

PETITIONER:
HARI VISHNU KAMATH

Vs.

RESPONDENT:
GOPAL SWARUP PATHAK

DATE OF JUDGMENT:
18/12/1969

BENCH:
SIKRI, S.M.
BENCH:
SIKRI, S.M.
SHELAT, J.M.
BHARGAVA, VISHISHTHA
MITTER, G.K.
VAIDYIALINGAM, C.A.

CITATION:
1970 AIR 819 1970 SCR (3) 334
1970 SCC (1) 143

ACT:
Presidential and Vice-Presidential Elections Rules, 1962 framed under s. 21 of Presidential and Vice-Presidential Elections Act (31 of 1952) Rule 4(1) requiring nomination papers to be presented personally by candidate or proposer or seconder-Nomination paper sent by post whether properly presented-Whether "received" within the meaning of r. 4(2)-Returning Officer whether can reject such nomination paper before date of scrutiny-Rule 4(1) whether mandatory or directory.

HEADNOTE:
At the election for the office of Vice-President held in 1969 the nomination paper of one 'S' was sent by post. The Returning Officer rejected it forthwith on the ground that it did not comply with the requirements of r. 4(1) of the Presidential and Vice-Presidential Rules, 1952 inasmuch as it had not been presented by the candidate or his proposer or seconder. in person. The said nomination paper was not put up for scrutiny under r. 6. The respondent won the election. The petitioner who was one of the losing candidates filed an. election petition under Art. 71 of the Constitution and s. 14 of the Presidential and Vice-Presidential Elections Act. 1952 and prayed that the election of the respondent be declared void under s. 18 of the Act. The questions that fell for consideration were :
(i) whether the nomination of S had been wrongly rejected on the ground given; (ii) whether the Returning Officer had power to reject the nomination before the date of scrutiny; (iii) whether r. 4(1) was directory or mandatory.

HELD:(i) Rule 4(1) provides only one method of presentation i.e. delivery either in person by the candidate or by his proposer or seconder. Further it mentions the time within which the nomination paper can be delivered i.e. between the hours of eleven in the forenoon and three in the afternoon. Therefore, if the nomination paper is not presented in person either by the candidate or by the proposer or seconder it cannot be deemed to have been

presented at all. There is good reason for making this rule because otherwise not only the authenticity of the person sending the nomination paper but also the time of delivery of the nomination paper would be in doubt. Since the rule provides only one method of presentation that method must be followed. The provisions of rr. 4(2), 5 and 6 support the above conclusion.

The nomination paper of 'S' could be rejected on the ground that it had not been presented in person and received before 3 O'clock in the afternoon on the last date appointed under cl. (a) of sub-Jr. (1) of r. 4. Such a nomination paper could not be treated to have been 'received' within the meaning of sub-r. (2) or r. 4 and the Returning Officer was entitled to reject it. [340 F-341 C, HI

(ii) There was no force in the submission that the Returning Officer should have waited till the date of the scrutiny. As soon as the Returning Officer finds that a nomination paper has not been duly presented and received he must reject it outright at the time it is handed over to him. [341 H-342 A]

335

(iii) Rule 4(1) is mandatory. To hold otherwise would lead to utter confusion and delay in the completion of the election. The Returning Officer would not know who and where to inform about the date of scrutiny, he would not be certain whether it is genuine, and would have to take evidence as to whether it is a genuine nomination paper or a forged paper. [342 B]

JUDGMENT:

ORIGINAL JURISDICTION : Election Petition No. 6 of 1969. Petition under Art. 71 of the Constitution of India and S. 14 of the Presidential and Vice-Presidential Election Act (Act XXXI of 1952).

Sarjoo Prasad, P. Paramegvara Rao and K. C. Dua, for the petitioner.

M.C. Setalvad, N. A. Palkhivala, M. C. Chagla, J. B. Dadachanji, Ravinder Narain and O. C. Mathur, for the respondent.

Jagdish Swarup, Solicitor-General, L. M. Singhvi and S. P. Nayar, -for the Election Commission and Union of India.

The Judgment of the Court was delivered by Sikri, J. This is a petition under Art. 71 of the Constitution and S. 14 of the Presidential, & Vice-Presidential Elections Act (XXXI of 1952)-hereinafter referred to as the Act-praying for a declaration that the election of Shri Gopal Swarup Pathak, respondent, to the office of the Vice-President of India is void.

The main ground on which this declaration is sought is, that the nomination paper of Dr. Ram Sharan Dass Sakhuja was wrongly rejected by the Returning Officer on August 6, 1969. The respondent apart from meeting this ground has raised a number of other issues including the issue whether the nomination paper of Dr. Ram Sharan Dass Sakhuja was genuine, and if not, whether the petition is maintainable. The learned counsel for the respondent strongly pressed on us that we should first try this issue suggested by him but as we have come to the conclusion that the petition must fail on the ground that the nomination paper of Dr. Ram Sharan Dass Sakhuja was rightly rejected on August 6, 1969, it is not necessary to consider the other issues that arise out of the pleadings of the parties.

The two issues suggested by the petitioner which we propose-

to discuss are

1. Whether the nomination of Dr. Ram Sharan Dass, Sakchuja has been wrongly rejected on the ground that the nomination paper was not delivered in person;

336

2. Whether the Returning Officer had power to reject the nomination even before the date of scrutiny.

The relevant facts for determining these issues may now be set out. On 19th or 20th July, 1969, the office of the Vice President of India fell vacant on the resignation of the then incumbent, Shri V. V. Giri. The Election Commission appointed Shri B. N. Banerjee, Secretary, Rajya Sabha, as Returning Officer for the election of the Vice-President of India. The Election Commission issued a notification under s. 4 appointing August 9, 1969, as the last date for filing nomination for election to the office of the Vice-President Of India and August 11, 1969, for scrutiny of nomination papers. A number of candidates filed nomination papers and on August 11, 1969, the Returning Officer made a record of proceedings. The relevant part of the pro-ceedings reads as follows

"I held the scrutiny of nomination papers for the Vice-Presidential Election today, the 11th August, 1969, at 11 A.M. in my office (Room No. 29) in Parliament House, New Delhi, 24 nomination papers were delivered to me within the time and in the manner laid down in rule 4 of the Presidential and Vice-Presidential Election Rules, 1952. These nomination papers related to :-

1. Shri S. Nagappa (One nomination paper)
2. Shri G. S. Pathak (Seventeen nomination papers)
3. Shri Sivashanniugam (Two nomination papers) (Jagannathan Pillai)
4. Smt. Manohara Nirmala (One nomination paper) Holkar
5. Shri B. P. Mahaseth (One nomination paper)
6. Shri Hari Vishnu Kamath (.Two nomination papers)

3. I gave the candidates and the others present all facilities for examining the nomination papers -of all the candidates delivered to me. The nomination paper were examined by them. No objection was raised to any nomination papers by any candidate or his representative. I scrutinised all the nomination papers and I found that they satisfied the requirements of a valid nomination paper. I accordingly accepted all the nomination papers as valid and made endorsements on all the 24 nomination papers accepting them.

337

4. I also brought to the notice of those present that I had received some nomination papers, and some other papers-purporting to be nomination papers, by post, and that I could not treat them as valid nomination papers as they were not delivered to me in accordance with sub-rule (1) of rule 4 of the Presidential and Vice-Presidential Election Rules, 1952, and that they also did not comply with, the provisions of law in other respects. I further mentioned to those present that there were in addition three other papers which, though presented to me in person, did not comply with the requirements of the law as they were not accompanied by the certified extracts from the electoral roll and suffered from other defects. I had not given any serial number to any of these papers and had rejected all of them."

One of the nominations referred to in para 4 of the proceedings was that of Dr. Ram Sharan Dass Shakuja. It appears that. the nomination papers of Dr. Shakuja, alleged to be

complete in every respect, were not delivered in person either by Dr. Shakuja. or by the proposer or seconder in person to the Returning Officer but were received by him by post on August 6, 1969. On that very day the Returning Officer did not treat the papers as valid as they were not delivered to him in accordance with sub-r. (1) of r. 4 of the Presidential and Vice-Presidential Elections Rules, 1952.

In order to discuss the issues mentioned above it is necessary to set out the relevant statutory provisions. Under s. 4 of the Act the Election Commission by notification appoints for every election (a) the last date for making nominations, (b) the date for scrutiny of nominations, (c) the last date for the withdrawal of candidatures, and (d) the date on which poll -shall, if necessary, be taken. Under s. 5 any person may be nominated as a candidate for election to the office of Vice-President if he is qualified to be elected to that office under the Constitution. Subsection (2) of s. 5 prescribes that each candidate shall be nominated by a nomination paper completed in the prescribed forms and subscribed by the candidate himself as assenting to the nomination and by two electors as proposer and seconder.

We may assume for the purpose of this case that the conditions laid down in s. 5(2) were complied with.

Section 6 deals with the withdrawal of candidature and provides that any candidate may withdraw his candidature by a notice in writing in the prescribed form subscribed by him and delivered before three o'clock in the afternoon on the date fixed

338

under clause (c) of subsection (1) of section 4, to the Returning Officer either by such candidate in person or by his proposer, or seconder who has been authorised in this behalf in writing by such candidate.

The learned counsel for the petitioner rightly conceded that if a candidate wants to withdraw his candidature the notice in writing must be delivered to the Returning Officer in person by such candidate or by his proposer or seconder who has been authorised. In other words no candidate can withdraw by sending a notice in writing by post.

Section 18 gives the grounds for declaring the election of a returned candidate to be void. One of the grounds is "If the Supreme Court is of opinion that the nomination of any candidate has been wrongly rejected or the nomination of the successful candidate or of any other candidate who has not withdrawn his candidature has been wrongly accepted, the Supreme Court shall declare the election of the returned candidate to be void."-

Section 21 gives powers to the Central Government to make rules and the two matters, among others, on which rules can be made are:

"(d) the form and manner in which nominations may be made and the procedure to, be followed in respect of the presentation of nomination papers;

(e) the scrutiny of nominations and, in particular, the manner in which such scrutiny shall be, conducted and the conditions and circumstances under which any person may be present or may enter objections there at."

In pursuance of these powers rules were framed. Rule 4 deals with the presentation of nomination papers and is in the following terms

"4. (1) On or before the date appointed under clause (a) of sub-section (1) of section 4, each candidate shall, either in person or by his proposer or seconder, between the hours

of eleven in the forenoon and three in the afternoon, deliver to the Returning Officer at the place specified in this behalf in the public notice a nomination paper completed in Form 2 in the case of a Presidential election, and in Form 3 in the case of a Vice-Presidential election, together with a certified copy of the entry relating to the candidate in the electoral roll for the Parliamentary constituency in which he is registered.

339

(2) Any nomination paper which is not received before three o'clock in the afternoon on the last date appointed under clause (a) of sub-section (1) of section 4 or to which the certified copy referred to in subrule (I) of this rule is not attached shall be rejected."

Rule 5 prescribes the procedure on receipt of nomination papers as follows :

"5. On the presentation of a nomination paper, the Returning Officer shall-

(a) sign thereon a certificate stating the date and time of presentation of the nomination paper and enter thereon its serial number;

(b) inform the person or persons presenting the nomination paper of the date, time, and place fixed for the scrutiny of nominations; and

(c) cause to be affixed in some conspicuous place in his office a copy of the nomination paper as certified and numbered under clause (a) of this rule."

Rule 6 provides for the scrutiny of nominations and is in the following terms :

"6. (1) The candidates, one proposer and one seconder of each candidate, and one other person duly authorised in writing by such candidate, shall be entitled to be present at the time of scrutiny of nominations; and the Returning Officer shall give them all reasonable facilities for examining the nomination papers, of all candidates which have been delivered within the time and in the manner laid down in rule 4.

(2) The Returning Officer shall then examine the nomination papers and decide all objections which may be made to any of them.

(3) The Returning Officer may, either on such objection or on his own motion, and after such summary inquiry, if any, as he thinks necessary, reject a nomination paper on any of the following grounds, namely :

(a) that the candidate is not eligible for election as President or Vice-President, as the case may be, under the Constitution; or

(b) that the proposer or seconder is not qualified to subscribe a nomination paper under sub-section (2) of section 5; or

340

(c) that the signature of the candidate, proposer or seconder is not genuine or has been obtained by fraud; or

(d) that the nomination paper has not been duly completed and the defect or irregularity is of a substantial character; or

(e) that the proposer or seconder has subscribed, whether as proposer or seconder, another nomination paper received earlier by the Returning Officer at the same election.

(4) The Returning Officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of sub-section (1) of section 4 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control

Provided that, in case an objection is made, the candidate

concerned shall, if he so requires, be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the Returning Officer shall record his decision on the date on which the proceedings have been adjourned.

(5)The Returning Officer shall endorse on each nomination paper his decision either accepting or rejecting it and if the nomination paper is rejected, he shall record in writing a brief statement of his reasons for rejecting it."

The question whether a candidate is entitled to send his nomination papers by post to the Returning Officer may now be considered. It will be noticed that r. 4 provides only one manner of presentation, i.e., delivery either in person by the candidate or by his proposer or seconder. Further it mentions the time within which it can be delivered, i.e., between the hours of eleven in the forenoon and three in the afternoon. It seems to us that if the nomination paper is not presented in person either by the candidate or by the proposer or the seconder. it cannot be deemed to have been presented at all. There seems to be good reason for making this rule because otherwise not only the authenticity of the person sending the nomination paper will be in doubt but also the time of the delivery of the nomination paper would be in doubt.

Be that as it may, if the rule provides one method of presentation that method of presentation must be followed. That this

341

is the only method of presentation of nomination papers is home out by subsequent provisions. Sub-rule (2) of r. 4 provides that any nomination paper which is not received before 3 o'clock in the afternoon on the last date appointed under cl. (a) of sub-s. (1) of s. 4 shall be rejected. This shows that even if a nomination paper is presented personally but after 3 o'clock in the afternoon it has to be rejected. The rule proceeds on the basis that the presentation must have been either 'in person or by the proposer or the seconder. If a nomination paper is received by post it would be difficult to say that it has been presented and received before 3 o'clock on the last date appointed under cl. (a) of sub-s. (1) of s. 4.

Rule-5 also proceeds on the basis that the presentation of a nomination paper must be in person because it requires the Returning Officer to sign thereon a certificate stating the date and time of presentation of the nomination paper and inform the person or persons presenting the nomination paper of the date, time and place fixed for the scrutiny of nominations. It is clear that r. 5 contemplates only one method of presentation. This is again evident from r. 6 which directs the Returning Officer inter alia to give the candidates and other authorised persons present reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in r. 4. In other words, the nomination papers which have not been delivered within time and in the manner laid down in r. 4 have not to be shown for purposes of scrutiny.

The learned counsel for the petitioner contends that sub-r. (2) of r. 4 gives two grounds of rejection, one that the nomination paper is not received before 3 o'clock in the afternoon of the last date appointed under cl. (a) of sub-s. (1) of s. 4, and the second that the certified copy referred to (in sub-r. (1) of r. 4 is not attached. He further says that r. 6 gives five more grounds of rejection. He says that the ground on which the nomination paper of Dr. Ram

Sharan Dass Shakuja has been rejected is not covered by either sub-r. (2) of r. 4 or r. 6 and accordingly the nomination paper of Dr. Ram Sharan Dass Shakuja could not have been validly rejected.

It seems to us that this nomination paper could be rejected on the ground that it has not been presented in person and received before 3 o'clock in the afternoon on the last date, appointed under cl. (a) of sub-r. (1) of r. 4. Such a nomination paper could not be treated to have been received within the meaning of sub-r. (2) of r. 4 and the Returning Officer was entitled to reject it.

There is no force in the second submission that at any rate the Returning Officer should have waited till the date of the scrutiny

L7Sup.(CI)170-7

342

because as soon as he finds that a nomination paper has not been duly presented and received he must reject it outright at the time it is handed over to him.

The learned counsel contends that even if there has been a breach of r. 4(1), the rule is not mandatory and the breach of it should not be deemed fatal. We are unable to agree with this submission. As we have mentioned before, the rules contemplate only one method of presentation and if that method is not followed the nomination papers cannot be held to be validly presented and must be rejected outright. To hold otherwise would lead to utter confusion and delay in the completion of the election. The Returning Officer would not know who and where to inform about the date of scrutiny; he would not be certain whether it is genuine, and would have to take evidence as to whether it is a genuine nomination paper or a forged paper.

In the result the petition fails and is dismissed with costs. The petitioner will pay to the respondent Rs. 500 as total amount of costs.

G.C.

Petition dismissed.

343