

Rajesh Kumar Vs. Devendra Singh

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Court : Madhya Pradesh

Decided On : Jun-20-2012

Appellant : Rajesh Kumar

Respondent : Devendra Singh

Judgement :

HIGH COURT OF MADHYA PRADESH : JABALPUR ELECTION PETITION
NO.7/2009 Rajesh Kumar Petitioner vs. Devendra Singh Respondent

----- Shri Manoj
Sharma with Rajmani Mishra, Advocates for the petitioner. Shri Imtiyaz Husain
with Shri R.B. Patel, Advocates for the respondent.

----- Date of
Hearing :

27. 3.2012 Date of Order :

20. 6.2012 ORDER This order shall govern disposal of I.A. Nos.3/11, 4/11 and
47/11.

2. In this petition, election of the returned candidate viz. the respondent to the M.P.
Legislative Assembly Constituency No.143, Silwani has been called in question on
the ground of improper rejection of the nomination paper, as contemplated in sub-
section (1)(c) of S.100 of the Representation of the People Act, 1951 (for short the
Act).

3. The petitioners nomination paper, a copy of which has been tendered in evidence as Exhibit P-1, was rejected for the reason that he, being an elector of a different constituency namely Udaipura, had failed to submit a copy of the electoral roll of that constituency or certification from ERO of that constituency, as per requirement of Section 33(5) of the Act. ::

2. :: ELECTION PETITION NO.7/2009 4. While supporting the corresponding decision of the Returning Officer, the respondent has pleaded that the nomination was also liable to be rejected on the following grounds - (i) Absence of signature of the petitioner. (ii) Non-compliance with Article 173(a) of the Constitution of India. (iii) Conduct of the petitioner in making contradictory statements regarding his caste. According to him, even the petition deserves rejection for want of common authorship of signatures available on it as well as on the nomination paper.

5. The petitioners prayer for striking out the issues nos.2 and 3(c) respectively based on the aforesaid averments made by the respondent has already been rejected vide order-dated 11.8.2011 in the light of the well-settled position of law that in an election petition, the High Court's jurisdiction cannot be confined to the grounds on which the Returning Officer rejected the nomination (See. J.H. Patel v. Subhan Khan AIR 199.SC 3439).

6. It is also relevant to note that the respondents earlier application, under Section 73 of the Evidence Act, 1872 and registered as I.A. No.25/10, has been dismissed, vide order-dated 18.1.2011, as withdrawn with liberty to file an appropriate application, under Section 45 thereof, in view of the fact that specimen signatures of the petitioner had already been obtained on the deposition sheet. I.A. No.3/2011

7. It is an application, under Section 45 read with 73 of the Evidence Act, 1872, for subjecting the writings on the nomination ::

3. :: ELECTION PETITION NO.7/2009 paper to examination by an Handwriting Expert namely S.K. Kelkar and opinion as to whether they are of one and the same person.

8. As per the respondent, such an examination is necessary for a just decision of issue no.3(c) in the wake of his pleadings to the effect that the petitioner had not

subscribed to oath & affirmation and on the corresponding form, only petitioners name was written at places A to A and B to B. In this regard, attention has been invited to the provision of Section 36(2)(c) of the Act, which reads as under - 36. Scrutiny of nominations.-(1) ... (2) The returning 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 on any of the following grounds:- (a) .. (b) .. (c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

9. The prayer has been vehemently opposed inter alia on the ground that it does not fall within the ambit of Section 73 of the Evidence Act.

10. At the trial, Neeraj Shrivastava (PW3) has admitted that the nomination paper was filled up by him only. It is trite that evidence given by experts of handwriting can never be conclusive, because it is, after all, opinion evidence. Re-affirming the earlier decisions including the one rendered in Ram Chandra v. State of Uttar Pradesh AIR 195.SC 381.the Apex Court in Fakhruddin v. State of Madhya Pradesh AIR 196.SC 1326.proceeded to point out that - Evidence of the identity of handwriting receives treatment in three sections of the Indian Evidence Act. ::

4. :: ELECTION PETITION NO.7/2009 They are Sections 45, 47 and 73. Handwriting may be proved on admission of the writer, by the evidence of some witness in whose presence he wrote. This is direct evidence and if it is available the evidence of any other kind s rendered unnecessary. The Evidence Act also makes relevant the opinion of a handwriting expert (S.45) or of one who is familiar with the writing of a person who is said to have written a particular writing. Thus besides direct evidence which is of course the best method of proof, the law makes relevant two other modes. A writing may be proved to be in the handwriting of a particular individual by the evidence of a person familiar with the handwriting of that individual or by the testimony of an expert competent to the comparison of handwritings on a scientific basis. A third method (S.73) is comparison by the Court with a writing made in the presence of the Court or admitted or proved to be the writing of the person.

11. Learned counsel for the petitioner, while placing implicit reliance on decision of the Andhra Pradesh High Court in *Annapurnamma v. B. Sankararao* AIR 196.AP 35. and highlighting the fact that he has already examined himself and Neeraj Shrivastava at the trial, has submitted that when oral evidence clearly established that a person executed a certain document it would be completely unnecessary for the Court to embark upon an investigation into the signatures by comparison. Reference has also been made to the following observations by the Bench - There are many factors which have to be taken into consideration in effecting a comparison of the two signatures, and although a Court could apply its own eyes and its own mind to determine whether a particular signature is resembling another it would be going beyond the ordinary limits of the capacity of a Court to constitute itself as a Handwriting Expert and try to compare the signature without all the gadgets and devices which are available to a Handwriting Expert, besides the lack of expert knowledge which a Handwriting Expert possesses. ::

5. :: ELECTION PETITION NO.7/2009 12. However, as explained by the Supreme Court in - (i) *Ajit Savant Majagavi v. State of Karnataka* AIR 199.SC 325.- Section 73 does not specify by whom the comparison shall be made. However, looking to the other provisions of the Act, it is clear that such comparison may either be made by a handwriting expert under Section 45 or by anyone familiar with the handwriting of the person concerned as provided by Section 47 or by the Court itself. As a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature or handwriting and in the event of slightest doubt, leave the matter to the wisdom of experts. But this does not mean that the Court has not the power to compare the disputed signature with the admitted signature as this power is clearly available under Section 73. (Underlined for emphasis) (ii) *Thiruvengada Pillai v. Navaneethammal* AIR 200.SC 1541. Section 45 of the Indian Evidence Act, 1872 relates to 'opinion of experts'. It provides inter alia that when the Court has to form an opinion as to identity of handwriting or finger Impressions, the opinion upon that point of persons specially skilled in questions as to identity or handwriting or finger impressions are relevant facts. Section 73 provides that in order to ascertain whether a finger impression is that of the person by whom it purports to have been made, any finger impression

admitted to have been made by that person, may be compared with the one which is to be proved.

13. Further, the ordinary method of proving a document is by calling as a witness the person who had executed the document or saw it being executed or signed or is otherwise qualified and competent to express his opinion as to the handwriting. As an obvious corollary, the receiver of the document, on establishing his ::

6. :: ELECTION PETITION NO.7/2009 acquaintance with the handwriting of the person and competence to identify the writing with which he is familiar, may also prove a document (S. Gopal Reddy v. State of A.P. (1996) 4 SCC 596.relied on).

14. Needless to point out that it is still open to the respondent to call in evidence the returning officer, who received the nomination paper.

15. For these reasons, there is absolutely no justification for referring the writings to the Handwriting Expert for examination and opinion as to identity thereof. The I.A., therefore, deserves to be dismissed with costs. I.A. No.4/2011 16. It is an application, under Section 45 of the Evidence Act, 1872, for summoning S.K. Kelkar, the Handwriting Expert to compare the admitted signatures of the petitioner on his deposition sheet with those on the nomination paper and to submit his reasoned opinion before this Court.

17. As averred by the respondent, in order to show that the nomination paper was signed by a person other than the person, who appended the signature on the election petition, the only course open to him is to examine the handwriting expert.

18. In reply, the petitioner has termed the prayer as uncalled for saying that it is not uncommon to find differences in the signature of the same person even after a short interval of time. According to him, - the main issue in the present case is as to whether his nomination was wrongly rejected and it is clearly proved from the oral evidence of the petitioner and Neeraj Shrivastava that the nomination paper was signed by the petitioner only. ::

7. :: ELECTION PETITION NO.7/2009 19. Learned counsel for the respondent has strenuously contended that the admission made by the petitioner that signatures in

dispute were appended by him on the nomination paper does not assume any significance as it amounts to admission in his own favour. For this, attention has been invited to the illustration (a) to Section 21 of the Evidence Act, that is reproduced thus - The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged. A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged. In support of the contention, reference has also been made to the following decisions - (i) *Sunil Chowdhury v. Arup Kumar* AIR 200.CALCUTTA 10 wherein it was held that the word "admission", if construed to be the admission of the person by whom it purports to have been written, it will lead to disastrous effect because such person will deliberately admit some document not really written by him to be in his handwriting so that on examination by the expert it would not be tallying with the disputed document and consequently, he will be benefited by the report. (ii) *Bans Narain v. Chandrani Kuer* AIR 194.All 130, wherein it was held that a statement of a party can be of no avail to that party. (iii) *Manilal Ratanchand Shah v. Nanubhai Jesingbhai* AIR 194.Bom 394, wherein it was held that admission in ones own favour has no evidentiary value. ::

8. :: ELECTION PETITION NO.7/2009 20. However, fact of the matter is that in accordance with Section 81(1) of the Act, an election petition has to be presented in person before the Registrar of the Court and the corresponding report of the Registry raises a presumption, though rebuttable, that the petition was filed by the petitioner himself. Moreover, for establishing that while filing the nomination paper, someone else has impersonated himself as the petitioner, the Returning Officer would be the best witness. The well-settled position of law on the comparison of disputed signature/writing with the admitted signature/writing has already been discussed. This apart, it is trite that the effect of an alleged admission depends upon the circumstances in which it was made. For this, the following illuminating observations made by the Supreme Court in *Nagubai Ammal v. B. Shama Rao* AIR 195.SC 59.may usefully be quoted - an admission is not conclusive as to the truth of the matters stated therein. It is only a piece of evidence, the weight to be attached to which must depend on the circumstances under which it is made. It

can be shown to be erroneous or untrue, so long as the person to whom it was made has not acted upon it to his detriment, when it might become conclusive by way of estoppel.

21. To sum up, it is neither expedient in the interests of justice nor desirable to summon the Handwriting Expert for opinion on the aforesaid point. This I.A. also deserves rejection with costs. I.A. No.47/2011 22. The I.A. is an application for summoning J.S. Dhurve, the Returning Officer, as a Court witness. ::

9. :: ELECTION PETITION NO.7/2009 23. Opposing the prayer, the petitioner has pointed out that the respondent has a right to summon the Returning Officer as his own witness and is also entitled to cross-examine him, under Section 154 of the Evidence Act, after declaring him hostile in case, he gives statement favourable to the petitioner during his chief examination.

24. Ordinarily, it is for the party to summon any witness necessary for his case. However, by virtue of Order 16 Rule 14 of the Code of Civil Procedure read with Section 87(1) of the Act, the Court also has the power to summon any person, not called as a witness by a party to the petition, to give evidence and the only pre-requisite is that where the Court at any time thinks it that the ends of justice require or that the case before it needs that kind of evidence. (R.M. Seshadri v. C. Vasantha Pai AIR 196.SC 69.referred to).

25. However, the prayer for summoning returning officer as a Court witness has been made by the respondent even before closure of his evidence. Obviously, the respondent can substantiate his pleadings by examining Returning Officer and no reasonably satisfactory explanation has been given for not summoning the Officer as his own witness.

26. Taking into consideration the nature of controversy involved and other facts and circumstances of the case, I am of the view that there is no compelling reason to summon Returning Officer as a Court witness. The I.A. is liable to be rejected.

27. In the result,- (i) I.A. Nos.3/11 and 4/11 stand dismissed with costs, quantified at Rs.1000/-. (ii) I.A. No.47/11 is dismissed with liberty to the respondent to

summon the Returning Officer as his own witness. ::

10. :: ELECTION PETITION NO.7/2009 (R.C. Mishra) JUDGE 20 6.2012

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