

IN THE HIGH COURT OF JUDICATURE AT PATNA
Election Petition No.5 of 2015

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1. Binodanand Sah S/o Govind Lal Sah, Resident of village + P.O.- Bharri, P.S.- Kadwa, District- Katihar

.... Petitioner/s

Versus

1. Shakil Ahamad Khan Son of Late Shayeb Khan, resident of village+ P.O.- Kabar, P.S. Barari (O.P. Semapur) District- Katihar
2. The Election Commission of India, through the Chief Election Commissioner, New Delhi. deleted
3. The Chief Electoral Officer, Bihar, Patna deleted
4. The Returning Officer 64, Kadwa Legislative Assembly-cum-Deputy Collector, Land Reforms, Barsoi, Katihar deleted
- Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P.K. Verma, Sr. Adv. Mr. Ujjawal Kumar Sinha, Adv. Mr. Suman Kumar Jha, Adv.
For the Respondent/s	:	Mr. S.B.K. Mangalam, Adv. Mr. Md. Qumrul Hoda, Adv. Mr. Ravi Ranjan, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
C.A.V. JUDGMENT
Date: 30-11-2017

It is alleging improper rejection of nomination under Section 100(1)(c) by the Returning Officer for the 64 Kadwa Legislative Assembly Constituency in the district of Katihar in the Assembly Election held in the year 2015 that the election petitioner is before this Court by invoking the provisions of Sections 80, 80A and 81 of the Representation of People Act, 1951 (hereinafter referred to as 'the Act').

The brief facts leading to the contest is that following a



notification dated 09.09.2015 for holding the general election to the Legislative Assembly in the State of Bihar that the schedule was issued by the Election Commission of India and in so far as the election to the 64 Kadwa Legislative Assembly Constituency, Katihar is concerned, it is as follows:

Date of Notification 08.10.2015 (Thursday)

Last date of making nomination 15.10.2015 (Thursday)

Date for scrutiny of nomination 16.10.2015 (Friday)

Last date for withdrawal of candidature 19.10.2015 (Monday)

Date of polling 05.11.2015 (Thursday)

Date of counting 08.11.2015 (Sunday)

Date before which election shall be completed 12.11.2015
(Thursday)

The election petitioner filed his nomination on 13.10.2015 which according to him was complete in all respects containing all required information. According to the petitioner, the Returning Officer issued a check list on the receipt part of nomination paper with the note that Column 8 (iii) (ख) in Form 26 was blank and the petitioner had to file a fresh/revised affidavit by 3 P.M. on 15.10.2015 which is the last date for filing nomination. According to the petitioner, since there was no blank space in Column 8 (iii) (ख) of



Form 26, the matter was explained to the Returning Officer who informed him that the matter would be considered on the date of scrutiny. According to the petitioner, on the date of scrutiny again the Returning Officer was made to understand that the defect was not correct and that the required information was present and thus there was no requirement of any fresh/revised affidavit in Form 26 which according to the petitioner, satisfied the Returning Officer, however, he later came to know that his nomination was rejected on grounds that the affidavit in Form 26 was incomplete. After raising objection before the Chief Electoral Officer as well as the Election Commission of India as against the rejection of nomination that he is before this Court.

On notice issued, the sole respondent has appeared and by filing his written statement, has contested the claim advanced by the election petitioner. According to the sole respondent, who is the returned candidate, there was no infirmity in the decision of the Returning Officer to reject the nomination of the election petitioner which suffered from defects and despite a reminder given to him to cure the same as present on the receipt of the nomination form itself, since the election petitioner did not bother to remove the defect, the rejection was valid. Pleading thus and in reference to the mandatory provisions present in 'the Act' as well as in the guideline issued by the



Election Commission it was submitted that election petition is fit to be dismissed.

A list of proposed issues was filed by both the parties and after hearing both sides that the following issues were framed vide order passed on 04.08.2016:

- “(i) Whether the nomination paper of the election petitioner from 64-Kadwa Legislative Assembly Constituency, Katihar has been improperly rejected by the Returning Officer?
- (ii) Whether the rejection of the nomination paper of the election petitioner on the ground of incomplete information given under column 8 (iii) (Kha) of Form-26 is improper and bad in law as well as on facts?
- (iii) Whether in view of the improper rejection of the nomination paper of the election petitioner, the election of 64-Kadwa Legislative Assembly Constituency, Katihar is fit to be set aside?”

In support of the contentions the election petitioner has examined 5 witnesses who are as follows:

P.W.1 Sanjay Kumar Singh, Deputy Collector Land Reforms, Katihar, Returning Officer, 64 Kadwa Legislative Assembly Constituency.

P.W.2 Shiv Narayan Mandal, a voter/proposer

P.W.3 Kamla Prasad Mandal, a voter/proposer

P.W.4 Arun Kumar Jha, Advocate

P.W.5 Binodanand Sah, the election petitioner

On behalf of the sole respondent 3 witnesses were examined



who are as follows:

R.W.1 Sanjay Kumar Singh, Advocate

R.W.2 Shakil Ahmad Khan, sole respondent and the returned candidate.

R.W.3 Anjum Afroz Khan, elder brother- cum- election agent of the sole respondent.

Seven Exhibits have been marked without objection and which are as follows:

Ext.(I) series are the 4 set of nomination papers filed by the election petitioner Binodanand Sah

Ext.(II) series is the order rejecting the nomination papers of Binodanand Sah.

Ext. (III) is the ordersheet dated 16.10.2015 on the rejection of the nomination paper of Binodanand Sah.

Ext.(IV) is the check list of document.

Ext.(V) is the Hand Book meant for Returning Officer 2014 issued by the Election Commission of India.

Ext.(VI) is the letter of the Election Commission of India enclosing the representation of the petitioner filed on 18.10.2015 along with copy of nomination paper.

Ext.(VII) is the letter of the Chief Election officer along with copy of the complaint filed by the petitioner before the Election



Commission of India, New Delhi along with copy of the nomination paper .

As I have noted, all these Exhibits were marked without objection.

It is thus to be seen whether the decision of the Returning Officer to reject the nomination of the election petitioner is backed by reasons and supported by the statutory provisions. The nomination paper in 4 sets filed by the election petitioner is marked Ext. (I) series and it is not in dispute that Column 8 (iii) (ख) has not been properly filled up leaving certain blank spaces. It is also not in dispute that the check list issued on 13.10.2015 very specifically mentioned this defect at Serial No.(i) and also directed the election petitioner to file a fresh/revised affidavit latest by 3 P.M. on 15.10.2015 in Form 26 before the commencement of scrutiny of nomination failing which the nomination paper is liable to be rejected. The notings at the bottom of the check list also cautioned the candidate on this aspect. It is again not in dispute that neither a fresh nor a revised affidavit in Form 26 was filed by the election petitioner.

It is in the aforementioned undisputed circumstances that on the date of scrutiny i.e 16.10.2015 the Returning Officer while taking note of the continued defect in Form 26 and in particular Column 8 (iii)



(ख) has proceeded to reject the nomination form relying upon paragraph 6.10 (XI) of the Handbook for Returning Officers, 2014 which inter alia mandates that incomplete affidavits would be rejected leading to rejection of nomination form. The order of rejection dated 16.10.2015 is marked as Ext. (III) and the Handbook is marked Ext. (V). The election petitioner examined as P.W.5, has accepted the receipt of the check list as also the fact that he was informed that Column 8 (iii) (ख) is blank. Though he supports his action of not filing fresh affidavit in Form 26 or a revised affidavit on grounds that the issue was explained to the Returning Officer by him as well as by his lawyer and that the Returning Officer was satisfied but the fact remains that the objection present on the check list casting obligation on the election petitioner was not recalled by the Returning Officer and continued to operate.

According to the election petitioner, he should have been given opportunity to correct the error at the time of scrutiny which was not given. The surprising part of the deposition of the election petitioner is that he is not even aware as to who has deposed in his support in the present election trial. One Arun Kumar Jha stated to be a practicing lawyer in the Katihar District Court has been examined as P.W. 4 and claims to have helped the election petitioner in filing the nomination.



Even P.W. 4 has accepted the defect pointed out by the Returning Officer with direction to remove or to file fresh affidavit but has again advanced the same submission that the Returning Officer was satisfied by the explanation given to the blank spaces. P.W. 3 is the proposer of the election petitioner and admits to the error pointed out by the Returning Officer in the nomination paper. P.W. 2 Shiv Narayan Mandal is also a proposer and admits that he knows nothing regarding the pleadings made in the election petition. He also admits that on receipt of the check list there were arguments in between Arun Kumar Jha P.W.4 and the Returning Officer.

The Returning Officer Sanjay Kumar Singh has been examined as P.W. 1 and he has stated that of the 24 candidates who had filed their nominations, 21 nomination papers were accepted while the nomination papers of 3 candidates was rejected including the petitioner and 2 others namely Ganesh Sharma and Shoeb Alam. He has stated that since Column 8 (iii) (ख) of Form 26 was left blank that it was rejected. In reference to the Handbook he has stated that in obedience of the instructions issued by the Election Commission of India, the candidates were duly informed about the defects, who were also required to remove the defects but since the same was not removed until the date of scrutiny that in view of the grounds present



in the Handbook for Returning Officer, 2014, the nomination was rejected.

In so far as three witnesses led by the sole respondent is concerned, they have simply endorsed the view taken by the Returning Officer and have attributed it to the casual approach of the election petitioner who did not bother to remove the defect despite written intimation present in the check list which also warned him of rejection.

Mr. S.B.K. Mangalam, arguing for the sole respondent-returned candidate has submitted that though the witnesses deposing for the election petitioner including himself, have stated that their explanation to the blank space at Column 8 (iii) (ख), satisfied the Returning Officer but the election petition is silent on the issue and thus a pleading not present in the election petition cannot be expanded through oral evidence which is an afterthought. Learned counsel in support has relied upon judgment of the Supreme Court reported in **(1975) 4 SCC 393 (Chanda Singh Vs. Choudhary Shiv Ram Verma & Ors.)** paragraphs 4 and 5 and **(2007) 3 SCC 617 (Virendra Nath Gautam Versus Satpal Singh & Ors.)** paragraph 35.

Mr. P.K. Verma learned Senior counsel appearing for the election petitioner with due assistance of Mr. Ujjawal Kumar Sinha



and Mr. Suman Kumar Jha advocate has basically relied upon the statutory provisions underling Section 33 of 'the Act' to submit that as there was no defect in the nomination paper rather the defect was in the affidavit part, the Returning Officer should have ignored the mistake under Sub section (4) of Section 33. In reference to Sub Section (7) of Section 33 he submits that the circumstances in which a person shall not be nominated is given thereunder and provides no such instance. According to Mr. Verma Section 33A of 'the Act' was introduced for the purpose of giving information to the general public by filing affidavit. He has referred to Section 36 of 'the Act' to submit that Sub section (4) very clearly cautions the Returning Officer not to reject any nomination paper for a defect which is not substantial in character. In reference to Sub section (5) of Section 36 he submits that even if there be an objection at the time of scrutiny, the petitioner was entitled to accommodation for a day for removing the same which was not provided to the petitioner. In support of his submission that the defect was not substantial in character learned counsel has relied upon the following judgments:

(1) AIR 1974 SC 2343 (Dilip Kumar Gon. Vs. Durga Prasad Singh) paragraph 5,7 and 8

(2) 2013(3)PLJR 19 (Satya Narayan Singh versus the Election Commission of India & Ors.) paragraph 44



(3) AIR 1968 SC 1179 (Hira Singh Pal Versus Madan Lal)

paragraph 3 and 7

(4) AIR 1968 SC 1203 (Amolak Chand Vs. Raghuveer

Singh) paragraph 4

(5) AIR 1984 SC 856 (Abhay Kumar Singh vs Balram Singh

Yadav @ Balram Singh) paragraph 6 and 7

According to Mr. Verma, learned Senior counsel it is only if a defect is substantial character that can lead to the extreme action of rejection of nomination but not such which are technical in character and which is also clear from Clause 6.9, 6.9.1, 6.9.4, 6.9.5 and 6.10 of the Handbook.

It is responding to the arguments of Mr. Verma that defects which are not of substantial character requires condonation and should have been ignored by the Returning Officer on the strength of the judgments, that Mr. Mangalam argues that the case laws relied upon by Mr. Verma are of period prior to the law settled by the Supreme Court on the issue of mandatory disclosure of information on assets/antecedents in the affidavits and in support, he has referred the following judgments of the Supreme Court:

1. (2014) 3 PLJR SC 199 (Kisan Shankar Kathore Vs. Arun Dattatray Sawant & Ors.) paragraphs 34 to 39

2. (2014) 1 PLJR SC 55 (Resurgence India Vs. Election



Commission of India & Anr.) paragraphs 22, 27 and 28; and (3) a recent judgment reported in **2017(1) PLJR (SC) 50 (Sri Mairemban Prithviraj @Prithviraj Singh Vs. Shri Pukhrem Sharatchandra Singh)** paragraphs 14 to 18.

It is submitted that the requirement of proper disclosure has been made mandatory and thus there was no option for the petitioner but to abide by the directions of the Returning Officer.

I have heard learned counsel for the parties and I have perused the records including the oral and documentary evidence on record.

As I have observed at the outset it is undisputed that a defect was pointed out by the Returning Officer at the time of presentation of the nomination paper occurring at Column 8 (iii) (ख) of affidavit in Form 26 and which was supposed to be removed by the petitioner either by filing a fresh affidavit or a revised one latest by 3 P.M. on 15.10.2015 i.e before the scrutiny date fixed for 16.10.2015, yet the petitioner did not remove the same rather has shifted the burden on the Returning Officer by submitting that the explanation given by the election petitioner and his advocate, P.W. 4 satisfied the Returning Officer which fact is neither pleaded in the election petition nor supported in the deposition of the Returning Officer. Thus the lapse of the election petitioner to remove the defect pointed out by the



Returning Officer is admitted and is a conscious omission on his part.

Though Mr. Verma has chosen to argue that in view of the stipulations present in Section 33 and 36 of 'the Act', only a defect in the nomination paper can lead to its rejection and not any defect in the affidavit in Form 26 but in my opinion the argument is fallacious because in view of the stipulations present in Section 33(1) which requires a nomination paper to be submitted complete and in prescribed form read alongside Section 33 A(2) of 'the Act' which makes the affidavit an integral part of the nomination paper, the two mandatory obligations cannot be segregated.

As regarding the issue whether the blank spaces in column 8(iii) (ख) (which in fact is Column 8(ख)(iii) of serial no. 11 भाग-ख) was substantial in character, I am of the opinion that the Returning Officer is the best Judge of the situation and in case he was of the opinion that information present at paragraph 8(iii) (ख) of Form 26, so required a rectification by filing a fresh affidavit or by revising the same, the election petitioner was duty bound to remove the same. That the petitioner failed to abide by the directions of the Returning Officer to provide answers to the blank spaces under Column 8(iii) (ख) which continued to exist, a mere second opinion on the nature of the defect by this Court, on its character, would not render the decision of the



Returning Officer perverse because the defect is apparent and despite the attention drawn, was not removed.

The third argument advanced by Mr. Verma in reference to the proviso attached to Section 36 (5) which mandates that if an objection is raised by the Returning Officer during the course of scrutiny, the candidate be allowed accommodation for a day for removal of the defect, is again fallacious because in the present case the petitioner was put on notice much in advance as regarding the defect and was also given sufficient time for removal thereof but he did not choose to do so rather proceeded to contest the same. Had it been a case where the nomination form along with the affidavit in Form 26 been accepted by the Returning Officer on the date of presentation on 13.10.2015 with the objection coming on the date of scrutiny, may be the petitioner had a case under the proviso attached to Section 36(5) but where on the very date of presentation of the nomination form i.e 13.10.2015, the petitioner was made aware of the defect requiring its rectification by 15.10.2015, his failure to do so would not entitle him to the accommodation provided under proviso to Section 36(5) of 'the Act'.

Section 33(1) read along side Section 33A and Section 36 (5) of 'the Act' makes it abundantly clear that a nomination paper which includes the affidavit in Form 26 also, is to be complete in all respects



and to the satisfaction of the Returning Officer. Admittedly such is not the position here. The legal opinion as to the relevance of the information to be disclosed in the affidavit portion of Form 26 has undergone a sea change over the period and has adorned a mandatory character. Any lapse by a candidate on the disclosure of his assets, liabilities, criminal prosecutions and other information required to be placed on record, would result in rejection of his nomination and in the present case since the petitioner was made fully aware of such consequence at the time of presentation of his nomination itself, he can raise no grievance. The judgments relied by Mr. Verma are either of the period prior to the position settled by the Supreme Court on the mandatory character of disclosure of information or are distinguishable on facts.

In the case of **Satya Narayan Singh** (supra), the Returning Officer had accepted the nomination form along with the affidavit without any objection and without pointing any defect but at the time of scrutiny, he rejected the nomination on grounds that Form 26 was not duly sworn by the petitioner before a Magistrate. May be the said case was covered under the proviso attached to Section 36 (5) but such is not the case here because whereas in the case of **Satya Narayan Singh** (supra) the petitioner was made aware of the defect only at the time of scrutiny, the petitioner herein was made aware of



the defect at the time of presentation with reasonable time given for its removal.

In so far as the case of **Hira Singh Pal** (supra) is concerned, the nomination paper was rejected by the Returning Officer because in his opinion the election petitioner was a dummy candidate. It was held that the Returning Officer had gone beyond jurisdiction to reject the nomination.

In so far as the case of **Amolak Chand** (supra) is concerned, the nomination was rejected because though contesting from a general constituency the election petitioner concerned had mentioned that he belongs to schedule caste which was a superfluous information not required to be put and it is taking note of such circumstances that the rejection of nomination was set aside. Similar is the case of **Dilip Kumar Gon.** (supra).

On the other hand in the case of **Abhay Kumar Singh** (supra) even a discrepancy of age has not found to be a substantial character for rejection of a nomination.

There is a clear distinction between the line of cases relied upon by Mr. Verma with those relied upon by Mr. Mangalam rendered in the case of **Resurgence India** (supra), **Kisan Shankar Kathore** (supra) and **Sri Mairemban Prithviraj @ Prithviraj Singh** (supra) for in all these cases, the Supreme Court while discussing the



mandatory character of disclosure of information has held, that a voter has a fundamental right to the information relating to assets, liabilities as well, of a contesting candidate. Be it on his litigant character or his financial status.

As I have said there is a clear distinction between a rejection of nomination on the basis of information given in the nomination form and/or the affidavit sworn and a defect resting on lack of information. Even though very strenuously the election petitioner through his counsel has tried to argue in support of the blank space present in column 8(iii) (ख) to submit that the required information is much present if read carefully but in my opinion if a statutory document requires an information to be placed at a particular space earmarked for the same, the candidate has a duty to fill the form accordingly. If any candidate has mentioned the details either above or below the space provided, which does not answer the query, or gives a confusing picture as in the present case, he cannot get away with the lapse more particularly where the lapse has been brought to his notice and sufficient time has been afforded to correct the same.

The personal information present in Form 26 is a disclosure meant for the voters and obviously if the required information is not mentioned at the proper place it would leave the voter confused and



the very object of disclosure stands defeated. It is the responsibility of the candidate concerned to disclose the relevant facts against the queries appearing in the nomination paper as well as in Form 26 and having not discharged the obligation correctly, the election petitioner cannot leave it to the wisdom of the voter to solve the cross puzzle by matching the entries. Although Mr. Verma has understandably relied upon Clause 6.9 and 6.10.1 (iv) of the Handbook for Returning Officers, to justify the lapse and to persuade this Court to hold that the lapse is not of a substantial character but the instructions present at paragraph 6.10.1 (xi) puts at rest all speculations when it inter alia mentions as under :

“(xi) incomplete affidavits are liable to be rejected leading to rejection of a nomination paper on the ground of not filling up all columns in the affidavit even after reminders since the Hon’ble Supreme Court of India has held that voter has elementary right to know full particulars of the candidate to represent him in the Parliamentary/Assemblies and such right to get information is universally recognized as natural right flowing from the concept of democracy and is an integral part of Article 19(i)(a) of the Constitution of India.”

It is apparent that the stipulations so present in the Handbook for Returning Officer 2014 is in the light of the legal position settled by the Supreme Court in the case of **Union of India Vs. Association of Democratic Reforms and other reported in (2002) 5 SCC 294** and in the case reported in **(2003) 4 SCC 399 (Peoples Union for**



Civil Liberties (PUCL)& Anr vs. Union of India & Anr.) on the disclosure of information relating to assets and liabilities as well as criminal proceedings facing the candidate.

Even if, according to the election petitioner, the information required for Column 8(iii) (ख) was given by him albeit not at the proper place, the error so admitted, should have been corrected by him within the time given by the Returning Officer on the date of presentation of his nomination which provided not less than 2 days for the petitioner either to revise the affidavit or to file a fresh Form 26 but he did not choose to do either.

As I have said some space(s) in column 8(iii) (ख) are apparently blank and even if according to the petitioner the information was present though not mentioned in the space provided for the same, the obligation is not discharged. The nomination paper and Form 26 bear statutory character and the queries made therein have to be answered against the space meant for the same. No candidate can be permitted to violate this discharge for if lapse of such kind are permitted, it would amount to legalizing conscious and deliberate violations. Contesting election is a serious business and none with a casual, careless and laid back attitude, should be permitted to make a mockery of the same nor can seek a premium



from the Court to bail them out.

For the reasons and discussions aforementioned it is held that the rejection of the nomination paper of the election petitioner on grounds of incomplete information present at Column 8(iii) (ख) in Form 26 is valid and in the nature of the defect present, the case advanced does not fall in the category of improper rejection of nomination by the Returning Officer requiring any interference.

The issues thus framed are answered accordingly.

In the circumstances discussed, the issues raised by the election petitioner do not call for interference with the election to the 64 Kadwa Legislative Assembly Constituency, Katihar.

The election petition is dismissed accordingly but without any order as to costs.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.12.2017
Transmission Date	NA

