K. S. ABDUL AZEEZ

*v.*

RAMANATHAN CHETTIAR & ORS.

*February* 28, 1966

[P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, M. HIDAYATULLAH, J. C. SHAH, AND S. M. SIKRI, JJ.]

*The Representation of the People Act* (43 *of* 1951), *s.* 36(4) *and Conduct of Election Rules,* 1961, *r.* 4—*Filling up nomination paper with one reserved symbol and leaving the rest blank—If a defect of "substantial character."*

The nomination Form prescribed for election to the State Assembly had a blank space, where a candidate could show three symbols in order of preference as his symbol. One of the candidates for election showed only one symbol which was reserved for a political party, and left blank the rest of the space. The Returning Officer rejected the nomination paper holding that the defect was of a substantial character. Alleging that the rejection was improper, two voters filed an election petition challenging the election of the appellant who was successful at the ensuing election. The Tribunal dismissed the petition but, on appeal, the High Court set aside the election on the ground that the rejection was improper.

In appeal to this Court,

HELD : Under s. 36(4) of the Act, the returning officer shall not reject the nomination paper when the defect is not of a substantial character. The mention of the reserved symbol, in the first space and leaving blank the rest of the space is covered by the phrase, "failure to complete, or defect in completing, the declaration as to symbols," in the proviso to r. 4 of the Conduct of Election Rules, and was therefore not defect of a substantial character. [674 E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 435 of 1965

Appeal from the judgment and order dated March 4, 1963 of the Madras High Court in Appeal against Order No. 300 of 1962.

*R. Ganapathy Iyer*, for the appellant.

*R. Mahalingier*, for respondents Nos. 1 and 2.

The Judgment of the Court was delivered by

**Hidayatullah, J.** At the last General Election to the Assembly in the Madras State five candidates filed their nomination papers for the Nilakottai constituency. The appellant K. S. Abdul Azeez was one of them and at the ensuing election he was successful having polled 4,000 and odd votes in excess of those of his nearest rival. Four other candidates had filed nomination papers and they included respondents 3 to 5 in this appeal. One of the candidates withdrew and the nomination paper of the 5th respondent

A (Peyathevar) was rejected at the scrutiny. He had shown in his nomination paper only one symbol in the spaces provided for three symbols and that was the star which is reserved for the Swatantra Party. He was not the accredited candidate of the Swantantra Party and as he had not shown any other symbol, the nomination paper was held to contain a defect of substance.

B After the election was over two voters (who are respondents 1 and 2 in this appeal) filed an election petition against the appellant and one of the grounds urged against him was that as the rejection of the nomination paper of Peyathevar was improper, under s. 100 (1)(c) of the Representation of the People Act the election was void. Other grounds on which the election was challenged need not C concern us because nothing turns upon them in this appeal. The Election Tribunal held that the nomination paper was rightly rejected and dismissed the election in petition negativing the other allegations to the election at the same time. On appeal by the two voters the decision of the Tribunal was reversed and it was held that the nomination paper was improperly rejected and the election of the D appellant was, therefore, void. On hearing Mr. Ganapathy Iyer and looking into the relevant provision on the subject of symbols we are satisfied that the decision of the High Court was right.

The matter has to be considered in relation to the Conduct of Election Rules, 1961. Sub-rule (1) of Rule 5 enables the Election Commission to specify the symbols that may be chosen by candi- E dates at elections and the restrictions to which their choice shall be subject. By virtue of this power the Election Commission issued a notification No. So 2316 dated 19th September, 1961 which showed in a table the symbols for the Madras Legislative Assembly elections. Some of these symbols were reserved for recognised political parties and the name of the party was mentioned in brackets against F the reserved symbol. Symbols which were not reserved were "free symbols" and an independent candidate, such as the appellant, could choose one of them. If two or more independent candidates chose the same free symbols lots were to be drawn. These rules were in the notification and detailed reference to them is hardly necessary because the matter is perfectly plain.

G The question is whether by choosing a symbol reserved for a political party and by leaving blank the space where he could have shown two other symbols as his alternative choice, Peyathevar's nomination paper became so defective that it was rightly rejected. In this connection we have to see the provision of s. 36(4) of the Representation of the People Act, 1951. Sub-section(4) provides:

H

> "The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character."

This sub-section must be read with Rule 4 of the Conduct of Election Rules. It provides as follows:— A

> "Every nomination paper presented under sub-section (1) of section 33 shall be completed in such one of the Forms 2A to 2E as may be appropriate."

The form appropriate to this election had a blank space where a candidate could show three symbols in order of preference as symbols of his choice. Peyathevar showed only the star in the first space and left blank the other two places. The nomination paper, therefore, did not comply with s. 33 read with Rule 4. The nomination paper was, however, saved by the proviso to Rule 4 which reads: B C

> "Provided that a failure to complete, or defect in completing, the declaration as to symbols in a nomination paper in Form 2A or Form 2B shall not be deemed to be defect of a substantial character within the meaning of sub-section(4) of section 36."

D

The Tribunal held that mentioning a reserved symbol and leaving blank the space for alternative symbols, did not come within this proviso and was a defect of substance. The High Court held otherwise and, in our opinion, rightly. In so far as the blank space is concerned it showed a failure to complete the declaration as to symbols and where the star was shown as the symbol it amounted to a defect in completing the declaration as to symbol in the nomination paper. In other words, taking the proviso as a whole the mention of the star and leaving blank rest of the space was covered by the composite phrase "failure to complete or defect in completing the declaration as to symbols." E

Mr. Ganapathy Iyer contends that a defect in completing the symbol is something like putting down "two bullocks" but omitting the words "with yoke on" or mentioning the "ears of corn" without mentioning "the sickle" in describing the reserved symbols for the Congress and the Communist Parties respectively. We do not agree. If an independent candidate named "star," "bicycle" and "flower" as his preferences there would be no defect in the nomination paper except one, namely, that he included the "star—" a reserved symbol—to which he was not entitled. The phrase "defect in completing the declaration as to symbols" would obviously cover such a case and there is no difference between that case and this where the star is shown in the first space and the rest of the space is left blank. The intention seems to be that the question of symbols should not play an important part because symbols can be assigned by political parties till the date for withdrawal and nomination paper should not be cancelled during the interval. F G H

A On the whole the decision of the High Court was right in the circumstances of this case and we see no reason to reverse it. The appeal, therefore, fails and is dismissed but as none appeared to contest it there shall be no order as to costs.

*Appeal dismissed.*

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