A

B. DANDAPANI PATRA

v.

RETURNING OFFICER-CUM-SUB-DIVISIONAL OFFICER, BERHAMPUR AND OTHERS

NOVEMBER 8, 1989

B

[M.H. KANIA AND KULDIP SINGH, JJ.]

Representation of the People Act, 1950/Representation of the People Act, 1951/Registration of Electors Rules, 1980: Sections 16 and 21/Section 33/Rules 16-21A and 22—Candidate—Elector of different constituency—Producing of attested copy of relevant part of electoral roll as it stood before final revision—Rejection of nomination paper—Validity of—Attested copy of electoral roll—What is.

C

The appellant was a candidate for election to the Legislative Assembly. As he was standing for election from a constituency other than the one in which he was an elector, he filed an attested copy of the relevant part of the electoral roll relating to the constituency in which he was an elector, along with the nomination paper. On an objection by one of the candidates, the Returning Officer rejected the appellant's nomination paper for non-compliance with Section 33(5) of the Representation of the People Act, 1951. The appellant filed an Election Petition before the High Court, which dismissed the same.

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In the appeal filed before this Court, the appellant contended that since he had produced before the Returning Officer an attested copy of the relevant part of the electoral roll of the constituency in which he was an elector, the rejection of his nomination paper on the ground of non-compliance with Section 33(5) of the said Act was wrong and bad in law.

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Dismissing the appeal, this Court,

HELD: The publication of the integrated roll is not essential for the revision of the electoral roll to be complete and the electoral roll with the amendments duly published becomes the final electoral roll for the constituency. [103D]

G

In the instant case, admittedly, the electoral roll of the State Assembly was directed to be revised and was, in fact, revised as on January 1, 1984 and the supplementary electoral roll notifying the

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changes to be incorporated on the revision was published and available before February 1985. [102F] A

However, what the appellant produced before the Returning Officer was not an attested copy of the final electoral roll for the said constituency although the final roll was available, but only an attested copy of the electoral roll as it stood on July 21, 1983. The production of such attested copy of the relevant part of the electoral roll as it stood before the final revision cannot amount to compliance with the provisions of sub-section (5) of Section 33 of the said Act. His nomination was, therefore, rightly rejected. [103F] B

Ranjit Singh **v.** *Pritam Singh & Ors.,* **[1966] 3 SCR 543, relied on.** C

Jagannath Ramchandra Nunekar **v.** *Gene Govind Kadam & Ors.,* **[1988] 3 Judgments Today 662, distinguished.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2542 (NCE) of 1986. D

From the Judgment and Order dated 24.1.1986 of the Orissa High Court in Election Petition No. 7 of 1985.

S.P. Singh and S.K. Jain for the Appellant. E

G.L. Sanghi, M.A Firoz and R.K. Mehta for the Respondents.

The Judgment of the Court was delivered by

KANIA, J. This is an appeal from the judgment of a learned Single Judge of the Orissa High Court dismissing Election Petition No. 7 of 1985 filed by the appellant in that Court. F

The facts of the case have been fully set out in the impugned judgment of the High Court and hence, little purpose would be served in setting them out here again. It should be sufficient to note only the few facts required to be set out to appreciate the controversy arising before us. G

The election in question was to the Legislative Assembly of the Orissa State from 74-Gopalpur (Scheduled Caste) Assembly Constituency. This election was held in March 1985. The last date for filing the nomination papers was February 8, 1985. The date of scrutiny was H

as February 9, 1985. The last date for withdrawal of the nominations was February 11, 1985, February 10, 1985 being a Sunday. The appellant duly filed his nomination papers for the seat and along with the other papers, he filed an attested copy of the relevant part of the electoral roll relating to 67 Sorada Assembly Constituency in which he was an elector. This was required because he was standing for election from a constituency other than the one in which he was an elector. On an objection by one of the candidates, the said nomination paper was rejected for non-compliance with section 33(5) of the Representation of the People Act, 1951 (hereinafter referred to as "the said Act"). The contention of the appellant is that he had produced before the Returning Officer an attested copy of the relevant part of the electoral roll of the constituency in which he was an elector and hence, the rejection of his nomination paper on the ground of non-compliance with section 33(5) of the said Act was wrong and bad in law.

As we have already pointed out, it is common ground that what the appellant produced before the Returning Officer was an attested copy of the relevant part of the electoral roll of the constituency in which he was an elector and that copy admittedly was dated July 13, 1983. There is a finding that the appellant had obtained the said copy on July 19, 1983 although he sought to contend that he had obtained it on July 19, 1984. The correctness of that finding has rightly not been assailed before us. Section 15 of the Representation of the People Act, 1950 (hereinafter referred to as "the 1950 Act") provides that for any constituency there shall be an electoral roll which shall be prepared in accordance with the provisions of that Act under the directions and supervision of the Election Commission.

It is the admitted position in the case before us that the electoral roll of the Orissa Legislative Assembly was directed to be revised and was, in fact, revised as on January 1, 1984 and the supplementary electoral roll notifying the changes to be incorporated on the revision was published and available before February 1985. Section 21 of the 1950 Act deals with the preparation and revision of electoral rolls. Sub-section (1) of that section states that the electoral roll for each constituency shall be prepared in the prescribed manner by reference to the qualifying date and shall come into force immediately upon its publication according to law. Clause (a) of sub-section (2) of that section provides unless otherwise directed by the Election Commission the electoral roll shall be revised in the prescribed manner with reference to the qualifying date before each General Election to the House of the People or to the Legislative Assembly of a State. The provisions

of Rule 22 of the Registration of Electors Rules, 1960 (hereinafter referred to as "the said Rules of 1960") read with the provisions of Rules 15 to 21-A thereof show that when the electoral roll has to be revised the names of persons inadvertently omitted have to be included and the names of dead electors and of persons who ceased to be or are not ordinarily resident in the constituency have to be deleted from the electoral roll and so on. After this, the officer concerned prepares the list of amendments to be carried out to the electoral roll. Provisions are also made for the correction of any clerical or printing errors in the earlier roll. After the completion of this task, either the entire revised electoral roll is to be prepared or the amendments in the existing electoral roll have to be made and incorporated in the electoral roll and published separately along with the original electoral roll. A complete electoral roll is made available for inspection and a notice to that effect is displayed in Form No. 16. Rule 22(2) of the said Rules of 1960 lays that on such publication, the roll together with the list of amendments shall be the electoral roll of the constituency. Sub-rule (3) of Rule 22 of the said Rules of 1960 shows that these amendments may be incorporated and an integrated roll may be published subject to any general or special directions issued by the Election Commission. It is clear on the reading of these provisions that the publication of the integrated roll is not essential for the revision of the electoral roll to be complete and the electoral roll with the amendments duly published becomes the final electoral roll for the constituency. In the present case, it is clear that what the appellant produced before the Returning Officer was not an attested copy of the final electoral roll for the said constituency for the election in question although the final roll was available. What he produced was an attested copy of the electoral roll as it stood on July 21, 1983 and the production of such attested copy of the relevant part of the electoral roll as it stood before the final revision cannot amount to compliance with the provisions of sub-section (5) of section 33 of the said Act. His nomonation was, therefore, rightly rejected.

We are supported in our views by the decision of this Court in *Ranjit Singh* v. *Pritam Singh & Ors.*, [1966] 3 SCR 543. It was held that:

> "When S. 33(5) refers to a copy of the relevant parts of the electoral roll, it means a part as defined in rule 5. A complete copy would carry the various amendments made in the roll and enable the Returning Officer to see whether the name of the candidate continued in the roll for the whole of the relevant period."

A In the aforesaid judgment, 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.

B

Learned counsel for the appellant placed a strong reliance on the decision of this Court in *Jagannath Ramchandra Nunekar* v. *Gene Govind Kadam & Ors.*, [1988] 3 Judgments Today 662. That judgment is, however, clearly distinguishable on facts. In that case, a certified copy of the relevant entry in the electoral roll was furnished to the C appellant on January 8, 1986 which was only one day before the date on which he filed his nomination paper. The presumption would, therefore, arise that such a certified copy would be of the relevant entry in the final electoral roll and that presumption was justified on the actual facts. That decision has no application to this case where a certified copy of the relevant part of the electoral roll was applied for D and obtained several months before the revision of the electoral roll. The ratio of the judgment cited is, therefore, not applicable to the case before us.

In the result, the appeal fails and is dismissed with costs.

E N.P.V. Appeal dismissed.