

Gopal Ramji Dhenge Vs. the Returning Officer, Lakhani Electoral Division

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Court : Mumbai

Decided On : Oct-15-1963

Reported in : (1964)66BOMLR542; 1964MhLJ656

Judge : Abhyankar and ;Wagle, JJ.

Appeal No. : Special Civil Application No. 190 of 1962

Appellant : Gopal Ramji Dhenge

Respondent : The Returning Officer, Lakhani Electoral Division

Disposition : Petition allowed

Judgement :

Abhyankar, J.

1. This petition is filed by a voter under Articles 226 and 227 of the Constitution.
2. The petitioner is a resident of village Kesalwada, in Sakoli tahsil of Bhandara district. His name has been included in the list of voters for the Electoral Division of Lakhani prepared under Section 13 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (hereinafter called the Zilla Parishads Act). The petitioner has given the serial number of his name in the voters' list of village Kesalwada which is 248 and Kesalwada is included in Lakhani Electoral Division of Bhandara Zilla Parishad.

3. The election of Councillors to the Bhandara Zilla Parishad from Lakhani Electoral Division was ordered to be held by the Collector, Bhandara, who fixed a certain programme. According to that programme, nominations were to be received upto May 7, 1962, scrutiny of nomination papers was fixed for May 8, 1962 and candidates were allowed to withdraw from contest between May 12, 1962 to May 14, 1962, and the poll, if necessary, was to be taken on May 27, 1962. In pursuance of this programme, respondents Nos. 2 to 11 and one Laxman filed nomination papers for being elected as a councillor from the Lakhani Electoral Division. On the date fixed for scrutiny of the nomination papers, the Returning Officer, according to the rules, permitted the candidates, their proposers and in some cases only one person duly authorised in writing by a candidate to attend the proceedings for scrutiny. Thus the petitioner, who was an elector, did not and could not attend at the time of the scrutiny.

4. From the candidates, who had filed nomination papers, the nomination paper of respondent No. 9 Patiram Tulsiram Kamane was rejected on the ground that his proposer was disqualified under Rule 14(2) read with Rule 19(2)(b) of the Election Rules, because the proposer had subscribed as proposer to four nomination papers filed by the same candidate. On this ground the nomination paper of Patiram was rejected by the Returning Officer. Thereafter some of the other candidates, viz. respondent No. 6 Nemichand, respondent No. 7 Pandurang, respondent No. 8 Maroti, respondent No. 10 Nagorao Badge and respondent No. 11 Nilkanth Ganvir withdrew their candidature leaving in the field only respondents Nos. 2 to 5 as contesting candidates. The electorate went to poll on May 27, 1962, and the votes were counted by the Returning Officer on May 31, 1962. He declared respondent No. 3 Govinda Shivaji Nimbekar as the elected councillor, Govinda having polled 3,479 votes which was the maximum number of votes polled amongst the contesting candidates.

5. The petitioner has filed this petition challenging the election of respondent No. 3 on the ground that the nomination paper of respondent No. 9 Patiram was wrongly rejected by the Returning Officer and thus, the result of the election has been vitiated because of such a wrong and illegal rejection of the nomination paper of one of the candidates viz. Patiram. He had, therefore, prayed that the order of the

Returning Officer rejecting the nomination paper of respondent No. 9 Patiram should be quashed and the nomination filed should be held proper and accepted and a fresh election be ordered to be held after setting aside the declaration of respondent No. 3 as the elected councillor.

6. This petition was filed on June 15, 1962, i.e. after the poll was taken and respondent No. 3 was declared elected. But the Court declined to stay any action in respect of the election. The contention of the petitioner is that he has no remedy to challenge the result of the election on the ground that a nomination paper of one of the candidates was wrongly rejected under the Act. As an elector the petitioner has been given a right under Section 27(1) of the Maharashtra Zilla Parishads Act to challenge the validity of the election of a councillor, but this right is restricted by several sub-clauses of Section 27. The inquiry that can be held by the District Judge as the tribunal empowered to hold that inquiry on an election petition filed under Section 27 is restricted, by Sub-section (5) and Sub-section (7) of Section 27. Sub-section (7) of that section is as follows:

(7) If the validity of any election is brought in question only on the ground of an error made by the officer charged with carrying out the rules made in this behalf under Sub-section (2) of Section 12 or of Section 14, or of an irregularity or informality not corruptly caused, the Judge shall not set aside the election.

7. Now, rules have been made in exercise of powers under Section 274(2)(1) and (iii) of the Maharashtra Zilla Parishads Act read with Sub-section (2) of Section 9 and Section 14 of the same Act. These Rules are called the Maharashtra Zilla Parishads Election Rules, 1962. Under Rule 19 of these Rules, provision is made for scrutiny of nomination. Under Rule 20(1) of the Rules any candidate aggrieved by a decision of the Returning Officer either accepting or rejecting a nomination paper, may present an appeal therefrom to the District Judge of the district in which the area of the Zilla Parishad is situated within a prescribed period. Under Sub-rule (8) of Rule 20, it is provided that the decision of the District Judge on appeal under this rule and, subject only to such decision, the decision of the Returning Officer accepting or rejecting the nomination of a candidate shall be final and conclusive and shall not be called in question in any Court or before a Judge

referred to in Sub-section (2) of Section 27.

8. It is thus clear that the only persons who can challenge the improper acceptance or rejection of a nomination paper of a candidate are any of the other candidates and the remedy for such a challenge is by way of an appeal to the District Judge. Under Sub-rule (8) of Rule 20 the decision of the District Judge is made final and that decision cannot be questioned in any Court or before a Judge referred to in Sub-section (2) of Section 27, meaning the Judge who is empowered to deal with and decide election petitions that can be filed under Section 27. It is, therefore, clear that so far as a candidate is concerned, he has been given a limited right of challenging the improper acceptance or rejection of a nomination paper of the other candidates and that this ground cannot form the subject-matter of an election petition at the instance of a candidate under Section 27 of the Zilla Parishads Act.

9. The petitioner's contention is that even though an elector is not entitled, because the elector cannot be present at the proceedings for scrutiny of a nomination paper at all, to challenge the election of a candidate by way of an appeal under Rule 20(8), the right of an election petition which is given to an elector under Sub-section (1) of Section 27 of the Zilla Parishads Act is circumscribed by the provisions of Sub-section (7) of Section 27 of the same Act. Under Sub-section (7) the jurisdiction of the Judge is limited to deciding an election petition on the grounds provided in Sub-section (5). There is also an express bar to the Judge trying any question relating to the validity of an election on the ground of an error made by an officer charged with carrying out the rules made in this behalf under Sub-section (2) of Section 12 or of Section 14, or of an irregularity or informality not corruptly caused. Now, Rules 19 and 20 have been made under Section 14 for conduct of elections. They are to be found in Chapter III of the rules framed under Section 14 among other sections. The petitioner, therefore, says that so far as the scrutiny of nomination and proper or improper acceptance of nomination paper of a candidate are concerned, an elector is debarred from any remedy under the Zilla Parishads Act. The elector cannot also challenge an election on the ground of improper acceptance of nomination paper of a candidate by an election petition under Section 27. Therefore, the only

remedy that an elector, like the petitioner, can have and has is by invoking the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution in asking for a writ of quo warranto or any other appropriate writ, order or direction, if he satisfactorily establishes that an election is vitiated on account of the improper rejection of a nomination paper of a candidate. The petitioner's contention, in other words, is that the electoral right that the petitioner has as an elector in the constituency includes a right to challenge, by appropriate proceedings in this Court, the improper rejection or acceptance of a nomination paper of a candidate if such improper acceptance or rejection of a nomination paper of a candidate has resulted in vitiating the result of an election ultimately held. The elector is excluded by Zilla Parishad's Act from the remedies available to make a challenge to an improper acceptance or rejection of a nomination paper at the earlier stage and the District Judge or the election tribunal constituted to adjudge on the election petition that may be filed is debarred from giving relief in the election petition on the ground that the nomination paper of a candidate was improperly accepted or rejected. It is, therefore, contended by the petitioner that his electoral right can only be enforced in a proper case by invoking the jurisdiction of this Court under the Constitution.

10. The petition is contested on behalf of the elected candidate and the learned Counsel appearing in support of the return urged that an elector in a constituency under the Zilla Parishads Act has no greater right than a right to vote. He has, undoubtedly, been given a right under Section 27 to challenge the election of an elected candidate also, but that is a limited right. There is no absolute right in an elector to challenge election of a candidate on the ground other than those for which an election petition is permitted under Section 27 of the Zilla Parishads Act. In other words, the contention raised on behalf of respondent No. 3 is that such right that an elector has to contest the validity of election of an elected candidate is circumscribed by the provisions of the Act and Rules and he has no other right to challenge the election on the ground that the nomination paper of a candidate was either improperly accepted or rejected. Respondent No. 3 urges that it is a qualified right that an elector has been given under the Zilla Parishads Act and that right cannot be enlarged by resorting to the remedy of invoking the extra-ordinary jurisdiction of this Court under Article 226 and 227 of the Constitution.

11. It is also urged that there is no error of jurisdiction in the Returning Officer in rejecting the nomination paper of respondent No. 9 as he interpreted the provisions of Rule 19 in a particular manner. Even if it were assumed that that interpretation was erroneous or improper, it would merely amount to an error in the exercise of jurisdiction but not want of or excess of jurisdiction. It is only in cases where a quasi-judicial tribunal exceeds its jurisdiction that a writ could properly be asked by a person. In the instant case the utmost that could be said as to the order of the Returning Officer is that he has erroneously interpreted the provisions of Rule 19 while scrutinizing the validity of the nomination paper and on that ground the petitioner would have no remedy under the Act.

12. It is also urged that subsequent to the declaration of the result, the election of respondent No. 3 was challenged by an election petition filed by one other voter and that election petition came to be dismissed. Once that election petition came to be dismissed, any other voter cannot challenge the same election because the election petition filed by the voter must be deemed to have been filed in a representative capacity. Though the present petitioner was not a party to the election petition filed before the District Judge, he should be deemed to be bound by the result of that election petition. In short, the decision in the election petition would amount to a judgment in rem so far as the status of respondent No. 3 is concerned, and that would be immune from challenge in any other or further proceedings in the same matter.

13. The learned Counsel for the contesting respondent has relied upon the following decisions :-1. (B.M. Ramaswamy v. B.M. Krishnamurthy : [1963]3SCR479). 2. (Vasantrao v. Election Commission [1953] N.L.J. 376 : A.I.R. [1953] Nag. 237. (Kotesam v. S.M. Patnaik : AIR1954 Ori87). 4. (Venkatrao v. Vithal : (1963)65BOMLR545 . 5. (Sukar Gope v. State of Bihar : AIR1953 Pat47). 6. (In re Dr. John Matthai A.I.R. [1952] T.C. 1.

14. We would like first to notice the contention of the respondent that an election petition at the instance of an elector on identical points having been filed and rejected, the petitioner was not entitled to agitate the same question in these proceedings. In the Division Bench decision of this Court in Venkatrao v. Vithal it

has been held that it is not open to a voter in an election petition filed under Section 27 of the Maharashtra Zilla Parishads Act, 1961, to challenge an election on the ground that the person declared elected was a disqualified person at the time his nomination paper was filed. In view of this pronouncement it is hardly necessary to point out that an election petition filed by an elector challenging the election on the ground of improper rejection of the nomination of another candidate was incompetent. If the election tribunal had no jurisdiction to entertain a petition on this ground, we fail to see how any decision in that petition could at all operate either as *res judicata* or a judgment in *rem*. In the first place, it is not possible to accept the contention that an election petition is a representative petition in the sense that the decision binds every other person of the same category though he may have no notice of the petition or no opportunity either to contest or carry on the petition. It is also to be seen that the petition being incompetent on the ground that was urged, because the tribunal had no jurisdiction to decide the question or to give relief on the basis of improper rejection of a nomination paper, nothing said or held in that decision would be of any avail or could act as a judgment which is binding on the petitioner. It is also well settled that the petitioner not being a party to the judgment, unless by some principle of law that judgment would be held binding on the petitioner, the petitioner would not be precluded from pursuing his remedy if otherwise available under the law. If the petitioner, or a person like him, i.e. an elector cannot avail of the remedy of an election petition to challenge the election on the ground that a nomination paper has been improperly accepted or rejected, we fail to see what impediment can be read from any other provisions of the Act which would preclude an elector in an appropriate case from challenging the action of the Returning Officer if he, in the constituency in which the elector has a right to vote, improperly accepts or rejects a nomination paper, under the provisions of the Constitution.

15. Some of the decisions on which the learned Counsel for respondent No. 3 has strongly relied are decisions under the unamended provisions of the Representation of the People Act and in which jurisdiction of the High Court was invoked under Article 226 and 227 of the Constitution prior to the stage of election, where either a nomination paper was improperly rejected or a challenge was made to some order at a stage anterior to the election or the poll. In most of those cases

the provisions of Article 329 of the Constitution came to be examined and it has been held that in view of the specific bar to the initiation of proceedings to challenge an order in an 'election', which word has been used in most pronouncements to include all the stages from the issue of a Gazette notification for holding of an election till the declaration of the result, in our opinion, these decisions are of no assistance to respondent No. 3 on the short ground that the Representation of the People Act has been substantially amended and the limitations put on the powers of the High Court even under Article 329 of the Constitution have now been fully explained by the Supreme Court. After the amendment of the Representation of the People Act, we have not been shown any case by the learned Counsel for respondent No. 3 holding that in a proper case order or decision of a quasi-judicial tribunal like the Returning Officer or the appellate authority cannot be interfered with if the High Court is so persuaded to exercise its powers under Article 227 or 226 of the Constitution.

16. What is, therefore, to be seen is whether the provisions of Sub-rule (8) of Rule 20 read with the provisions of Section 27 of the Zilla Parishads Act could in any manner be read against the exercise of the powers by this Court in a proper case under Article 227 or 226 of the Constitution. The learned Counsel for the respondent strongly relies on the provisions of Sub-rule (8) of Rule 20 which says that the decision of the District Judge on appeal under this rule and, subject only to such decision, the decision of the Returning Officer accepting or rejecting the nomination of a candidate shall be 'final and conclusive and shall not be called in question in any court...'. One cannot fail to notice that this prohibition is imposed by a rule making subordinate authority exercising its powers of subordinate legislation under Section 14 of the Zilla Parishads Act. It is difficult to accept the contention that such a subordinate rule making authority could either have the power or the intention to limit or fetter the jurisdiction of the High Court under Article 226 and 227 of the Constitution. The limitation, if any, is imposed by a rule and not by provision of a statute. But whatever be the authority which purports to limit the powers of a Court in respect of the challenge to the decision of the Returning Officer accepting or rejecting the nomination of a candidate, it cannot be forgotten that the rule is made by a subordinate rule making agency in exercise of legislative powers of the State Legislature. Unless the respondent were to

establish that any law made by the State Legislature or a rule making authority in exercise of a subordinate legislative power could have the power to fetter the discretion or the jurisdiction of this Court under Article 226 and 227; it is difficult to accept the contention of the respondent that the petitioner will be debarred from invoking the jurisdiction of this Court simply because of the provisions of Sub-rule (8) of Rule 20. We, therefore, reject this contention as to the power of this Court to entertain this petition at the instance of the petitioner.

17. It is then contended that there is no right in the petitioner to canvass before this Court the legality of acceptance or rejection of the nomination paper of one of the candidates because, under the Act and the rules, the elector has not been given such a right. The question, therefore, that falls for consideration is whether it is implicit within the electoral right of a voter to insist that a candidate, who has filed a nomination paper at the election of a constituency, shall not be debarred from contesting, except on a proper rejection of his nomination paper. The learned Counsel urges that where such a right is intended to be given expressly, provision is made in the statute. In Section 79 of the Representation of the People Act, 1951, the meaning and content of what is an 'electoral right' is defined to mean 'the right of a person to stand or not to stand as, or to withdraw from being, a candidate, or to vote or refrain from voting at an election'. There being no such definition of an electoral right under the Zilla Parishads Act itself, the electoral right of an elector would not include a right to challenge the improper acceptance or rejection of the nomination paper of a candidate. We find it difficult to accept this proposition. To test its validity we asked the learned Counsel to show what would be the position if a candidate, who is obviously or patently disqualified from being chosen as a representative of a constituency, is elected in absence of any objection to his nomination paper being taken by other candidates. Could it be said that once a candidate is elected an elector is not entitled to seek a relief against the election of a disqualified candidate merely because the other contending candidates did not choose or did not know that the candidate, who is ultimately declared elected, was disqualified from filing his nomination paper? In other words, is an elector prevented by any principle or precedent from suffering a disqualified person being imposed on the constituency as its representative merely because the nomination of that person was not objected on the ground of disqualification at

a stage anterior to the election? In our opinion, it would be considerably weakening the content of the electoral right of an elector to hold that, in such circumstances, an elector is powerless and without remedy and must suffer to be represented by a candidate who is under the law disqualified from being chosen as a representative of the constituency. It must be held that even in absence of a statutory definition of an 'electoral right', the very concept of the process of election of a representative that has been provided for in the Zilla Parishads Act, with the normal functioning of democratic principles, would show that it is implicit in this right of an elector that he should have an opportunity of challenging the qualification of a person who represents the constituency in the event of his being elected at the poll. This opportunity may be given to an elector by filing an election petition and by canvassing the challenge before the election tribunal. But if the Legislature or the rule making authority prevents an elector from making that as one of the grounds of challenge before the election tribunal, we are unable to hold that the right is taken away for all time and that an elector would suffer a disqualified candidate being allowed to function as a representative of the constituency. We must, therefore, hold that an elector has an undoubted right to challenge in appropriate proceedings the qualification of a person who claims to be elected if he can show that such a person was not qualified to be elected because he suffered certain disqualifications or infirmities under the provisions of the law under which he sought the election. If that be the content of the right of an elector, it is easy to see that he must have a remedy for enforcement of that right. That remedy is apparently not provided in the scheme of election petitions and the rules made thereunder in the Zilla Parishads Act. It may be that it is a lacuna in the rules made for the purpose. But the right being there, we fail to see why in a proper case the elector cannot invoke the jurisdiction of this Court to show that the election result is vitiated because the person who had a right to contest the election has been improperly refused an opportunity or that a person who had no right to contest the election has been elected by acceptance of his nomination paper.

18. It will be useful at this stage to compare the various provisions of the Zilla Parishads Act which create certain rights and provide remedies in the matter of elections of councillors. Section 16 of the Zilla Parishads Act enumerates

disqualifications of a person from being chosen as a councillor. Detailed provisions have been made under Section 14 as to the process of election for which rules have been made by the Government called the Maharashtra Zilla Parishads (Election) Rules. We have already adverted to Rules 19 and 20 which provide for scrutiny of nomination papers of candidates and an appeal from an order accepting or rejecting a nomination paper at the instance of a candidate only. Then rules have been framed for filing of an election petition and the powers of the election tribunal are provided in the statute itself in Section 27 of the Act. We have shown above in detail how the jurisdiction of the election tribunal is of a limited character and it exercises its power within those limitations. The election tribunal has no right to set aside an election of an elected candidate either on the ground that the elected candidate was improperly nominated or that any other candidate was properly nominated but his nomination paper was improperly rejected. We do not find any provision in the Act, except Section 40, where the qualification of a person to be elected can be the subject-matter of a challenge except to the limited extent provided in Rule 20 of the election rules and that too at the instance of a rival candidate. Section 40 of the Zilla Parishads Act provides for the consequence of a councillor becoming disqualified during the term of his office:

40.(1) Subject to the provisions of Sub-section (2) of Section 62, if any Councillor during the term of his office-

(a) becomes disqualified under Sub-section (1) of Section 16, or

(b) is, for a period of six consecutive months (excluding in the case of the presiding authority the period of leave duly sanctioned) without the permission of the Zilla Parishad, absent from meetings thereof,

the office of such Councillor shall, notwithstanding anything contained in Clause (c) or Clause (d) of Sub-section (1) of Section 9 become vacant.

Thus, a councillor after having been elected to a Zilla Parishad is liable to be removed from office if he incurs a disqualification or becomes disqualified after his election. But there is no machinery and there is no authority as far as we can see, in any other provisions of the Act under which the disqualification of an elected

councillor can be brought to the notice of an authority and his election can be challenged or his continuance in office can be challenged. Here we refer to the disqualification of an elected councillor on the date on which his nomination paper was accepted or, in other words, at the time of his election. On the other hand, we may compare the provisions of the Bombay Village Panchayats Act which also provides for disqualifications of a person from being a member of a Panchayat which is provided for in Section 14 of that Act. Under Section 15 provision is made for an election petition being filed to challenge the validity of the election of a member of a Panchayat by any person qualified to vote at the election, i.e. by an elector. The questions which have to be considered by an election tribunal under the Bombay Village Panchayats Act are then provided for in Sub-section (5) of Section 15. If a candidate is found to have committed a corrupt practice as defined in Sub-section (6) of Section 15, the tribunal is required to declare the candidate as disqualified. If there is no question of committing of a corrupt practice, then the validity of an election can be challenged on other grounds, which include scrutiny and computation of the votes recorded in favour of a candidate and recounted. Though there is no reference to the election of a candidate capable of being challenged on the ground of improper acceptance or rejection of a nomination paper, we do not find in Section 15 of the Bombay Village Panchayats Act any restriction on the power of the election Judge to give relief on this ground. Then follows Section 16 which is in the following terms:

16. (1) If any member of a panchayat-

(a) who is elected or appointed as such was subject to any of the disqualifications mentioned in Section 14 at the time of his election or appointment, or

(b) during the term for which he has been elected or appointed, incurs any of the disqualifications, mentioned in section 14,

he shall be disabled from continuing to be a member, and his office shall become vacant.

(2) In every case, the authority competent to decide whether a vacancy has arisen shall be the Collector. The Collector may give his decision either on an application

made to him by any person, or on his own motion. Until the Collector decides that the vacancy has arisen, the member shall not be disabled under Sub-section (1) from continuing to be a member. Any person aggrieved by the decision of the Collector may, within a period of fifteen days from the date of such decision, appeal to the State Government, and the orders passed by the State Government in such appeal shall be final:

Provided that no order shall be passed under this sub-section by the Collector against any member without giving him a reasonable opportunity of being heard.

A perusal of Section 16 shows that a person who is elected as a member of a Panchayat is liable to be removed from his office if it is shown that he suffered any of the disqualifications mentioned in Section 14 of the Village Panchayats Act at the time of his election or appointment. For this purpose the Collector is authorised to make an inquiry and declare that such a person, even though elected, was disqualified from being chosen under Section 14 and in the event of such a declaration, that person is disabled to continue as a member. We do not find any similar provision in the Zilla Parishads Act which would enable an inquiry being held at any stage subsequent to the election to find out whether the elected councillor was or was not disqualified from being chosen as a councillor.

19. The question is whether the Legislature could have intended that even though a person was disqualified from being chosen as a councillor he would have the right to continue as a councillor and there would be no remedy in any one to challenge the continuance of such a person in office. In our opinion, there is no warrant for the assumption that in limiting the right of challenge to the improper acceptance of a nomination paper of a candidate at the anterior stage of the election to contesting candidates the Legislature intended that a disqualified person should be enabled to continue in office once he is elected as a councillor. It follows, therefore, that if continuance of a councillor can be challenged on the ground that he was disqualified from being chosen as a councillor, in our opinion, there must be a corresponding right in an elector also to show that the election itself has been vitiated because of the improper rejection of the nomination paper of one of the candidates. It is of the essence for the electoral process for

establishing a democratic institution that no one who is qualified should be prevented from being chosen and no one who is disqualified shall have an opportunity of representing a constituency. These are counterparts of the same right, and it is difficult to hold that whereas a remedy is available to a candidate by an application to this Court for challenging the election by asking for a writ of quo warranto or some such writ, order or direction on the ground that a person elected was not qualified on the date of the election for being chosen, there is no corresponding right in an elector to challenge the election of a person on the ground that one of the other candidates who was qualified to be a candidate has been improperly prevented from contesting the election. In our opinion, such a right is also implicit if purity of election by democratic process is to be preserved.

20. Thus, on a consideration of all the provisions of the Act and the principles which should govern democratic process of elections, we have come to the conclusion that the petitioner has a right to invoke the jurisdiction of this Court and he will be entitled to a relief if he could show that the nomination paper of respondent No. 9 was improperly rejected.

21. Now, it is clear from the order of the Returning Officer that he rejected the nomination paper of respondent No. 9 on the sole ground that his proposer had subscribed to four nomination papers filed by the same candidate. According to the Returning Officer, this was in violation of Rule 14(2) read with Rule 19(6) of the Election Rules. A Division Bench, of which one of us was a member (Abhyankar J.), had occasion to interpret the provisions of Rules 19 and 14 and it has been held in *Batu Laloo v. P.S. Malvankar* (1962) Special Civil Application No. 220 of 1962 that a nomination paper is not liable to be rejected merely because the proposer of the nominee has subscribed more than one nomination paper in respect of the same candidate. What is hit by Rule 14(2) of the Election Rules is subscribing nomination of more than one candidate and, in that sense, more than one nomination paper in respect of more than one candidate, and not numerically more than one nomination paper in respect of the same candidate. It must, therefore, be held that the order of the Returning Officer rejecting the nomination of respondent No. 9 is vitiated by an error apparent on the face of the record. It is not disputed that the Returning Officer acts as a quasi-judicial tribunal and one of

the grounds on which the decision of the quasi-judicial tribunal can be -challenged, is by showing that the order is vitiated by an error ex facie on the record. Even if the Returning Officer had jurisdiction to decide one way or the other as to the validity of the nomination paper, if his decision is shown to be patently erroneous in law, the petitioner is entitled to a writ of certiorari. We, therefore, hold that the order of the Returning Officer dated May 8, 1962, rejecting the nomination paper of respondent No. 9 was wrong and is liable to be quashed.

22. It is then contended that the decision to the effect that the nomination paper was wrongly rejected is not enough to show that the result of the election is affected and that in that sense, the petitioner has failed to prove that the election itself is liable to be set aside.

23. In our opinion, so far as the effect of rejection of a nomination paper of a candidate who is eligible to contest is concerned, it is now well-settled that it is not predictable as to what the result would have been if the candidate whose nomination paper is wrongly rejected were in the arena of contest. In *Surendra Nath v. S. Dalip Singh* : [1957]1SCR179 their Lordships observed as follows (p. 245):.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 imagined where the most desirable candidate 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....

24. It is not, therefore, difficult to hold, as contended by the petitioner, that rejection of the nomination paper of respondent No. 9 in this case has materially affected the result of the election. We must, therefore, hold that the rejection of the nomination paper of respondent No. 9 was improper and unauthorised under the rules and that it has vitiated the result of the election.

25. The above observation will also show that it is one of the indicia of the electoral right of an elector that a candidate who is eligible and has offered his Candidature will not be deprived from contesting the election which, in a sense, is also an invasion of a right of the elector to choose the best candidate. The whole electoral process, as provided for in all these statutes making provision for elective offices for constitution of democratic bodies, has its impact on the right and obligations of the elector, the constituency and the candidate. It cannot, therefore, be said that the fact that one of the candidate's nomination paper has been rejected, though improperly, does not affect that right of the elector. It affects the right of the elector to this extent that the elector is deprived of an opportunity of sending the best candidate according to him if that candidate were in the field. The elector in that sense has been deprived of his electoral right. A candidate, who is declared elected, represents not only the voters who might have cast their votes in his favour, but all those who comprise the electorate in the constituency. It is thus that he acquires a representative status as a representative of the constituency. In choosing such a representative, therefore, the elector has his rights and they must be respected, and they cannot be invaded except at the peril of having such an election declared void.

26. We have, therefore, come to the conclusion that the petitioner has a right to challenge the improper rejection of a nomination paper of a candidate at the election, that the rejection of the nomination paper of respondent No. 9 was

improper and unauthorised and that it has materially affected the result of the election. We have directed that the order of the Returning Officer dated May 8, 1962, rejecting the nomination paper of respondent No. 9 be and is hereby quashed. As a consequence of that decision, the election of respondent No, 3 has also to be and is declared invalid. There shall be a fresh election on the basis of the nomination papers including that of respondent No. 9.

27. The result is that the petition is allowed, but in the circumstances there will be no order as to costs.

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