

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LETTERS PATENT APPEAL No. 250/2017**

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Reserved on : 11th April, 2017
Date of decision: 11th April, 2017

RAVINDER NEGI

..... Appellant

Through: Mr. Sachin Datta, Sr. Advocate with Mr. Nikhilesh Kumar, Advocate.

Versus

STATE ELECTION COMMISSION AND ANOTHERRespondents

Through: Mr. Sumeet Pushkarna and Mr. Siddhartha Nagpal, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE ANU MALHOTRA

SANJIV KHANNA, J.

With the consent of the counsel for the parties, the present Letters Patent Appeal, which impugns order dated 8th April, 2017, dismissing W.P. (C) No.3059/2017, *Ravinder Negi Vs. State Election Commission and Anr.* has been heard for disposal and final decision.

2. The appellant Ravinder Negi on 3rd April, 2017 had filed his nomination paper as a candidate for election from Ward No.10E, Vinod Nagar in the East Delhi Municipal Corporation. The nomination papers received by the Assistant Returning

Officer were entered at Sr. No.26 at 3.40 p.m. on 3rd April, 2017 and endorsement / receipt was issued.

3. The nomination papers on scrutiny by the Scrutinizing Officer/Returning Officer, Ward No.10E were rejected vide order dated 5th April, 2017 for want of signatures of the candidate, the appellant, on the nomination paper Form 02 i.e. the statutory form under Rule 17 of the Delhi Municipal Corporation (Election of Councillor) Rules, 2012 (Rules, for short). This order records that since declaration relating to age, gender and whether the candidate had been set up by a recognized political party had not been signed, the nomination paper was invalid and rejected. The contention that the Assistant Returning Officer should have got Form No.2 signed, was repelled as frivolous and unmerited as there was no such provision in the Rules or Delhi Municipal Corporation Act, 1957 (DMC Act, for short).

4. The impugned order dated 8th April, 2017 refers to Sections 8 and 9 of the DMC Act and the stipulations regarding qualification and disqualification for being chosen as a councillor. It was observed that the omission to sign Form No.2 was substantial in nature and cannot be overlooked because the appellant had submitted affidavits in Form Nos.21 and 22 with the nomination forms, which were duly signed. The order observes that perusal of the said affidavits would show that they do not address and deal with all grounds of qualification and disqualification of

membership of the Corporation. Form No.2 requires a declaration by the candidate to the best of his knowledge and belief that she/he is qualified and also not disqualified for being chosen to fill the seat in the Municipal Corporation. It implicitly would contain a positive and categorical assertion that the requirements of Section 8 are satisfied and the disqualifications enumerated in Section 9 of the DMC Act are not attracted.

5. Learned Senior Advocate appearing for the Appellant submits that the lapse and error in not signing Form No.2 i.e. the Nomination Paper, is a technical defect and not substantial for the appellant had certainly signed the two affidavits which contained the similar or identical information. Reliance is placed upon Sub Rule (4) and proviso to Sub Rule (5) to Rule 22. It is urged that the Scrutiny Officer or even the Returning Officer could have asked the appellant to rectify the said error. Identity of the appellant was never in doubt for he had filled up the nomination form and presented the same. Referring to Rule 19 and in particular to proviso to Sub Rule (5), it is submitted that the Returning Officer should permit correction of any clerical or technical error in the nomination form or direct that any clerical or printing error in the electoral rolls should be overlooked. Reliance is placed on ***Rattan Anmol Singh & Ram Prakash vs. Ch. Atma Ram & Ors***, AIR 1954 SC 510, and on the decision of the Single Judge in WP(C) No.3057/2017 titled ***Saroj vs. State Election Commission & Anr.***, rejecting the preliminary objection of the

Delhi State Election Commission on maintainability of the Writ Petition. Reference is also made to ***Ram Awadesh Singh vs. Smt. Sumitra Devi & Anr.*** (1972) 3 SCC 131, to highlight that nomination papers should not be rejected for technical reasons and mistake, if any, should be allowed to be corrected or the candidate should be asked to file a fresh nomination paper. It is of importance that the candidates who possess the prescribed qualifications should not be otherwise disqualified. Even if there is some defect, the Returning Officer should satisfy himself and then allow the same to be corrected. When the Returning Officer looks into the nomination paper and accepts the same, this would show that the mistake was not relating to a material defect.

6. The respondents have contested the said submissions and have relied upon Article 243 ZG(b) and it is urged that the Writ Petition under Article 226 of the Constitution is not maintainable. The remedy would be to file an Election Petition as per Section 15 and 17 of the DMC Act. Section 17 (1) (c) relates to improper rejection of the nomination paper. Reference is made to the Constitution Bench Decision in “***NP Ponnuswami vs. Returning Officer, Namakkal Constituency, Namakkal***, 1952 SCR 218, and subsequent decision in “***Rattan Anmol Singh*** (supra).

7. The contention of the appellant that the impugned order of the Single Judge dated 8th April, 2017 records new grounds and reasons, not recorded by the Scrutinizing Officer in his order dated 05.04.2017, has to be rejected. This order dated 05.04.2017 dealt with the contentions raised by the appellant at the time of scrutiny and examination of the nomination paper. The factual finding was and it is accepted that the nomination form / paper under Rule 19 of the Rules, was not signed by the appellant. Thus, it was held that the appellant had not submitted a valid nomination paper in Form No.02. Consequently, the appellant had not made the required declaration with regard to his age, gender and whether he was set up by a recognised political party etc.

8. The Scrutinizing Officer in rejecting the nomination form has gone by paragraph 6.10 of the handbook of Returning Officer, 2014 published by the Election Commission of India. Sub paragraph (1) Clause (v) states that the nomination paper must be rejected if it has not been signed by the candidate and / or by the required number of proposer(s).

9. The same handbook in paragraph 5.15.1 relating to preliminary examination of nomination papers, states that Assistant Returning Officer shall not at that stage hold any formal scrutiny and the examination should be restricted to the name and

electoral roll numbers of the candidate and the proposer(s). This is also the position as per Sub Rule (5) to Rule 19 which reads as under:-

“(5) On the presentation of a nomination paper, the Returning Officer shall, satisfy himself that the names and electoral roll numbers of the candidates and his proposer(s) as entered in the nomination paper are the same as those entered in the electoral roll;

Provided that the Returning Officer shall permit any clerical or technical error in the nomination paper in regard to the said names or numbers to be corrected in order to bring them into conformity with the corresponding entries in the electoral rolls, and where necessary, direct that any clerical or printing error in the said entries shall be overlooked.”

Therefore, reliance placed by the appellant on the registration of the nomination paper and issue of receipt by the Assistant Returning Officer is of no consequence and does not help us in deciding the present appeal.

10. The appellant has also placed reliance on Sub Rule (1) to Rule 19 which reads as under:

"19. Presentation of nomination paper and requirements for a valid nomination:-

(1) On or before the date appointed under clause (a) of rule 14 each candidate shall, either in person or by his proposer, between the hours of eleven O' clock in the forenoon and three O'clock in the afternoon, deliver to the Returning Officer at the place specified in this behalf in the notice issued under rule 16 a nomination paper completed in Form 2 and signed by the candidate and by an elector of the same ward as proposer

Provided that a candidate not set up by a recognized National Political party, shall not be deemed to be duly nominated for election from a ward unless the nomination paper is subscribed by ten proposers being electors of the same ward"

The aforesaid Sub Rule (1), in fact requires that the nomination paper should be complete in Form 2 and must be signed by the candidate and by the elector of the same ward as proposer(s). The Sub Rule incorporates the requirements and pre-conditions which each candidate has to satisfy. It does not cast any obligation or duty on the Returning Officer. Sub rule (5) on the other hand casts duty on the Returning Officer to satisfy himself that the names and electoral roll numbers of the candidate and his proposer(s) as entered in the nomination paper are the same as those entered in the electoral rolls.

11. The legal position is beyond any doubt or debate for scrutiny of nomination takes place in terms of Rules 21 and 22 by the Scrutinizing Officer on receiving nomination papers from the Returning Officer. Rule 22 is as under:-

"22. Scrutiny of nomination.- (1) On the date fixed for the scrutiny of nominations under rule 14, the candidate and two other persons duly authorized in writing by him but no other person, may attend at such time and place as has been specified in the notice issued 12 under rule 16 and before such Scrutinizing Officer as the Commission has appointed under rule 7 and the Scrutinizing Officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and the manner laid down in rule 19.

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

(a) that on the date fixed for the scrutiny of nomination the candidate earlier is not qualified or is disqualified for being chosen as a councilor under the Act; or

(b) that there has been a failure to comply with any of the provisions of rules 18,19 and 20

(c) that the signatures of the candidate or the proposer(s) on the nomination paper is/are not genuine. (3) Nothing contained in clause (b) or clause (c) of sub-rule (2) shall be deemed to authorize the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The Scrutinizing Officer shall not reject any nomination paper on the ground of any defect, which is not of a substantial character.

(5) The Scrutinizing Officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of rule 14 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot, open violence or by causes beyond his control:

Provided that in case an objection is raised by the Scrutinizing Officer or is made by any other person the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny; and the Scrutinizing Officer shall record his decision on the date to which the proceedings have been adjourned

Provided further that if the Scrutinizing Officer/Returning Officer, observes himself or an objection has been raised at the time of scrutiny of nominations that a particular candidate is disqualified to be chosen under clause (f), (h), (i), (j), (k) or subsection (1) of section 9 of the Act and he seeks clarification or any information in this behalf from the Commissioner of Municipal Corporation concerned, the Commissioner shall supply the requisite information/clarification to the Returning Officer within such time as given by the Returning Officer.

(6) The Scrutinizing Officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection;

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

(8) Immediately after all the nomination papers have been scrutinized and decision accepting or rejecting the same have been recorded, the Scrutinizing Officer shall prepare in Form 4 a list of validly nomination candidates, that is to say, candidates whose nomination have been found valid and forward the same alongwith all the nomination papers to the Returning Officer who shall countersign the list and affix it to his notice board."

The Scrutinizing Officer, as per Rule 22 has to examine the nomination papers and decide all objections made to any nomination by any third person or on his own motion and after a summary enquiry, can reject any nomination on the grounds stated in Sub Rule (2). Failure to comply with the provisions of Rule 18, 19 and 20 can be a ground to reject the nomination paper under clause (b). Thus, a

nomination paper which is unsigned by the candidate or the proposer(s), as mandated by Sub Rule (1) to Rule 19, can be rejected under Clause (b) to Sub Rule (2) to Rule 22. Proviso to Sub Rule (5) to Rule 22 permits the candidate to rebut and question the objection raised by the Scrutinizing Officer or third person. It does not permit the candidate to rectify or amend the defects. However, Sub Rule (4) states that Scrutinizing Officer should not reject the nomination paper on the ground of any defect which is not of a substantial character.

12. The question whether failure or absence of signature on the nomination form is a defect of technical nature or substantial one, has been answered by the Supreme Court in ***Rattan Anmol Singh*** (supra) in the following words:-

"13. The question therefore is whether attestation is a mere technical or unsubstantial requirement. We are not able to regard it in that light. When the law enjoins the observance of a particular formality it cannot be disregarded and the substance of the thing must be there. The substance of the matter here is the satisfaction of the Returning Officer at a particular moment of time about the identity of the person making a mark in place of writing a signature. If the Returning Officer had omitted the attestation because of some slip on his part and it could be proved that he was satisfied at the proper time, the matter might be different because the element of his satisfaction at the proper time, which is of the substance, would be there, and the omission formally to record the satisfaction could probably, *in a case like that*, be regarded as in unsubstantial technicality. But we find it impossible to say that when the law requires the satisfaction of a particular officer at a particular time his satisfaction can be dispensed with altogether. In our opinion, this provision is as necessary and as substantial as attestation in the cases of a will or a mortgage and is on the same

footing as the “subscribing” required in the case of the candidate himself. If there is no signature and no mark the form would have to be rejected and their absence could not be dismissed as technical and unsubstantial. The “satisfaction” of the Returning Officer which the rules require is not, in our opinion, any the less important and imperative.

14. The next question is whether the attestation can be compelled by the persons concerned at the scrutiny stage. It must be accepted that no attempt was made at the presentation stage to satisfy the Returning Officer about the identity of these persons but evidence was led to show that this was attempted at the scrutiny stage. The Returning Officer denies this, but even if the identities could have been proved to his satisfaction at that stage it would have been too late because the attestation and the satisfaction must exist at the presentation stage and a total omission of such an essential feature cannot be subsequently validated any more than the omission of a candidate to sign at all could have been. Section 36 is mandatory and enjoins the Returning Officer to refuse any nomination when there has been

“any failure to comply with *any* of the provisions of Section 33....”

The only jurisdiction the Returning Officer has at the scrutiny stage is to see whether the nominations are in order and to hear and decide objections. He cannot at that stage remedy essential defects or permit them to be remedied. It is true he is not to reject any nomination paper on the ground of any technical defect which is not of a substantial character but he cannot remedy the defect. He must leave it as it is. If it is technical and unsubstantial it will not matter. If it is not, it cannot be set right."

Reference to the Returning Officer in the aforesaid quotation in the present context, would be construed as reference to the Scrutinizing Officer.

13. In *Ram Dayal vs. Brij Raj Singh & Anr.*, (1969) 2 SCC 218, the proposer had affixed his thumb impression which had not been attested, as required. It was held that the proposer(s) had not signed the nomination form. Referring to *Rattan*

Anmol Singh (supra), it was held that signature wherever necessary, must be strictly in accordance with the statutory requirements. Signature was not a mere technical or unsubstantial requirement. Signature cannot be dispensed with. Signature must exist at the stage of presentation and omission of such an essential feature cannot be subsequently validated.

14. The aforesaid decisions are complete answer to the contention of the appellant, which have to be rejected.

15. Learned counsel for the State Election Commission is also right in his submission that improper rejection of nomination as per Section 17(1) (c) of the DMC Act can be made subject matter of the Election Petition. In *N P Ponnuswamy* (supra), the Supreme Court had interpreted Article 329 (b) of the Constitution and on the ambit of the word “Election” held that the same has reference to the entire process which consists of several stages and embraces many steps. Referring to the provisions of the Representation of People’s Act, 1951, it was observed that where a right and liability is created by the statute which gives special remedy for enforcing it, then the remedy given by that statute must be availed of. It was accordingly held as under:

"17. It may be pointed out that Article 329(b) must be read as complimentary to clause (a) of that article. Clause (a) bars the jurisdiction of the courts with regard to such law as may be made

under Articles 327 and 328 relating to the delimitation of constituencies or the allotment of seats to such constituencies. It was conceded before us that Article 329(b) ousts the jurisdiction of the courts with regard to matters arising between the commencement of the polling and the final selection. The question which has to be asked is what conceivable reason the legislature could have had to leave only matters connected with nominations subject to the jurisdiction of the High Court under Article 226 of the Constitution. If Part XV of the Constitution is a code by itself i.e., it creates rights and provides for their enforcement by a Special Tribunal to the exclusion of all courts including the High Court, there can be no reason for assuming that the Constitution left one small part of the election process to be made the subject-matter of contest before the High Courts and thereby upset the time-schedule of the elections. The more reasonable view seems to be that Article 329 covers all "electoral matters".

18. The conclusions which I have arrived at may be summed up briefly as follows:

“(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme the election law in this country as well as in England is that no significance should be attached to anything which does not affect the 'election'; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the 'election' and enable the person affected to call it in question, they should be brought up before a Special Tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress.”

Article 329(b) is *pari materia* to Article 243 ZG(b) of the Constitution. The decision in ***Ram Awadesh Singh*** (supra) arose out an Election Petition.

16. In case the appellant files an Election Petition and issues and contentions are raised regarding rejection of nomination, the same would be examined in accordance with law, without being bound by the aforesaid observations. We have recorded our *prima facie* findings only to satisfy ourselves that no injustice is being done, and whether the prayers made have any substance.

17. In view of the aforesaid discussion we do not find any merit in the appeal and the same dismissed. There would be no order as to costs.

(SANJIV KHANNA)
JUDGE

(ANU MALHOTRA)
JUDGE

April 11th, 2017
NA/S