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AMRIT LAL AMBALAL PATEL

v.

HIMATBHAI GOMANBHAI PATEL & ANOTHER

May 3, 1968

B [J. C. SHAH AND V. BHARGAVA, JJ].

The Representation of the People Act (43 *of* 1951), *ss.* 36(2)(*a*) *and* 100(1)(*a*) *and* (*d*)—*Age of returned candidate below* 25 *on the date fixed for scrutiny of nominations—If election to be set aside.*

The appellant was the successful candidate in the 1967 State Legislative Assembly Elections. The 21st January, 1967 was the date fixed for the C scrutiny of nominations and the actual polling took place on 18th February, 1967. The election of the appellant was challenged on the ground that he was not qualified to be chosen to fill the seat as he was less than 25 years of age. The High Court set aside the election on the ground that the appellant's nomination paper should have been rejected under s. 36(2)(a) of the Representation of the People Act, 1951.

In appeal to this Court,

D HELD : (1) The evidence conclusively showed that the appellant was in fact born on 25th January, 1942, and not on 15th January, 1942 as contended by him. [280 C]

(2) Under s. 36(2)(a) the nomination paper of a candidate is to be rejected if he is not qualified under Art. 173 of the constitution *on the date fixed for the scrutiny of nominations*, that is, if he had not attained the age of 25 years on that date. Consequently, the nomination paper of the E appellant was liable to be rejected under s. 36(2)(a). Since, by the improper acceptance of the appellant's nomination, the result of the election was materially affected, the election had to be declared void under s. 100(1)(d)(i) of the Act. [281 H; 282 A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1603 of 1967.

F Appeal from the judgment and order dated September 14. 1967 of the Gujarat High Court in Election Petition No. 4 of 1967.

I. N. Shroff, for the appellant.

S. T. Desai, P. C. Bhartari for *J. B. Dadachanji*, for respon- G dent No. 1.

The Judgment of the Court was delivered by

Bhargava, J. There were three candidates for election to the Gujarat State Legislative Assembly from Ankleshwar Constituency No. 144. Respondent No. 1 in the appeal was one of the H candidates who, on being unsuccessful, filed the election petition against the appellant who, as a rival candidate, succeeded in the election. Respondent No. 2 was another defeated candidate in the General Elections. The last date for nomination was 20th

January, 1967. The nomination papers were scrutinised on 21st January, 1967. 23rd January, 1967 was the date for withdrawals and the actual polling took place on 18th February, 1967. The result was declared on 22nd February, 1967. The election of the appellant was challenged by the election petitioner on the ground that the appellant was not qualified to be chosen to fill the seat in the State Legislature on the date of nomination, because he was born on 19th February, 1943 and was less than 25 years of age. The appellant contested this assertion and pleaded that he was born on 15th January, 1942, so that he had attained the age of 25 years even before the date of nomination. The High Court of Gujarat, after taking evidence of both parties, arrived at the finding that the appellant's date of birth was 25th January, 1942, and set aside the election of the appellant on the ground that his nomination paper was wrongly accepted when it should have been rejected under section 36(2)(a) of the Representation of the People Act, 1951 (hereinafter referred to as "the Act"). The appellant has challenged this decision of the High Court in this appeal under s. 116A of the Act on two grounds. The first ground is that the High Court has wrongly arrived at the finding that the date of birth of the appellant was 25-1-1942 and should have held that the appellant was actually born on 15-1-1942. The second ground urged in the alternative is that, in any case, even if the appellant was born on 25-1-1942, he was more than 25 years of age on the 18th February, 1967 when the election took place, so that his election could not be set aside on the ground that he was disqualified from being chosen as a member of the State Legislature.

The first ground raises only a question of fact on which the High Court has recorded a finding against the appellant, even though the finding does not fully accept the case put forward by the election petitioner. The election petitioner had pleaded that the date of birth of the appellant was 19th February, 1943. During the course of hearing of this appeal before us, no attempt was made on behalf of the election petitioner to persuade us to accept the original case put forward on his behalf that the appellant has born on February 19, 1943 and, consequently, it is not at all necessary to discuss the evidence which was put forward on behalf of the election petitioner in support of that case. We need only deal with the evidence given on behalf of the appellant to prove that his date of birth was 15th January, 1942, and the evidence on the basis of which the High Court has arrived at the finding that the correct date of birth is 25th January, 1942. The evidence which is decisive on this question is the entry in the birth register in which the birth of the appellant was recorded when he was born. The original birth register was summoned in the High Court and it showed the date of birth as at present

entered as 15-1-1942. Reliance was placed on this entry on behalf of the appellant to urge that the High Court has wrongly found the date of birth to be 25-1-1942.

The entry in the register was found by the High Court to be highly suspicious and containing alterations. The learned Judge, who tried the election petition himself examined this entry in the register and found that the figure "1" in the figure "15" was an alteration, indicating that the original date, which was "25", was changed to "15" by changing the figure "2" into figure "1". This observation of the learned Judge was fully borne out by our own examination of the entry in the register under a magnifying glass. It appears that, in order to make the alteration, an attempt was made to partially rub out the original figure "2", with the result that there is thinning of the paper at that place. This thinning of the paper is clearly visible when the paper is held against bright light. Further, when the figure is examined with the aid of a magnifying glass, the figure "2" earlier written becomes visible. It is also significant that in the entries relating to the birth of the appellant in various columns, the writing is not in uniform ink. Different shades of ink have been used indicating subsequent alteration.

On behalf of the appellant, our attention was drawn to alterations in some other entries in the same register where also similar features exist, in order to urge that the alteration in this particular entry relating to the appellant should be treated as a mere correction and not a deliberate alteration from the correct date to an incorrect date of birth. It is true that there are alterations in some of the other figures also; but there is one very important circumstance that distinguishes the case relating to the entry of birth of the appellant as compared with other entries which contain alterations. On behalf of the election petitioner, one witness examined was P.W. 3 Kanaiyalal Chhotalal Hindia who is Head Clerk in Jayendrapuri Arts & Science College at Broach. He has deposed that the appellant joined the First Year Arts Class, now known as Pre-University Arts Class, in that College in the year 1960-61. At the time of admission in that College, the appellant's date of birth was entered as 19th February, 1943. Subsequently, at the instance of the appellant, this date was changed to 25th January, 1942. The change was actually carried out in the admission register by this witness himself. The witness has stated that, in order to obtain this change, the appellant produced a certified copy of the entry in the birth register and that certified copy showed the date of birth as 25-1-1942. There is no reason to disbelieve the evidence of this witness. His evidence thus proves that, when the first certified copy of the entry in the birth register was obtained by the appellant in order to get the entry in the college admission register corrected, that certified copy showed the date

of birth as 25-1-1942. This means that at that time, when that certified copy was issued, the entry in the birth register read as 25-1-1942 and not 15-1-1942. The necessary conclusion follows that the alteration found in the original register must have been made subsequent to the issue of that certified copy. It is true that, later on, the appellant obtained another certified copy in December, 1966 and, in that certified copy, the date of birth is entered as 15-1-1942. This does not however help the appellant, because, at best, it shows that by December, 1966, the entry in the original register had already been altered so as to read as 15-1-1942. This whole evidence thus leads to the conclusion that the date of birth, which was originally entered as 25-1-1942, was altered to 15-1-1942 some time between the issue of the first certified copy, which was produced in the College, and the second certified copy which was obtained in December, 1966. This evidence, in our opinion, is conclusive to show that the appellant was in fact born on 25th January 1942 and not on 15th January 1942 as contended on behalf of the appellant. The High Court accepted this case and we have no hesitation in affirming that finding of the High Court on this point.

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The alternative ground urged on behalf of the appellant is that, even if it be held that the appellant was born on 25th January, 1942, it should be held that he was qualified to be chosen as a member of the State Legislature in view of the provision contained in Art. 173 of the Constitution, the relevant part of which reads as follows :—

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> "173. A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he—
>
> (a) . . . . .
>
> (b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty years of age; and
>
> (c) . . . . ."

F

It was urged that, under this Article, the requirement is that the person must not be less than 25 years of age to be qualified to be chosen to fill a seat in the Legislative Assembly and, since a person can be held to be chosen when he is declared elected, all that is required by this article is that he should have attained the age of 25 years prior to the declaration of the result of the election. Similarly, reference was also made to s. 100(1)(a) of the Act which is as follows :—

G H

> "100. (1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

A (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963, or

(b) . . . . . .

B (c) . . . . . .

(d) . . . . . .

the High Court shall declare the election of the returned candidate to be void."

C The argument was that, under s. 100(1)(a), the question that falls for determination is whether the returned candidate was not qualified on the date of his election, and the date of election must be the date when the result of the election was declared, or, at the earliest, the date on which the polling took place. In the present case, the result was declared on the 22nd February, 1967, while the polling took place on 18th February, 1967, and before D these dates the appellant had attained the age of 25 years.

No doubt, these arguments advanced on behalf of the appellant are correct; but, apart from these provisions, effect has to be given also to the additional provision contained in section 36(2) of the Act which reads as under :—

E "36. (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 :—

F (a) that on the date fixed for the scrutiny of nominations, the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely :—

G Articles 84, 102, 173 and 191,

Part II of this Act, and sections 4 and 14 of the Government of Union Territories Act, 1963; or

(b) . . . . . .

H (c) . . . . . ."

It is to be noticed that this provision makes a departure inasmuch as it lays down that the nomination paper is to be rejected if the candidate is not qualified under Art. 173 of the Constitution on

the date fixed for the scrutiny of nominations. In the present case, the appellant had not attained the age of 25 years on 21st January, 1967, which was the date for scrutiny of nominations. Consequently, the nomination paper of the appellant was liable to be rejected under s. 36(2)(a) of the Act. Since it was liable to be rejected on this ground, it must be held that his nomination had been improperly accepted. In such a case, under s. 100 (1)(d), the High Court is to declare the election void, if the result of the election, in so far as it concerns the returned candidate, is found to have been materially affected. On the face of it, the consequence of the improper acceptance of the nomination of the appellant was that the result of the election was materially affected, because he was declared as duly elected when he was not entitled to that right on the ground that his nomination paper should have been rejected by the returning officer under s. 36(2)(a) of the Act. The election of the appellant had to be declared as void in these circumstances by the High Court not under s. 100(1)(a), but under s. 100(1)(d)(i) of the Act. The order made by the High Court setting aside the election of the appellant is, therefore, in accordance with law. There is no ground for interfering with it.

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The appeal fails and is dismissed with costs.

V.P.S. *Appeal dismissed.*