

Dev Kanta Barooah Vs Kusha Ram Nath and Another

Court: Gauhati High Court

Date of Decision: April 17, 1958

Acts Referred: Representation of the People Act, 1951 â€” Section 100(1), 30, 33(1), 36(2), 36(4)

Citation: AIR 1959 Guw 68

Hon'ble Judges: H. Deka, J; G. Mehrotra, J

Bench: Division Bench

Advocate: S.M. Lahiri, -General and R.C. Chaudhury, for the Appellant; S.K. Ghose, N.M. Lahiri, B.M. Goswami, J.P. Bhattacharjee and M.C. Pathak, for the Respondent

Judgement

H. Deka, J.

These are two connected matters. One is an appeal by Dev Kanta Barooah against the decision of the Election Tribunal

presided over by Mr. R. Labhaya, whereby the election of the appellant for the general seat in the Assam Legislative Assembly from the Nowgong

double member Constituency was set aside, and the other is a petition in connection with this appeal by one Beliram Das who was one of the

candidates for the reserved seat in the same constituency, alleging that the judgment of the Election Tribunal was bad so far as it refused to set

aside the election of the Scheduled Caste candidate Mahendra Nath Hazarika, who was returned for the reserved seat in the same constituency.

2. The facts shortly put are as follows: Kusharam Nath who was one of the candidates for the general seat in the Nowgong Constituency of the

Assam Legislative Assembly called in question the election of Dev Kanta Barooah by a petition u/s 81 of the Representation of the People Act

alleging that his nomination paper or papers were illegally rejected by the Returning Officer on scrutiny on 1-2-57. The petitioner filed five

nomination papers for election to the general seat of the Nowgong Constituency of the Assam Legislative Assembly,--three of them being filed on

the 23rd January and the other two on 28-1-1957, which was declared to be the last date for receiving nomination papers.

No error or omission was detected by the Returning Officer or Officers on the date of presentation of these nomination papers and they were duly

endorsed after verification, as provided u/s 33(4) of the Representation of the People Act. The first three papers were received by the Deputy

Commissioner of Nowgong who was the Returning Officer for Nowgong Constituency and the other two were received by the Additional Deputy

Commissioner who was then the Assistant Returning Officer for the said constituency. The papers came up for scrutiny on 1-2-1957 before the

Returning Officer Mr. Rahman who on an objection raised on behalf of Dev Kanta Barooah rejected the nomination papers of the petitioner by his

order or orders dated 1-2-57 purported to be u/s 36(2)(b) of the Representation of the People Act (which for the purpose of shortness we shall

hereafter call "the Act").

As a result of this order, the petitioner was deprived of his right to stand as a candidate and Dev Kanta Barooah was returned from the general

seat by beating his two other rivals. Mahendra Nath Hazarika--respondent No. 5 in this appeal--was declared elected for the seat reserved for the

members of the Scheduled Caste in that constituency. The election of Dev Kanta Barooah alone was questioned on the ground that the nomination

paper or papers of Kusharam Nath for the general seat was illegally rejected by the Returning Officer.

The case was resisted by Dev Kanta Barooah and Mahendra Nath Hazarika who filed a joint written statement alleging inter alia that the

nomination papers were correctly rejected inasmuch as the name of the constituency was not properly stated therein against relevant entries in the

forms. Section 100(1)(c) of the Act provides that subject to the provisions of Sub-section (2), if the Tribunal is of opinion that any nomination has

been improperly rejected, the Tribunal shall declare the election of the returned candidate to be void. Therefore the material issue was whether the

nomination of Kusharam Nath was improperly rejected by the Returning Officer by his order of 1-2-57. The two relevant issues framed by the

Tribunal run as follows:

Issue No. 3: Whether the nomination papers filed by the petitioner were valid and were improperly rejected.

Issue No. 4: Whether the Section of Respondent No. 1 is illegal and void.

3. Before entering into the merits of the case we might refer to the relevant provisions of the Act and rules framed thereunder which would be of

importance in connection with the subject-matter under appeal. The relevant portion of Section 33 of the Act runs as follows:

33. Presentation of nomination paper and requirements for a valid nomination.--(1) On or before the date appointed under Clause (a) of Section

30 each candidate shall, either in person or by his proposer, between the hours of eleven O'clock in the forenoon and three O'clock in the

afternoon deliver to the returning officer at the place specified in this behalf in the notice issued u/s 31 a nomination paper completed in the

prescribed form and signed by the candidate and by an elector of the constituency as proposer.

* * * *

(4) On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate

and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls:

Provided that the returning officer shall permit any clerical or technical error in the nomination paper in regard to the said names or numbers to be

corrected in order to bring them into conformity with the corresponding entries in the electoral rolls; and where necessary, direct that any clerical or

printing error in the said entries shall be overlooked.

From Sub-section (1) of Section 33 reproduced above, it will appear that the nomination paper has to be completed in the prescribed form and

signed by the candidate and by an elector of the Constituency as proposer. The "prescribed" form in this case coming under Rule 4, is form 2B

given in the schedule and the relevant part thereof for the purpose of this case is as follows:

Form 2B

Nomination Paper

(See Rule 4)

Election to the Legislative Assembly of(State)

(To be filled by the proposer)

I hereby nominate as a candidate for election from the..... Assembly Constituency.

1. Full name of proposer

2. Electoral roll number of proposer

3. Name of candidate's father/husband

4. Full postal address of candidate

5. Electoral roll number of candidate

Date. Signature of proposer.

It will indicate that what is required to be filled in by the proposer is the name of the candidate, the name of the Assembly Constituency, the full

name of the proposer, the electoral roll number of the proposer, the name of the candidate's father, full postal address of the candidate and the

electoral roll number of the candidate. Items 2 and 5 as indicated in the form, are the only entries to be considered in this case because there was

no objection as to filling in of the other entries.

4. The expression "'electoral roll number'" occurring in these two entries has been defined in Rule 2(b) of the Representation of the People (Conduct

of Elections "'and Election Petitions) Rules, 1956, which runs as follows:

2. (1) In these rules, unless the context otherwise requires, --

(b) "electoral roll number" of a person means--

(i) the serial number of the entry in the electoral roll in respect of that person;

(ii) the serial number of the part of the electoral roll in which such entry occurs; and

(iii) the name of the constituency to which the electoral roll relates;

.....

There is a foot-note at form 2B in reference to the asterisks put against items 2 and 5 and it practically sets down the substance of rule 2(b) as I

have indicated above.

5. It is clear from Section 33(4) of the Act which I have already quoted, that on presentation of a nomination paper the Returning Officer has a

duty to satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same

as those entered in the electoral rolls and in this case un rebutted evidence is to the effect that there was such satisfaction on the part of the

Returning Officer on the occasion of the presentation of each of his nomination papers.

6. The next relevant section is Section 36 of the Act which deals with scrutiny of nominations. The relevant portion of this section provides as

follows:

36. Scrutiny of nominations. (1)

(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:

.....

(b) that there has been a failure to comply with any of the provisions of Section 33 or Section 34;

.....

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

7. Let us now come to the merits of the case. The learned Member of the Tribunal has discussed the point at issue at considerable length and has

come to the finding that there was substantial compliance with Section 33(1) of the Act in completing the form and in delivering the same and the

omission or defect if any, was not of a substantial character and that the rejection order would be hit by Section 36(4) of the Act which provided

that the Returning Officer should not reject any nomination paper on the ground of any defect which is not of a substantial character. I am quoting

below the entries in connection with items 2 and 5 of the nomination papers (in Form 2B)--filed by Kusharam Nath, from the judgment of the

Tribunal:

The entries in columns 2 and 5 of the nomination papers are as follows:

Ext. P. 1 (2) Electoral Roll Number of the proposer--"Part 10, 275 of Electoral Roll of village Phulaniati, Mouza Hatichung, Nowgong, Assam."

(2) Electoral Roll Number of the candidate --"Part 10, 275 of Electoral Roll of village Phulaniati, Mouza Hatichung, Nowgong, Assam.

Ext. P. 2 (2) Electoral Roll Number of proposer--"59 of Electoral Roll of village Phulaniati, Mouza Hatichung, P. S. Sadar, Nowgong Assam."

(5) Electoral Roll Number of the candidate--275 of Electoral Roll of village Phulaniati, Mouza Hatichung, P. S. Sadar, Nowgong Assam. In both

the above papers the proposer is Lahiram Nath.

Ext. P3 (2) Electoral Roll Number of the proposer--297 of Electoral Roll of village Kalibari, Mouza Charaibahi, P. S. Roha, Nowgong.

(5) Electoral Roll Number of the candidate--275 of village Phulaniati, Mouza Hatichung, Nowgong.

Kandarpa Nath is the proposer in this paper.

Ext. P. 4 (2) Electoral Roll Number of the proposer--Assam Legislative Assembly Constituency, Part 10, of the Electoral Roll of village Phulaniati,

Mouza Hatichung, P. S. Sadar, Nowgong, the Serial No. of entry is 59, 1956.

(5) Electoral Roll Number of candidate--Assam Legislative Assembly Constituency, Part 10 of the Electoral Roll of village Phulaniati, Mouza

Hatichung. Police Station Sadar, Serial No. of entry 275, 1956.

Ext. 5(2) Electoral Roll Number of proposer--Assam Legislative Assembly Constituency Part 10 of the Electoral Roll of village Phulaniati, Mouza

Hatichung, P. S. Sadar, Nowgong, Roll No. 59, 1956.

(5) Electoral Roll Number of the candidate Assam Legislative Assembly Constituency--Part No. 10 of the Electoral Roll of village Phulaniati,

Mouza Hatichung, P. S. Sadar, Nowgong, Roll No. 275, 1956.

The only contention on behalf of the returned candidate as to the validity of the nomination papers was that the entries in reference to items 2 and 5

were not filled in as required by law, and that the mention of the name of the constituency at the top of the form was not by itself sufficient

compliance with the requirements of the law, unless the name of the constituency was repeated at full length against entries Nos. 2 and 5 which

alone would satisfy the definition of the expression ""the electoral roll"" as given in Rule 2. The finding arrived at by the learned Election Tribunal after

consideration of the nomination papers marked as Exts. P. 1 to P. 4 and the evidence adduced by the petitioner (there being no evidence from the

opponents) is as follows:

In Ex. P. 1 and in Ex. P. 4, the name of the constituency appears in one column but not in both. Where the name of the constituency is not

expressly mentioned the part of the constituency is very significantly described. Even these two papers therefore could present no practical

difficulty to the Returning Officers when satisfying themselves u/s 33(4) as to whether the names and numbers in the papers agreed with the names

and numbers in the roll. There is the evidence of Mr. Bora, Deputy Commissioner, Nowgong that he felt satisfied that the names and the numbers

in the paper were those of the persons referred to in the corresponding entries in the rolls. The omission of the word "Nowgong" in each paper

could not in the circumstances be regarded as a defect of a substantial character. Each of these papers read as a whole left no room for

controversy about the identity of the proposer and the candidate.

In the other three papers the name of the constituency "Nowgong" appears in both columns. The part of the roll is amply described. This has not

been disputed. The word "Nowgong" occurs in the description of the constituency but is not qualified by the word constituency. Even so it would

not be correct to say that the name of the constituency is not mentioned. Nowgong is the name of a town in the District. It is also the name of the

District. A Legislative Assembly Constituency also derives its name from it.

The word "Nowgong" may not by itself indicate that Nowgong constituency is meant but when ""Nowgong" appears in columns Nos. 2 and 5

where all requirements of electoral numbers are to be given and when the electoral roll number was being described in detail, the word Nowgong

obviously referred to the constituency of that name. This would also be the presumption. In this view there would be no omission of the third

requirement of the definition in these papers. In any case the omission would be of the qualifying word "constituency" and not of "Nowgong" the

name of the constituency, which is mentioned.

The returning Officer was of Nowgong constituency, Village Phulaniati, Mauza Hatichung in Sadar P.S. was part of the Nowgong Constituency.

All parts of the electoral roll must be before him for comparison. The checking could not reveal any discrepancy between the names and numbers

as given in the papers and the rolls.

Even according to the finding of the Returning Officer it is not a case of a total omission of the name of the constituency. All that he found was that

the name of the constituency (third requirement of Rule 2(b)) was not given in full. He could not overlook the, name of the constituency in both

columns at least in three papers. He did not indicate how and in what manner, the description of the name of the constituency resulted in any

practical difficulty in comparison and led to any doubt as to the identity of the persons concerned. Since the name and numbers were correctly

given, there could be no manner of doubt about the constituency which was meant.

8. We are in complete agreement with this finding arrived at by the tribunal. The only argument addressed by Mr. Lahiri, Advocate General,

appearing on behalf of the appellant Dev Kanta Barooah against the finding, is that putting in of the word "Nowgong" by itself was not enough

whereas it ought to have been described as "Nowgong Assembly Constituency". According to him "Nowgong" would mean anything but the

Nowgong Constituency or it would only supplement the postal address (covered by item No. 4). We find it difficult to accept this contention,--as a

matter of fact we find no substance.

We might in this connection refer to a document marked as Annexure "C" which is a notification u/s 30(d) of the Representation of the People Act

(printed at pages 25-26 of the Paper-Book) whereby the dates were specified for the purpose of holding the election, and the serial numbers and

the names of the Assembly constituencies were indicated therein in the table annexed to the notification. The relevant Assembly constituency was

shown as "'No, 69--Nowgong.'" The same description was given at the top of each of the nomination papers submitted by Kusharam and in the

relevant entries in columns 2 and 5 if the word "Nowgong" occurs, we cannot but say that this indicated the name of the Assembly constituency

unless there be anything else to signify any contrary meaning.

It is nobody's case that the constituency was not correctly described in the above notification. Mr. Lahiri asks us to put some other construction

on the word "Nowgong" either as "the District of Nowgong" or "the town of Nowgong,"--but if we cannot bring in the word "constituency" which

is more relevant in the context,--we cannot add any other words on mere assumption. In the circumstances of the case, we agree with the learned

Member of the Election Tribunal that the word "Nowgong" signified the "'Nowgong Assembly Constituency. What more, the members and the part

of the electoral roll were correctly given in each of these cases. Therefore it was more or less on a superficial view that the Returning Officer

rejected the nomination papers without looking into the substance of the thing.

This would get a support even from the orders he passed rejecting the nomination papers. In the nomination paper marked Ext. P. 1 where he

gives fuller reasons, the relevant passage runs as follows:

The nomination paper has not furnished requirements in full and that this is a material omission and amounts to non-compliance of Section 33(4) of

R. P. Act. The nomination paper is liable to rejection u/s 36(2)(b) of the R. P. Act. It is accordingly rejected.

The learned Tribunal has commented on this remark which would show clearly that reference to non-compliance of Section 33(4) was obviously

an error because provision of this section was sufficiently complied with which cast a duty on the Returning Officer on the presentation of the

nomination papers. All that he sought to mean was that there was non-compliance with the provision of Section 33(1) which required the filling up

of the form in the prescribed manner.

In the other papers the Returning Officer has referred to the identical reason of Section 33(4) not being complied with. This would only indicate

that the Returning Officer did not apply his mind coolly to the provisions applicable and he seemed to be in a rush to reject the nomination paper

on objections being raised on behalf of the appellant as to the defect in filling up the same. We therefore endorse the finding that the Returning

Officer had rejected these nomination papers of Kusharam on insufficient, if not erroneous grounds.

9. There was a further fact that Section 33(1) required that the proposer should be an elector of the Constituency in each of the nomination

papers,--more particularly in Ext. P. 4 in item No. 2 the Electoral roll number of the proposer is given in these words:

Assam Legislative Assembly Constituency, Part No. 10 of the Electoral Roll of village Phulaniati, Mouza Hatichung, P. S. Sadar, Nowgong the

Serial No. of entry 59, 1956.

If the word "Nowgong" is connected with the opening lines, it is clear that the electoral roll is correctly given and this description would exactly fit

in with the particulars of the electoral roll number of the candidate in entry 5, even though the word Nowgong is not there. Ext. P. 2 is even more

accurate as to the description of the proposer and the candidate so far as the electoral roll number is concerned. The fifth nomination paper--which

bore no order of the Returning Officer--was almost perfect in the matter of description of the electoral roll as defined in Rule 2.

10. I now propose to discuss the case law relied on by the parties. Mr. Lahiri relied on the case of P.N. Balasubrahmanyam Vs. Election Tribunal

of North Arcot at Vellore and Others, Mr. Lahiri drew our attention to the observations of the learned Judges in that appeal to the effect that--

the failure to fill up the particulars as to the name of the constituency in the electoral roll of which the petitioner's name was included and his serial

number in that electoral roll is not a technical defect. It is a substantial defect which the Returning Officer had no jurisdiction to overlook.

But in that case it appears that the name of the candidate was not included in the voters' list at all at the time the nomination paper was submitted.

Their Lordships further observed that "without these particulars "ex facie" there was nothing to show that the petitioner was in fact a qualified

elector in respect of the constituency.

In the instant case the name of the candidate or the proposer was there. His name, number and the serial number of the part of the electoral roll

were correctly stated and verified and in some of the papers even the name of the constituency did occur. Therefore this decision had no material

bearing on the facts of this case. What might be a major defect in certain set of facts may be a minor defect applied to other set of facts. Therefore

we see no reason to find that the observation in the case of P.N. Balasubrahmanyam Vs. Election Tribunal of North Arcot at Vellore and Others,

applies to the case under consideration. Mr. Lahiri had further drawn our attention to the observations of their Lordships occurring in paragraph 35

in the case of Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, but those observations also have no bearing on the facts of the present

case.

He had further relied on the case of Rattan Anmol Singh and Another Vs. Atma Ram and Others, There what their Lordships had to decide was

as to whether a nomination paper was sufficiently subscribed or signed by an illiterate proposer and their Lordships found that in the absence of

attestation as provided, there was no compliance with the rules. On the other hand, the observations made by their Lordships in paragraph 14 of

that decision as to whether a mistake or an omission is substantial has a bearing in this case.

In the present case there was obvious satisfaction on the part of the returning officer as to the identity of the persons and the correctness of the

entries in the electoral roll both as to the description of the proposer and the candidate in the electoral roll, whose names were pointed out in the

pertinent electoral rolls. Therefore the defect if any as to the words "Assembly Constituency" not being mentioned after the word "Nowgong

would lose much of its significance and it must be held to be of an unsubstantial character as it did not go to the root of the thing itself,--there being

sufficient description to identify the names of both the proposer and the candidate in the electoral rolls.

This would go more to support the case of the petitioner than that of the appellant. Mr. Lahiri next drew our attention to a certain unreported

decision of the Indore Election Tribunal in the case of Shankarrao v. Dr. K.N. Katju. There not only the name of the constituency was not given in

the nomination paper of Shankarrao but there was also non-compliance of the provision of Section 33(5) which needed that where the candidate is

an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or certified copy of the relevant

entries in such roll should also be filed or be produced before the Returning Officer at the time of the scrutiny Therefore the Tribunal correctly held

that the nomination paper of Shankarrao was properly rejected.

11. The learned Tribunal in our opinion has correctly relied on the decision of the Supreme Court in the case of Thakur Pratap Singh Vs. Shri

Krishna Gupta and Others, wherein their Lordships observed as follows:

We do not think it right and we deprecate the tendency towards technicality. It is substance that counts and must take precedence over mere

form. Some rules are vital and go to the root of the matter. They cannot be broken, others are only directory and breach of them can be

overlooked provided there is substantial compliance with the rules read as a whole and provided no prejudice ensues;...

In that case there was an omission to mention candidate's occupation which was regarded as a defect of an unsubstantial character as there was

enough material in the paper to enable the candidate to be identified beyond doubt.

12. The learned Election Tribunal has further relied on the case of Karnail Singh v. Election Tribunal, Hisar, reported in 10 ELR 189--a decision of

the Supreme Court--wherein it was held that--

where the name of the part of the electoral roll in which the name of the candidate appeared was not filled up against column No. 8 of the

nomination paper, but there was no difficulty in identifying the candidate, and the entry of his name in the roll was pointed out to the Returning

Officer, but the nomination was rejected by him on the ground that the nomination form had not been fully filled up,--the defect was only a

technical defect not of a substantial character and the nomination was improperly rejected.

In this particular case also there is no defect in the matter of identifying either the proposer or the candidate or their numbers in the electoral rolls in

each case, nor had this been the contention of the opposer. We need not refer to other cases cited at the bar since they are not of any material

assistance, nor do they touch the point at issue. In the above set of facts we fully endorse the view held by the Election Tribunal to the effect that

the nomination of Kusharam Nath was improperly rejected and in our opinion the election of the returned candidate, namely Dev Kanta Barooah

was validly set aside.

13. In regard to the application by Baliram Das in connection with the appeal we find no substance and his application in our opinion would not lie.

u/s 116-A of the Act an appeal would lie from the order of the Tribunal refusing to set aside the election of Mahendra Nath Hazarika, which as a

matter of fact was neither prayed for nor pressed, and if the particular candidate Beliram Das was interested in having the election of Mahendra

Nath Hazarika set aside, he ought to have preferred an appeal as provided under the Act even though he made no application u/s 81 of the Act.

Further, there is no substance in his contention inasmuch as u/s 98 of the Act the Election Tribunal has the option to pass any of the orders as

provided thereunder and the relevant order comes under Clause (b) thereof, which provides that at the conclusion of the trial of an election petition

the Tribunal may make an order declaring the election of all or any of the returned candidates to be void. Section 100(1) which I have already

referred to, strictly provides that in case of a nomination paper being improperly rejected, the Tribunal should declare the election of the returned

candidate to be void, which is an amendment of the old section which provided that the whole election should have been declared void.

The purpose of the amendment is to indicate that the election only of the returned candidate whose election is impeached, should normally be set

aside and not of other candidates, unless required by the circumstances. In this case in the Court of the Election Tribunal nobody prayed for setting

aside the election of Mahendra Nath Hazarika and the petitioner Beliram Das cannot succeed in his attempt so to do by an application in

connection with the pending appeal. His application must therefore fail and we reject it without cost.

14. In case of the appeal preferred by Dev Kanta Barooah the appeal is dismissed with costs and we assess the hearing fee at Rs. 200/- payable

to the contesting respondent Kusharam Nath.

G. Mehrotra, J.

15. I had the advantage of reading the judgment of my brother, and the facts are fully set out in his order. I would, however, like to add my own

reasons. By a notification, dated 19-1-1957, nominations of candidates for the Nowgong Constituency were invited. Nowgong Constituency is a

double member Constituency. Kusha Ram Nath, the petitioner before the Tribunal, hereinafter called the petitioner, filed five nominations for the

General Seat. Three nominations were filed on 23-1-1957 and two on 28-1-1957. Deva Kanta Barooah, hereinafter called the appellant, and

Biren Gupta, respondent No. 3, also filed nominations for the General Seat.

Mahendra Nath Hazarika, respondent No. 5, filed a number of nomination papers for the reserved seat for the Schedule caste; Respondent No. 2,

Phani Bora, had also filed his nominations for the General seat, and Baliram Das, respondent No. 4, had filed his nominations for the Reserved

seat. Scrutiny of the nomination papers took place on 1-2-1957, and the Returning Officer, on an objection by the appellant, rejected the

nomination papers of the petitioner. After the polling, the appellant was duly declared elected to the General seat and respondent No. 5 to the

reserved seat for the Schedule caste.

Thereafter a petition challenging the election of the appellant was filed on the ground that the petitioner's nomination papers were improperly

rejected. The contention of the petitioner found favour with the Tribunal, and the present appeal has been filed against the order of the Tribunal.

The question to be considered lies in a very narrow compass, and in order to appreciate the respective contentions of the parties, it is necessary to

refer to some of the provisions of the Representation of the People Act, 1951 (Act XLIII of 1951), hereinafter called the Act.

Section 30 of the Act provides for the appointment of dates for nominations by the Election Commission. Section 33 provides for the presentation

of nomination paper and requirements for a valid nomination. Clause (1) of the said section reads as follows :

On or before the date appointed under Clause (a) of Section 30, each candidate shall, either in person or by his proposer, between the hours of

eleven O'clock in the forenoon and three O'clock in the afternoon deliver to the Returning Officer at the place specified in this behalf in the notice

issued u/s 31, a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as

proposer.

Clause (4) of Section 33, which is relevant to the point at issue, reads as follows :

On the presentation of a nomination paper, the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidate

and his proposer as entered in the nomination paper, are the same as those entered in the electoral rolls :

Provided that the Returning Officer shall permit any clerical or technical error in the nomination paper in regard to the said names or numbers to be

corrected in order to bring them into conformity with the corresponding entries in the electoral rolls; and where necessary, direct that any clerical or

printing error in the said entries shall be overlooked.

Clause 33 (5) provides for the filing of the copy of electoral roll in certain circumstances. After the nomination papers have been filed, Section 36

provides for the scrutiny. Clauses (2) and (4) of Section 36, which are material for the controversy, are as follows :

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 :

(a) that 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 : Articles 84, 102, 173 and 191, and Part II of this Act, or

(b) that there has been a failure to comply with any of the provisions of Section 33 or Section 34; or

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

36 (4).--The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

Under Clause (1) of Section 33, the nomination paper is to be filed completed in the prescribed form and signed by the candidate and by an

elector of the constituency as proposer. Rule 4 of the Election and Election Petition Rules, 1956,--hereinafter called the Rules, provides that every

nomination paper presented under Sub-section (1) of Section 33 shall be completed in such one of the forms 2A to 2F as may be appropriate.

The appropriate form in this case is Form 2B, and the relevant columns are 2 and 5 of the said paper, i.e. ""Electoral roll number of proposer"" and

Electoral roll number of candidate."" Rule 2 (1) (b) of the Rules defines electoral roll number of a person as follows :

Electoral roll number"" of a person means--

(i) the serial number of the entry in the electoral roll in respect of that person;

(ii) the serial number of the part of the electoral roll in which such entry occurs; and

(iii) the name of the constituency to which the electoral roll relates.

The Election Commission issued a notification u/s 30(d) specifying the dates on which the poll for Assam Legislative Assembly was to take place in

respect of each constituency; and in column I of the table in the said notification, this constituency is described as Nowgong Constituency. Under

the provisions of the Preparation of Electoral Rolls Rules, 1956, each Assembly Constituency is to be divided into parts, and the Electoral Roll will

contain part number also.

It should be pointed out that the proposer of a candidate has to be an elector of the same constituency; but there is no such bar"" for a candidate.

Analysing the position of the nomination papers filed by the petitioner, it is clear that in the description of the constituency in the heading of the

nomination paper, the constituency has been correctly described as ""Nowgong Assembly Constituency"". Lahiram is the proposer in four of the

nomination papers. His name appears at No. 59 of Part 10 of village Phulaniati, mouza Hatichung, P. S. Sadar, Nowgong.

The name of the candidate appears at No. 275 of the same part. The name of the second proposer to Nomination Paper marked Ex. P3, appears

at No. 297 of Electoral Roll of village Kalibari, mauza Charaibahi, P. S. Roha, Nowgong. The candidate in the present case admittedly is of the

same constituency. Briefly, therefore, in Ex. P1, one of the nomination papers, in column 2, the name of the constituency is not stated, but in

column 5, the name does occur. In Exhibits P2 and P3, the name of the constituency appears both in columns Nos. 2 and 5. In Ex. P4, the name

of the constituency appears in column 2, but not in column 5.

It is not disputed that the requirements I and II of the rule 2(b) which defines electoral roll number, have been complied with. The only description

wanted in these nomination papers is the name of the constituency to which the electoral roll relates. It has also been found, and in our opinion

correctly, by the Tribunal that the Returning Officer who received the nomination papers, was satisfied that the papers were in order, as required

u/s 33(4) of the Act. The nomination papers have been rejected by the Returning Officer on the date of the scrutiny on the ground that they did not

comply with the requirement of Section 33(1), though in the order it is given as Section 33(4).

What the Returning Officer meant by the non-compliance with Section 33(4) was that the nomination papers were not in order as the requirement

of the third ingredient of an electoral roll number, as defined in the Rules, has not been complied with. The finding of the Tribunal is that there has

been compliance with the provisions of Section 33(1) in this case; and the omission of the third requirement of the definition of "Electoral Roll

Number" is only a defect of non-substantial character, and the nomination paper should, therefore, not have been rejected in view of the provisions

of Section 36(4).

Mr. Lahiri who appears for the appellant, has canvassed two points before us. Firstly, he contends that the omission in the present case cannot be

regarded as a defect, but it is a non-compliance with the provisions of Section 33(1) and consequently falls in the category of cases u/s 36(2)(b),

& not Section 36(4), and secondly, that even if it be considered to be a defect, it is one of substantial character, and is not covered by the

provisions of Section 36(4). I see no substance in any of these two contentions. The two clauses of Section 36 of the Act are not mutually

exclusive of each other.

Every non-compliance with the requirements of the form u/s 33(1) is in a way a defect in the form, and every defect is in substance a non-

compliance with the requirement of Section 33(1). In each case, it will have to be considered whether the particular defect can be regarded as a

defect of non-substantial character, or not. What is a defect of non-substantial character, has not been enumerated anywhere in the Act. No

exhaustive definition can be given of the defect of non-substantial character. It will have to be determined from the nature of the defect, the

underlying purpose for which the compliance has been insisted upon in the Act, and the fact of the Returning Officer's satisfaction at the stage

when the nomination papers had been presented.

In the case of Rattan Anmol Singh and Another Vs. Atma Ram and Others, it has been laid down by the Supreme Court that if there has been a

non-compliance with the provisions of Section 33(1), such a non-compliance will entitle the Returning Officer to reject the nomination paper unless

it is saved u/s 36(4). This case is a complete answer to the contention of the appellant that Sections 36(2)(b) and 36(4) are mutually exclusive and

a non-compliance covered by Section 36(2)(b) does not come within the scope of Section 36(4).

In that case, the proposer and the seconder were illiterate; their thumb marks were not attested at the time when they were made, and it was held

that it was not a defect of technical nature but was one of substantial character. It was, however, observed as follows at page 47 of the Report (E.I.

LR): AIR 513):

The question therefore is whether attestation is a mere technical or unsubstantial requirement. We are not able to regard it in that light. When the

law enjoins the observance of a particular formality it cannot be disregarded and the substance of the thing must be there. The substance of the

matter here is the satisfaction of the Returning Officer at a particular moment of time about the identity of the person making a mark in place of

writing a signature. If the Returning Officer had omitted the attestation because of some slip on his part, and it could be proved that he was satisfied

at the proper time, the matter might be different because the element of his satisfaction at the proper time, which is of the substance, would be

there, and the omission formally to record the satisfaction could probably, in a case like that, be regarded as an unsubstantial technicality. But we

find it impossible to say that when the law requires the satisfaction of a particular officer at a particular time, his satisfaction can be dispensed with

altogether".

These observations go to show that the principle underlying the object for which a particular requirement has been imposed, is a relevant

consideration to judge whether the failure to carry out such a requirement is or is not a substantial defect. In this case, the want of attestation was

considered fatal as the Returning Officer was not satisfied with regard to the identity of the proposer from the materials before him.

Respondents' counsel cited two English cases Baldwin v. Ellis (1929) J KB 273 and R. v. Tugwell (1868) 3 QB 704, in support of his contention,

besides the cases dealt with by the Tribunal. In the first case, in column 5 under the heading "How qualified", it was only mentioned that the

persons nominated were ""Local Government electors"", and the nomination papers did not state the name of the parish for which they were

qualified as Local Government elector. This omission was considered fatal and was not regarded as a mere inaccurate description of the person

nominated.

Rule 33 which was pleaded in this case, was differently worded than 9. 36(4) of the Act. That was a case where the omission to mention the name

of the parish was such as to give no idea to the Returning Officer if the person was qualified or not. In the second case also, it was a case of total

omission, and not of inaccuracy in the description. Reliance was then placed on the case of P.N. Balasubrahmanyam Vs. Election Tribunal of North

Arcot at Vellore and Others, In this case no doubt the omission to mention the name of the constituency, in the electoral roll of which the

petitioner's name was included, and his serial number in that electoral roll, was regarded as a non-compliance with Section 33(1), and not saved

by Section 36(4); but there admittedly the petitioner's name at the date of the presentation of nomination was not on electoral roll of any

constituency.

It was, therefore, in substance a want of qualification. Besides this, the column was totally blank, it mentioned nothing--neither the name of the

constituency nor the serial number, because there was none. The following observation will give the ratio of this case :

We agree with the Election Tribunal that the omission to give the particulars as to the electoral roll and the serial number therein was a good

ground for the rejection of the nomination paper by the Returning Officer u/s 36(2)(d) of the Act. In one sense, this non-compliance is intimately

bound up with the other defect, namely, that the petitioner was not on the roll of any parliamentary constituency on the date of the nomination.

In the case of Karnail Singh v. Election Tribunal, Hissar, reported in 10 ELR 189, the omission to state the part of electoral roll in which the

candidate's name appears, was not considered fatal by the Supreme Court. The main contention of the appellant's counsel is that the Tribunal was

not right in holding that the criterion for determining the character of the defect was only if the identity of the proposer could or could not be

known.

From looking into other materials, the identity of the proposer or candidate can always be determined, but if the requirement of any rule has not

been complied with, it will be non-compliance with Section 33(1). The Tribunal, in my opinion, did not hold that in every case where the identity

could be established with reference to other materials, no defect in the nomination form could ever be regarded as of substantial character. What

the Tribunal has laid down is that the object underlying the requirement of giving the candidate's electoral roll number is to give sufficient material to

the Returning Officer to satisfy himself about the identity of the proposer or the candidate, and if the entry in the required column was enough to

satisfy the Returning Officer about the identity, the part which was left out could not be regarded as a defect of substantial nature.

The second line of criticism of the judgment of the Tribunal by the counsel for the appellant was that the Tribunal has drawn an artificial distinction

between a partial and a total omission; to the extent there was an omission, it was a total omission, and thus a non-compliance with the provision of

Section 33(1). I do not think the distinction made by the Tribunal is artificial. The requirement in the present case of Section 33(1) was to give the

electoral roll number of a proposer or the candidate. The electoral roll number itself, by virtue of its definition in Rule 2(b), consists of three parts.

If none of the three parts of the definition had been mentioned in the column, it could be regarded as a total omission; but in the present case,

where some of the ingredients of the definition of the electoral roll number have been given, it cannot be regarded as a total omission but only a

partial omission. It cannot be said that the candidate failed to fill in the column. It will be doing no violence to language to say that the column has

been filled in a defective manner. The complete failure to make any entry in the column will not give any material to the Returning Officer to be

satisfied about the identity of the person, while the partial omission may be such as, in the circumstances of the case, may be no hindrance to the

Returning Officer satisfying himself about the identity of the person.

16. I have carefully examined the defects pointed out in the nomination papers filed by the petitioner respondent and, in my opinion, none of the

defects can be regarded as one of substantial character; and in the circumstances of the case, the provisions of Section 36(4) were attracted. The

nomination papers were improperly rejected, and the election of the appellant was rightly set aside by the Tribunal. I, therefore, concur with the

order proposed by my brother.