stated that his nomination papers were illegally rejected. He filed two sets of nomination papers which were duly signed by him and his proposers. In one of the nomination papers a detailed reason for rejection was recorded but in the second nomination paper the word "Aswikrit Karta Hun" (rejected) only mentioned. He has furnished the details of his name, the Part and the Serial Number of 110-Raghopur Assembly Constituency which is reflected in the voter list of 1998. His name figured at serial no. 444 in Part 11. He also states that a demand of voter list for the year, 2002 was made from him orally but there was no voter list of the year available to his knowledge. He also denied that he had received any kind of memo much less memo no. 10. He does accept that he was personally not present at the time of scrutiny but he had authorized one Sri Prabhakar Singh, Advocate to participate in the same but he was not allowed to go to the place of scrutiny."

8. We have heard Mr. Nagendra Rai, learned senior counsel for the appellant. Despite service of notice, there is no

appearance on behalf of the respondent.

9. To appreciate the controversy from a proper perspective, it is apposite to refer to Section 100 of the Act. It reads as follows:-

> "**100. Grounds for declaring election to be void.-** (1) Subject to the provisions of sub-section (2) if the High Court is of opinion-
> (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or
>
> (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
>
> (c) that any nomination has been improperly rejected; or
>
> (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected –
>
> (i) by the improper acceptance of any nomination, or
>
> (ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or
>
> (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void."

10. Be it stated, before this provision was incorporated by the Representation of the People (2nd amendment) Act, 1956, Section 100(1)(c) read as follows:-

> "If the Tribunal is of opinion that the result of the election has been materially affected by the improper acceptance or rejection of any nomination, the Tribunal shall declare the election to be wholly void."

Interpreting the said provision, the Constitution Bench in ***Surendra Nath Khosla and another v. S. Dalip Singh and others***[1] ruled thus:-

> "It appears that though the words of the section are in general terms with equal application to the case of improper acceptance, as also of improper rejection of a nomination paper, case law has made a distinction between the two classes of cases. So far as the latter class of cases is concerned, it may be pointed out that almost all the Election Tribunals in the country have consistently taken the view that there is a presumption in the case of improper rejection of a nomination paper that it has materially affected the result of the election. Apart from the practical difficulty, almost the impossibility, of demonstrating that the electors would have cast their votes in a particular way, that is to say, that a substantial number of them would have cast their votes in favour of the rejected candidate, the fact that one of several candidates for an election had been kept out of the arena is by itself a very material consideration. Cases can easily be

1 AIR 1957 SC 242

> imagined where the most desirable candidates from the point of view of electors and the most formidable candidate from the point of view of the other candidates may have been wrongly kept out from seeking election. By keeping out such a desirable candidate, the officer rejecting the nomination paper may have prevented the electors from voting for the best candidate available. On the other hand, in the case of an improper acceptance of a nomination paper, proof may easily be forthcoming to demonstrate that the coming into the arena of an additional candidate has not had any effect on the election of the best candidate in the field. The conjecture therefore is permissible that the legislature realising the difference between the two classes of cases has given legislative sanction to the view by amending Section 100 by the Representation of the People (Second Amendment) Act, 27 of 1956, and by going to the length of providing that an improper rejection of any nomination paper is conclusive proof of the election being void. For the reasons aforesaid, in our opinion, the majority decision on the fourth issue is also correct."

11. After the amendment, a three-Judge Bench in ***Mahadeo v. Babu Udai Partap Singh and others***[2]**,** after referring to the decision in ***Surendra Nath Khosla*** (supra), opined as follows:-

> **"11.** This position has now been clarified by the Legislature itself by amending S. 100 in 1956. The amended S. 100(1)(*a*), (*b*) and (*c*) refer to three classes of cases where the election is set aside on proof of facts enumerated in the said clauses. Clause (*a*) refers to a case where a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act at the

2 AIR 1966 SC 824

> date of his election. As soon as this fact is proved, his election is set aside. Similarly, under Cl. (*b*), if any corrupt practice is shown to have been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent, the election of the returned candidate is set aside and declared void. Likewise, Cl. (*c*) provides that the election of a returned candidate shall be declared void if it is shown that any nomination has been improperly rejected. It would thus be seen that the view which the Election Tribunals and the Courts had been consistently taking in dealing with the question about the effect of the improper rejection of any nomination paper, has been confirmed by the Legislature and now, the position is that if it is shown that at any election, any nomination paper has been improperly rejected, the improper rejection itself renders the election void without any further proof about the material effect of this importer rejection."

12. In view of the abovestated enunciation of law, the submission that there was no pleading and no evidence was adduced to establish that the election of the elected candidate was materially affected, is sans substance. Once the court comes to the conclusion that the nomination paper had been improperly rejected, it is obliged in law to declare the election void.

13. Presently, we shall proceed to deal with the issue whether the High Court was justified in accepting the plea of the respondent that his nomination paper was improperly rejected. In this regard, reference to Section 33(5) of the Act is seemly.

It reads as follows: -

> ""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 paper, be produced before the returning officer at the time of scrutiny."

14. The said provision came to be interpreted in ***B. Dandapani Patra* v. *Returning Officer-cum-Sub-Divisional Officer, Berhampur and others***[3], wherein a two-Judge Bench placed reliance on ***Ranjit Singh* v. *Pritam Singh***[4] and came to hold as follows: -

> "... it has been held that when Section 33(5) of the said Act refers to a copy of the relevant part of the electoral roll, it means a part as defined in Rule 5 of the said Rules of 1960. The complete copy would carry the various amendments made in the roll to enable the Returning Officer to see whether the name of the candidate continues in the roll."

15. The facts of the aforesaid decision would show that unless the current electoral roll is filed along with the nomination paper, that would tantamount to non-compliance of Section 33(5) of the Act. In the instant case, on a perusal of evidence of PW-1, the respondent herein, and the Returning Officer, it is perceptible that the said respondent had not filed the electoral

3 (1990) 1 SCC 505
4 (1996) 3 SCR 543

roll of 1998 which was the latest electoral roll as on 1.1.2002. On the date of scrutiny, the respondent was absent. The High Court, as noticeable, has referred to the order of rejection of nomination paper by the Returning Officer and opined that none had filed the electoral roll of 1.1.2002 and, therefore, the nomination paper could not have been rejected. The aforesaid view is the resultant of erroneous perception of fact. The ground that was indicated by the Returning Officer was that the valid electoral roll as on 1.1.2002 had not been filed. It has come in the evidence that no electoral roll was prepared on that date and the latest electoral roll was that of 1998. The respondent had not filed the same. In fact, he had filed the electoral roll of 1995. It is also clear from the evidence that at the time of scrutiny, he was not present.

16. In view of the foregoing analysis, we have no scintilla of doubt that the High Court has fallen into serious error by setting aside the election of the appellant and, accordingly, we set aside the judgment of the High Court, treat the election of the appellant as valid and further direct that the appellant shall get the entire remuneration for the period for which he was elected as a member of the legislative Council and we say so

on the basis of the Constitution Bench decision in ***Kirpal Singh, M.L.A.*** **v.** ***Uttam Singh and another***[5].

17. The appeal is accordingly allowed. There shall be no order as to costs.

.....J.
[Dipak Misra]

.....J.
[N.V. Ramana]

New Delhi;
May 13, 2014.

5 (1985) 4 SCC 621