A

WOPANSAO

v.

N. L. ODYUO & ORS.

July 28, 1971

B [J. M. SHELAT AND A. N. RAY, JJ.]

Representation of the People Act, 1950—*Section* 20(3) & 30—*Service Personnel—Statutory fiction does not take away right to get registered in constituency where personnel ordinarily residing, though place of service also—Electoral roll—Finality of.*

C The appellant challenged the election of respondent No. 1 to the Naga Land Assembly on the ground that the result of the election in so far as it concerned the respondent had been materially affected by the improper reception of votes cast in his favour by the personnel of the 12th Battalion Assam Rifles. It was urged (i) that the Electoral Registration Officer had no jurisdiction to register the personnel of the 12th Batallion Assam Rifles as voters, because, the service personnel under s. 20(3) of the 1950 Act would be deemed to be ordinarily resident on any date in the constituency D in which, but for his having such service qualifications he would have been ordinarily resident on that date and (ii) that the service personnel were not Indian citizens. The High Court dismissed the election petition. Dismissing the appeal to this Court,

HELD: (i) Section 30 of the 1950 Act does not confer jurisdiction on a civil court to entertain or adjudicate upon a question whether a person is or is not entitled to register himself in the electoral roll of a consti- E tuency or to question the illegality of the action taken by or under the authority of the Electoral Registration Officer or any decision given by the authority appointed under the 1950 Act for the revision of any such roll. The civil court therefore would have no jurisdiction to adjudicate upon a question whether the personnel of the 12th Battalion Assam Rifles in the present case were validly registered as service electors. [958E, F]

B. M. Ramaswamy v. *B. M. Krishnamurthy,* [1963] 3 S.C.R. 479 and F *Kabul Singh* v. *Kundan Singh,* [1970] 1 S.C.R. 845, referred to.

(ii) But lack of power in the Electoral Registration Officer to register voters in violation of the provisions of the relevant statutes would lead to the ground of improper reception, refusal or rejection of any vote or reception of any vote which is void and would, therefore, be a ground for avoiding the election under s. 100(1)(d) (iii) of the 1951 Act. [959G]

G *Baidyanath Panjiar* v. *Sitaram Mahto,* [1970] 1 S.C.R. 839, referred to.

(iii) In the present case the Electoral Registration Officer was within his jurisdiction to register the personnel of the 12th Batallion as ordinary residents in the constituency by reason of their statements in the prescribed forms. The effect of s. 20(5) of the 1950 Act is that statement of a member having service qualification is to be accepted as correct in the absence of evidence to the contrary. There was no evidence to displace the state- H ments in the present case. [960E]

Under s. 20(3) a fiction is created that members having service qualification would be deemed to be ordinarily resident at their home town or place but for their service qualification. The statutory fiction is intended

to confer the right to be registered as electors at their home town or village but the fiction cannot take away the right of persons possessing service qualification to get themselves registered in a constituency in which they were ordinarily residing though such place happens to be their place of service. [961B] A

(iv) There was no evidence to substantiate the allegation that the members of the service personnel were not Indian citizens. On the contrary it was in evidence that the Electoral Registration Officer was satisfied about the declarations of the members of the service personnel about their citizenship. [962F] B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1792 of 1970.

Appeal under s. 116A of the Representation of the People Act, 1951 from the judgment and order dated July 17, 1970 of the Assam and Nagaland High Court in Election Petition No. 1 of 1969. C

V. K. Krishna Menon, D. P. Singh, Narayana Nettar and *V. J. Francis,* for the appellant.

A. K. Sen, S. K. Ghosh, Naunit Lal, A. R. Barthakur, R. C. Chaudhary and *Swranjit Sodhi,* for respondent No. 1. D

The Judgment of the Court was delivered by

Ray, J.—This is an appeal from the judgment dated 17 July, 1970 of the High Court of Assam and Nagaland dismissing the appellant's election petition. E

The appellant, respondent No. 1 Odyuo and respondents No. 2 and 3 were candidates at 37-Wokha Constituency at the election held in the month of February, 1969 for the purpose of constituting a new Legislative Assembly of the State of Nagaland. F

The respondent Odyuo was declared elected. Odyuo obtained 1517 votes and the appellant 1485 votes. Odyuo secured 32 votes more than the appellant.

The appellant challenged the election of the respondent Odyuo as a member from 37-Wokha Constituency in the Nagaland Constituent Assembly. The grounds for impeaching the election were principally these. First, the result of the election in so far as it concerned the respondent Odyuo had been materially affected by the improper reception of 348 votes cast in his favour by the personnel of the 12th Battalion Assam Rifles then posted at Wokha and also by the wives of some of them who in view of section 20(3) of the Representation of the People Act, 1950 referred to for the sake of brevity as the 1950 Act were not eligible to be enrolled as voters in the electoral roll of the Wokha G H

A Constituency. Second, the majority of those 348 voters were not citizens of India, and, therefore, the votes cast by them in favour of the respondent Odyuo were void. Third, if the aforesaid 348 votes or the majority of them as void votes were left out of account, the appellant had secured a majority of valid votes.

B Among the ten issues framed at the trial counsel for the appellant advanced arguments only on two issues. First, whether the personnel of the 12th Battalion, Assam Rifles whose names are registered as service electors in the last part of the Electoral Roll for 37-Wokha Constituency would, but for their service qualification, have been ordinarily resident of Wokha Constituency within the meaning of section 20(3) of the Representation of the C People Act, 1950. Second, whether any of the electors registered as service electors in the last part of the said Electoral Roll were not Indian citizens.

This Court in *B. M. Ramaswamy* v. *B. M. Krishnamurthy & Ors.*(1) held that the finality of the electoral roll cannot D be challenged in a proceeding impeaching the validity of the election. The effect of section 30 of the 1950 Act was construed by this Court in the recent decision in *Kabul Singh* v. *Kundan Singh & Ors.*(2) to be that sections 14 to 24 of the 1950 Act are a complete code in the matter of preparation and maintenance of electoral rolls and section 30 of the 1950 Act does not confer E jurisdiction on a civil court to entertain or adjudicate upon a question whether a person is or is not entitled to register himself in the electoral roll in a constituency or to question the illegality of the action taken by or under the authority of the Electoral Registration Officer or any decision given by the authority appointed under the 1950 Act for the revision of any such roll.

F The civil court therefore would have no jurisdiction to adjudicate upon a question whether the personnel of the 12th Battalion Assam Rifles in the present case were validly registered as service electors. The contention on behalf of the appellant in the present case was that the Electoral Registration Officer had no jurisdiction to register the personnel of the 12th Battalion G Assam Rifles as voters in Wokha Constituency because the service personnel under section 20(3) of the 1950 Act would be deemed to be ordinarily residents on any date in the constituency in which, but for his having such service qualification, he would have been ordinarily resident on that date. The gist of the appellant's contention is that the members having service quali- H fication cannot be registered as voters in the constituency in which they are posted or stationed in service and the Electoral

(1) [1963] 3 S.C.R. 479. (2) [1970] 1 S.C.R. 845.

Registration Officer would have no jurisdiction to register the persons having service qualification as voters in the constituency in which they are stationed in service. The jurisdiction of the Electoral Registration Officer who registered the personnel of the 12th Battalion Assam Rifles as voters in Wokha Constituency was impeached on the ground that the service personnel were in the eye of law not ordinarily resident in the Wokha Constituency and as such they were not eligible to be registered as voters in the electoral roll of the said constituency.

The other grounds on which the qualification of the service personnel to be registered as voters in the Wokha Constituency was questioned was that they were not Indian citizens. Article 326 of the Constitution confers voting rights on citizens of India. Section 16 of the 1950 Act disqualifies a person for registration as a voter if he is not a citizen of India. Section 62 of the Representation of the People Act, 1951 called the 1951 Act prohibits a person from voting at an election in any constituency if he is subject to any disqualifications mentioned in section 16 of the 1950 Act. Under section 100(1)(d)(iii) of the 1951 Act if the result of the election in so far it concerned the returned candidate has been materially affected by the improper reception, refusal or rejection of any vote or reception of vote which is void, the court would have jurisdiction to declare such an election void. Therefore, if the allegation that the personnel of the 12th Battalion Assam Rifles were not Indian citizens was established, it was submitted that the election would be declared void.

The jurisdiction of the Electoral Registration Officer to register the voters was submitted on behalf of the appellant to be an infraction of the provisions contained in section 20 of the 1950 Act on the ground of the service personnel not being entitled to be voters at Wokha Constituency, and of section 16 of the 1950 Act read with section 62 of the 1951 Act challenging the qualification of the voters on the ground of citizenship. This Court in *Baidyanath Panjiar* v. *Sitaram Mahto & Ors.*(1) held that the lack of power of the Electoral Registration Officer to register voters in violation of the provisions of the relevant statutes would lead to the ground of improper reception, refusal or rejection of any vote or reception of any vote which is void and would, therefore, be a ground for avoiding the election under section 100(1)(iii) of the 1951 Act.

Section 20 of the 1950 Act gives the meaning of the words 'ordinarily resident'. Under section 20(3) of the 1950 Act any person having a service qualification shall be deemed to be ordinarily resident on any date in the constituency in which, but for his having such service qualification, he would have been ordinarily resident on that date. Service qualification is defined in section

(1) [1970] 1 S. C.R. 839.

A 20(8) of the 1950 Act to mean *inter alia* a member of the Armed Forces of the Union, or a member of a force to which the provisions of the Army Act, 1950 have been made applicable. Section 20(5) of the 1950 Act enacts that the statement of any person as is referred to in section 20(3) in the Act made in the prescribed form and verified in the prescribed manner, that but for his having the service qualification he would have been ordinarily B resident in the specified place on any date, shall, in the absence of evidence to the contrary, be accepted as correct. Under section 20(6) of the 1950 Act the wife of any such person as is referred to in sub-section (3), shall if she be ordinarily residing with such person be deemed to be ordinarily resident in the constituency specified by such person under sub-section (5).

C

The personnel of the 12th Battalion Assam Rifles at Wokha had indisputably service qualification. It is in evidence that the personnel of the 12th Battalion had been residing at Wokha 10 years prior to the time of the preparation of the electoral rolls and at the time of preparation of the electoral rolls resided at D Wokha. The service personnel made statements under section 20(5) of the Act that but for their having the service qualification they would have been ordinarily residents at Wokha. They also made statements that their wives were residing with them. They submitted forms in the prescribed forms. These statements made under Rule 7 of the Registration of Electoral Rules, 1960 were E submitted to the Registration Officer. The effect of section 20(5) of the 1950 Act is that statement of a member having service qualification is to be accepted as correct in the absence of evidence to the contrary. There was no evidence to displace the statements in the present case. The evidence is that the Electoral Registration Officer accepted the statements as correct and registered the F names of the personnel of the 12th Battalion.

The contention on behalf of the appellant was that a member having service qualification can only be ordinarily resident at the constituency in which but for his having service qualification he would have been ordinarily resident on that date, and, there- G fore, since Wokha was the place for service, Wokha could not be the place for ordinary residence and his home town or village would be the only place where he would be ordinarily resident. Such a construction would be misreading section 20(3) of the 1950 Act, having service qualification would be deemed to be ordinarily resident H at their home town or place but for their service qualification. When the personnel made statements to the effect that they ordinarily resided at Wokha, they did not want to take advantage of the fiction of being ordinarily resident at their home

town or village but they stated that they were ordinarily resident at Wokha. The Electoral Registration Officer was within his jurisdiction to register the personnel of the 12th Battalion as ordinary residents at Wokha by reason of their statements in the prescribed forms. The statutory fiction is intended to confer the right to be registered as electors at their home town or village but the fiction cannot take away the right of persons possessing service qualification to get themselves registered at a constituency in which they are ordinarily residing though such place happens to be their place of service.

A contention was advanced on behalf of the appellant that in registering the service electors the Registration Officer did not exercise his discretion but merely carried out the orders and directions of the Chief Electoral Officer. The High Court referred to the directions and instructions for preparation of electoral rolls for Armed Forces personnel and held that the statements in form No. 2 as prescribed by Rule 7 of the Registration of Electoral Rules, 1960 were checked by the Officer-in-charge of the Record Office and were thereafter forwarded to the Chief Electoral Officer concerned in whose office the statements were sorted out according to the constituency and thereafter forwarded to the Electoral Registration Officer concerned. We agree with the reasons and conclusion of the High Court that the decision of the statutory authority which acted on the declarations submitted by the service personnel verified and found to be correct was beyond any challenge on the materials on record.

The contentions on behalf of the appellant were that of the 348 service electors 37 were not Indian citizens, 35 of them being Nepali and 2 Sikkimese and further that out of the remaining service electors excepting 69 the rest were not Indian citizens. These were the allegations of the appellant in the particulars furnished by him in an application dated 4 October, 1969.

The appellant in his evidence stated that he was not clear whether the service electors were citizens of India or foreigners. It was also his evidence that when he asked the Record Officer at Shillong he learnt that many of the service personnel were not Indian citizens. The evidence of the appellant is not substantive evidence, or any proof of the allegation. Part of it is hearsay and is not corroborated. The other part is not of evidentiary value.

The appellant relied heavily on the evidence of P. W. 6, Dhrubajyoti Lahiri in proof of the allegation that the majority of the service personnel were not Indian citizens. Lahiri said that there was a Long Roll in two volumes which were marked Exhibits 17 and 18. The Long Roll was the register containing the residential particulars of the personnel, the date of enrolment, and

other heads of entries, namely, serial number in the book, number of personnel, rank, name, father's name, religion and class or caste, residential particulars giving village, nearest railway station, Post Office, Tehsil and Thana, District and Province, date of birth, enrolment, discharge, Education. There is no column or heading regarding nationality in the Long Roll. Exhibit 19 which was tendered in evidence was a list in tabular form. Exhibit 19 was prepared by Lahiri. He said that he himself compared it with the Long Roll. Lahiri's evidence was that there was no column in the Long Roll for citizenship. Lahiri's evidence was that the home address of some of these service personnel was Nepal. In cross-examination, Lahiri said that the service personnel were called Nepali by common parlance. Lahiri also said that the service personnel filled up the forms declaring that they were Indian citizens and Lahiri himself also asked the service personnel about their citizenship. His evidence was that these members of the service personnel were Indian citizens.

It is in evidence that the Electoral Registration Officer said that he was satisfied about the declarations of the members of the service personnel about their Indian citizenship. The High Court correctly found that in the statements furnished by the service personnel being Exhibit 6 series and Exhibit A series, they declared themselves to be citizens of India and the statements were verified by the Record Officer. The High Court also correctly held that no objection was taken at any stage and no notice was given to any member of the service personnel that their names would be objected to on the ground that they were not Indian citizens and they have not been given any opportunity of being heard in respect of the allegation. No such member of the service personnel was examined. There is no evidence to substantiate the allegation which was made that members of the service personnel were not Indian citizens. On the contrary, the evidence oral as well as documentary is overwhelming and unrebutted that each member of the service personnel made a statement declaring himself to be an Indian citizen.

The contentions advanced on behalf of the appellant fail. The appeal is dismissed with costs.

K.B.N.

Appeal dismissed.