
Shyam Sundar Gupta Vs Deokinandan Pddar Ors.

Election Petition Case No. 1 of 1982

Court: Calcutta High Court

Date of Decision: July 22, 1985

Acts Referred:

Representation of the People Act, 1950 " Section 14, 15, 16, 16, 17#Representation of the People Act, 1951 " Section 100(1)(a), 100(1)(c), 100(1)(d)(iv), 2(e), 20(7)

Citation: 90 CWN 478

Hon'ble Judges: Ajit Kumar Sengupta, J

Bench: Single Bench

Advocate: Ranjan Dutta and Samar Rudra, for the Appellant; R.K. Lala and G. C. Law, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Sengupta, J.

In this election petition, Shyam Sundar Gupta, the election petitioner has challenged the election on May 20, 1982, of

the respondent No. 1, Deoki Nandan Poddar, as the returned candidate from 143, Jorasanko Assembly Constituency in the State of West

Bengal. The grounds of challenge, mainly, are that the respondent No. 1 is not an elector of 143, Jorasanko Assembly Constituency, that he was

not on the date of the said election held on 19th May 1982 or at all an elector for 157, Vidyasagar Assembly Constituency and that the entry at

serial No. 661 Part No. 92 of 157 Vidyasagar Constituency did not relate to the respondent no. 1 and the elector mentioned in the said entry and

the respondent No. 1. are different persons. Accordingly the respondent No. 1 is not qualified to fill a seat in the West Bengal Legislative

Assembly from 143, Jorasanko Constituency and the nomination papers filed by the Respondent No. 1 are invalid. Therefore the election of the

Respondent No. 1 is void. The allegation made in the petition are that on 26th April 1982 during the scrutiny of the nomination paper of the

candidates for the said Constituency for election held on May 19, 1982, it appeared that the respondent no. 1 purported to describe himself in his

nomination paper as an elector of 157, Vidyasagar Assembly Constituency in the State of West Bengal, and his name was allegedly registered as

elector in Part No. 92, Serial No. 661, of the Electoral Roll of 157, Vidyasagar Assembly Constituency. It is further alleged that at the time of the

said scrutiny it appeared that the respondent No. 1 had purported to file along with the nomination papers a certified copy of the entry in the

Electoral Roll for 1982 Vidyasagar Assembly Constituency, which reads as follows :

WEST BENGAL LEGISLATIVE ASSEMBLY

157 - Vidyasagar Assembly Constituency

Electoral Roll

For 1982

Volume I Part No. 92

Street - Mahatma Gandhi Road

Premises No. 116/1/1 (1st floor)

S1. Name of Electors Father"s Male Approx Age Mother"s or as on Husband"s Female 1.1.81 Name 661 Poddar Deokinandan Gurupratap M

50 Sd. M. Chattopadhyaya Second Land Acquisition Collector, Calcutta and Electoral Registration Officer. Certified to be a true copy.

Sd. Illegible.

Electoral Registration Officer

157 - Vidyasagar Assembly Constituency

2. The election petitioner objected to the consideration of the said nomination papers of the respondent No. 1 at the time of scrutiny of the same as

the respondent No. 1 was not an elector for any Assembly Constituency in the State of West Bengal and as such he was not qualified to be chosen

to fill seat in the Legislative Assembly. The entry in the Electoral Roll of 157 Vidyasagar Assembly Constituency, the certified copy whereof has

been purported to be filed by the respondent no. 1 along with his nomination papers, did not and could not relate to the respondent No. 1 who

was neither an ordinary resident nor a resident of No. 116/1/1, Mahatma Gandhi Road, Calcutta, nor he is the son of Guru Pratap Poddar, nor

aged 50 years as on January 1, 1981, as indicated in the said certified copy. It was, therefore, contended before the Returning Officer that the

respondent No. 1 was not an elector within the meaning of Section 5 of the representation of the Peoples Act, 1951.

3. It is further alleged that during the scrutiny it was contended on behalf of the respondent No. 1 before Returning Officer that his father Ghasilal

Poddar was allegedly also known as Gurupratap (Jr.) and reliance was made on 3 several alleged affidavits. The election petitioner also relied on

certain affidavits. I shall deal with these affidavits later. In the affidavits. I shall deal with these affidavits later. In the affidavits, in support of the

contention of the Election Petitioner, it was stated that the respondent No. 1 is the son of Ghasiram Poddar and he was a resident of No. 80D,

Sarat Bose Road, and he was not the son of Gurupratap of No. 116/1/1, Mahatma Gandhi Road, Calcutta.

4. It is also alleged that by letter dated 27th April 1982, the election petitioner requested the Returning Officer for the said constituency to call

upon the respondent No. 1 to produce his passport, gun licence, ration card, driving licence, income tax record, etc. but the Returning Officer did

not call for the said records nor did the respondent No. 1 produce the same before the Returning Officer.

5. Upon consideration of the submissions of the Election Petitioner and the respondent No. 1, the Returning Officer disallowed the objection made

on behalf of the election petitioner and held that all the nomination papers of the respondent No. 1 were valid. It is alleged that the said decision of

the Returning Officer is erroneous, illegal and not binding on the petitioner.

6. In the written statement filed by the respondent No. 1 it has been stated that in 1969, in West Bengal Assembly election, the petitioner

contested the said election against the respondent No. 1 from the said 143, Jorasanko Assembly Constituency and the respondent No. 1 was

elected as a member of the Legislative Assembly defeating the election petitioner from the said Constituency. In the said election, the respondent

No. 1 contested as a resident of the premises No. 116/1/1, Mahatma Gandhi Road, Calcutta (Part No. 9.2 of the Electoral Roll, 157 Vidyasagar

Assembly Constituency), and the petitioner being fully aware of the same and knowing the full identity and the residence of the respondent, I did

not raise any dispute. According to the respondent No. 1 he also cast his vote in 1980 Parliamentary election as a voter from 116/1/1, Mahatma

Gandhi Road. It is also alleged that the name of the father of the respondent No. 1 is late Ghasilal Poddar who was also known as Gurupratap

(Jr.), and the respondent No. 1, is a resident of V16/1/1, Mahatma Gandhi Road, Calcutta. It is further stated that the respondent No. 1 is not the

resident of 80D, Sarat Bose Road as alleged by the election petitioner for the last several years and occasionally he stays there with his sons,

family and grand children. It is further stated that the name of the respondent No. 1 is appearing as an elector in the Electoral Roll of 157,

Vidyasagar Assembly Constituency for more than 12 years and on the basis of such elector of 157 Vidyasagar Assembly Constituency the

respondent No. 1 contested the legislative assembly election of 143, Jorasanko Assembly Constituency held in the years 1969, 1971, 1972 and

1977. Except in 1977 Assembly Election, the respondent No. 1 won all the aforesaid elections and in the said, elections also the respondent No. 1

filed nomination paper as an elector from the said premises No. 116/1/1, Mahatma Gandhi Road, Calcutta and each of the nomination papers of

the respondent was duly accepted on the basis that the respondent was an elector from 116/1/1, Mahatma Gandhi Road, Calcutta, a premises

within 157, Vidyasagar Assembly Constituency.

7. It is further stated by the respondent No. 1 that inasmuch as an objection was taken during scrutiny, the Returning Officer adjourned the scrutiny

till 27th April 1982 at 3 p.m. to enable the respondent No. 1 to satisfy the identity relating to the entry No. 661 in Part No. 92, of 157, Vidyasagar

Assembly Constituency. For the aforesaid purpose, the respondent No. 1 produced gun licence, issued by the Calcutta Police, driving licence,

issued by the Motor vehicles Department, Calcutta, and identity cards of the respondent No 1 as a member of the Legislative Assembly of West

Bengal for the years 1969 to 1972. It is alleged that upon being satisfied with the said documents and/or as to the identity of the respondent No. 1

relating to the said entry, the Returning Officer disallowed the objection of the election petitioner. It is also stated that the respondent No. 1 also

produced records to show that the election petitioner was fully aware of the identity of the petitioner from 1969 inasmuch as he contested from the

same constituency in 1969 Mid-term Assembly Election.

All other material allegations have been denied by the respondent No. 1

8. An application was made by the election petitioner for amendment of the election petition. In the amendment application, the election petitioner

had stated that at the time when the said election petition was prepared the election petitioner was not aware that the respondent No. 1 was an

elector in the Electoral Roll for 1982 for 146, Chowringhee Assembly Constituency in the State of West Bengal, his name appearing at Serial No. 3

39, Part No. 93, of the said Electoral Roll. On the contrary, the information available to the election petitioner at that time was that the respondent

No. 1 was not at all registered as an elector in any Assembly constituency in the State of West Bengal for the 1982 election to the West Bengal

Legislative Assembly. The election petitioner sought to make out a case that the elector named in Serial No. 661, Part No. 92 of the Electoral Roll

for 1982 for the 157, Vidyasagar Assembly Constituency but was an election registered at serial number 339 Part No. 93, of Electoral Roll 1982,

of 146 Chowringhee Assembly Constituency of the West Bengal Legislative Assembly. In fact, the amendment was sought to be made that the

respondent did not file valid or proper nomination papers inasmuch he did not file along with nomination paper or produce at the time of scrutiny

thereof a copy of the Electoral Roll or the relevant part thereof or a certified copy of the relevant entries of 146, Chowringhee Assembly

Constituency of which he was an elector but filed or produced a certified copy of. the entry at Serial No. 661 in Part. 92 of 157, Vidyasagar

Assembly Constituency whereof he was not an elector and the said entry did not relate to him.

9. The said application for amendment was dismissed by my judgment dated 4th July, 1985 on the ground that the election petitioner sought to

introduce a new case which is not permissible under the Representation of the People Act, 1951.

10. On 9th December, 1983, the issues were settled by B. C. Basak J. and the following issues were raised :

1(a) Can the allegations made in the election petition be a subject matter of an election petition under the provisions of the Representation of

People Act, 1951 ?

(b) If not, is this application maintainable ?

2. Was the respondent No. 1 an elector at the relevant time within the meaning of Representation of People Act, 1950 read with 1951 Act ?

3. Was the respondent No. 1 qualified to be chosen to fill the particular seat in West Bengal Legislative Assembly at the relevant time ?

4. Is the election of the respondent No. 1 invalid or void on any of the grounds mentioned in paragraph 17 of the petition ?

5. To what relief, if any, is the petitioner entitled ?

B. C. Basak, J. made it clear that the question whether the respondent No. 1 impersonated anyone or not will be covered by the issue No. 2. 12.

At the hearing, Mr. R. K. Lala, Learned Counsel appearing for the respondent No. 1 has submitted that the first two issues as regards the

maintainability of the petition should be decided and thereafter only the Court should proceed to decide other issues in the event it is held that the

application is maintainable. It is his contention that the election petitioner in effect has questioned the legality of the inclusion of the name of the

Respondent No. 1 in the Electoral Roll. He has therefore submitted that this Court has no jurisdiction to go into this question decided by the

Returning Officer in accepting nomination papers by overruling the objections raised by the election petitioner. He has drawn my attention to the

various provisions of the 1950 Act as well as of 1951 Act and has submitted that having regard to the principles laid down by several decisions

and the provisions of the said Acts, the question raised by the election petitioner in this election petition cannot be given into by this Court and so

such, the election petition is not maintainable. He has relied on several decisions which I shall presently refer.

12. On the other hand, M. Ranjan Dutt, Learned Advocate appearing for the election petitioner submitted that he is not challenging the entries in

the Electoral Roll. If he would have challenged the entries in the Electoral Roll then the contention raised by the respondent No. 1 would have been

of substance. His only endeavour would be to show that the entries in the Electoral Roll under serial No. 661 do not relate to the respondent No.

1 at all. He has submitted that unless evidence is adduced, the Court cannot decide the question whether the entries in that Electoral Roll pertain to

the respondent no. 1. He submits that all the issues should be determined and the Court should not dispose the issue relating to the jurisdiction

without deciding the other issues only.

13. To appreciate the contentions raised, it is necessary to refer to certain other facts. The Election Petitioner made an application before the

Returning Officer on 26th April 1982. In the said application, he has stated, inter alia, as follows :

Shri Deokinandan Podder who has filed his nomination paper for standing as a candidate for election to the West Bengal Legislative Assembly is

not qualified to stand as such candidate for the following reasons :

(1) The said Deokinandan Poddar is not the son of Gurupratap as claimed through the certified copy of the Voters List of 157 Vidyasagar

Constituency.

(2) The said certified copy relates to another person who is the son of the said Isuruprated.

(3) The present candidate is the son of Shri Ghasi Ram and a resident of a different constituency.

(4) The identity of the said candidate is therefore not established by the said certified copy of the voters list.

(5) The identity of the said Deoki Nandan Poddar as an elector is therefore not established and he does not fulfill the essential qualification as

prescribed u/s 5(c) of the Representation of the People Act 1951.

(6) The said candidate is therefore not eligible to stand for election on the basis of the nomination paper filed by him.

(7) The identity of the candidate is seriously disputed and I object to his candidature.

(8) The wrong description as per the certified copy of the Voters list filed and relied on by him in support of his candidature is of a substantial

nature vitiating the candidature to the core and on the face of the records.

(9) As such the nomination paper of the said Deokinandan Poddar is liable to be rejected u/s 36(4) and 36(6) of the Representation of the People

Act, 1951.

14. The Returning Officer was, therefore, requested to consider the said objections and reject the nomination paper filed by the said. Deokinandan

Poddar, the Respondent No. 1.

15. On 27th April, 1982 at the date of hearing of the said objection petition the election petitioner submitted 3 several affidavits sworn by Asoke

Kumar Joshi, Danmal Chandak, and Rajendra Prasad Choudhury, in support of the objections raised by the election petitioner. Danmal Chandak,

in his affidavit, stated as follows

That I know Shri Deokinandan Poddar who has filed nomination paper for standing as a candidate for Election to the West Bengal L.A. from 143,

Jorasanko Assembly Constituency. He is the son of Late Ghasi Ram and resident of 80D, Sarat Bose Road, Calcutta. He is not the son of Guru

Pratap of 116/1/1, Mahatma Gandhi Road, Calcutta, as claimed by him.

The affidavits of Rajendra Prasad Choudhury and Asoke Kumar Joshi are in identical terms.

16. The Election Petitioner has also made an application for production by the respondent No. 1 of his passport, gun licence, ration card, driving

licence. income tax records etc.

17. Deokinandan Poddar filed an affidavit to the said objection petition stating, inter-alia, as follows :

1. Since 14 years I am an Elector of 157 Vidyasagar Constituency and at all elections held since 1969 I have duly cast my vote as a Citizen of

India and as a Voter from premises No. 116/1/1, Mahatma Gandhi Road, Calcutta (hereinafter referred to as the said premises") presently under

157 Vidyasagar Assembly Constituency (hereinafter called the said Assembly Constituency).

2. In Legislative Assembly Elections of 143 Jorasanko Assembly Constituency held in the years 1969., 1971 and 1972 I contested the said

elections as a Candidate and I was duly elected to the Legislative Assembly from the said 143 Jorasanko Assembly Constituency. Only in 1977

Assembly elections I lost the election. In the aforesaid elections I filed my nomination papers as a Voter from the said premises in the said

Assembly Constituency and my such nomination papers were duly accepted for each of the aforesaid elections.

3. I state that at the said premises in the said Assembly Constituency there never was and there is no other person by the name of Deokinandan

Poddar save and except myself. Therefore, there was and is no question of proving my identity as alleged or at all. if necessary, I shall refer to or

produce before you relevant documents in this connection at the hearing.

4. In the ensuing election of Legislative Assembly West Bengal to be held on 19th May, 1982, I have duly filed my nomination papers to contest

from the said 143 Jorasanko Assembly Constituency as a Candidate of Indian National Congress. Along with the nomination paper filed by me on

24th April, 1982, I have also filed a certified copy of the Electoral Roll of 157, Vidyasagar Constituency in accordance with Section 33(5) of

Representation of People Act, 1951.

5. On 26th April, 1982, during the scrutiny of nomination paper by the Returning Officer, objection has been raised by one Mr. Shyamsunder

Gupta one of the Contesting Candidate on the purported grounds that my father's name has wrongly been described in the certificate copy of the

voter's list filed along with my nomination paper.

6. At the outset save what has been stated herein I deny and dispute each and every allegations contained in the said letter of objection filed by

Mr. Shamsundar Gupta.

7. I state and submit that there is no difference between myself and Deokinandan Poddar as printed in the Voter's list of 157, Vidyasagar

Constituency. Since 14 years I am a voter from the said premises in the said Assembly Constituency.

8. My father Late Ghasilalji was also known Gurupratap (Jr.) Therefore if my father's name Gurupratap has been shown in the certified copy of

the said voter's list it cannot be said to be incorrect or improper. Furthermore my grand-father's name was Late Gurupratap it as such that my

father was also called Gurupratap (Jr.). Omission of the words (Jr.) after the name of my father shown as Gurupratap in the said voter's list is too

minor and should be ignored.

9. In case it is contended that my father's name should have been shown as "Ghasilal" and not as Gurupratap (Jr.) in the said voter's list then in

that event without prejudice to what has been stated hereinabove I state and submit that the said mistake or error is of a minor nature and cannot

be said to be a substantial defect which may vitiate the nomination paper. The said mistake is a printing error. I state that at premises No. 116/1/1,

Mahatma Gandhi Road, Calcutta wherefrom I am a voter against serial No. 661 of part No. 92 of the Voter's List of 157 Vidyasagar Assembly

Constituency there was and is no other person, save and except myself known and named Deokinandan Poddar who could have been included in

the said Voter's List. The identity of mine cannot be a subject of challenge as from the said Jorasanko Assembly Constituency I contested earlier

elections as a Voter from the said premises in the said Assembly Constituency and was duly elected to the Legislative Assembly, West Bengal. I

crave leave to produce relevant document and papers in this behalf at the time of hearing.

10. I state and submit that no objection was taken by the said Shyam Sundar Gupta at the time of filing of my nomination on 24th April, 1982.

Even the Returning Officer accepted the filing of my nomination papers and as such the printing error if any of my father's name in the said voter's

list as alleged was deemed to have been overlooked by the Returning Officer and on this ground as alleged by the said Shyam Sundar Gupta my

nomination paper as filed on 24th April, 1982 cannot be rejected and in fact should be accepted.

11. There is no defect whatsoever in the nomination paper in question and the same should be accepted by your Honour otherwise great prejudice

will be caused to me and my party.

18. In support of the contentions raised by the said Deokinandan Poddar, three several affidavits were filed sworn by Baldev Kishen Roy, Kushlal

Kumar, and Bhagirthmal India. All of them stated they were residents of 116/1/1, Mahatma Gandhi Road. Two of the deponents said that save

and except the said Deokinandan Poddar who has filed his nomination to contest as a candidate of Indian National Congress from 143 Jorasanko

Assembly Constituency there is no other person at the said premises No. 116/1/1, Mahatma Gandhi Road, Calcutta, who is also known and

named as Deokinandan Poddar. Bhagirthmal India has stated that he has been working as Munim for the family of Deokinandan Poddar of

116/1/1, Mahatma Gandhi Road, Calcutta, since last 30 years. His affidavit was mainly to the following effect:

2. I state that in course of my work I came to know as the fact is that father of Sri Deokinandan Poddar was also called Gurupratap (Jr.) besides

being known or called as Ghasilal.

3. I state that the name of Sri Deokinandan Poddar son of Late Gurupratap (Jr.) Poddar also known as Late Ghasilal Poddar is appearing in the

voter's list against serial No. 661 part No. 92 of the 157 Vidyasagar Assembly Constituency. I further state that at premises No. 116/ 1/1,

Mahatma Gandhi Road, Calcutta, there never was and there is no other person by the same name other than the said Deokinandan Poddar.

19. After considering the evidence produced, the Returning Officer passed the following order :

Heard the candidate and the objector. Perused the documents produced by both sides Considered. There is no doubt that the candidate is named

Deokinandan Poddar. It is also admitted by all that he is in possession of a part of the premises bearing No. 166/1/1, Mahatma Gandhi Road,

Calcutta. The objector claims that he is a resident of some other place and that his father is not named Guruparatap. The candidate claims that his

father was not only named Ghasilalji but was also known as Gurupratap (Jr.). He emphatically states that he has been residing for long in the said

address.

The fact that Sri Deokinandan Poddar is an elector of 157 Vidyasagar Assembly Constituency cannot be disestablished by three affidavits placed

by the objector at the time of hearing because the three persons concerned may not be aware of the second name of Ghasilalji. Whereas we have

affidavits of three other persons submitted by the candidate claiming knowledge of the fact that the said Deokinandan Poddar is the son of one

Gurupratap or Gurupratap (Jr.). Simply on the basis of an equal number of affidavits, swering different sort of knowledge, it will not be proper to

deny the democratic right of a candidate to contest an election when his existence and reasonably approximate description in the electoral roll

cannot be substantially doubted. I, therefoore, disallow the objection and held the nomination papers, all four of them, valid.

20. At the outset I would like to dispose of one of the contentions raised as to whether I should hear the entire matter and dispose of all the issues

at a time. It is true that the Court has to give judgment on all issues But where a issue of law is raised relating to the jurisdiction and determination

of this issue, one way or others would dispose of the case finally. Such issue may be determined independently of other issues. If the preliminary

issues which affect the very entertainment or maintainability of the election petition are decided in favour of the Respondent No. 1 the petition has

to be dismissed in entirety. Once it is held that this Court has no jurisdiction to try or entertain the election petition because of the nature of disputes

raised therein, the Court cannot thereafter decide any question on merits. The objection to the jurisdiction has been taken in the first two issues

raised and these are being determined before taking evidence on the merits.

21. The real controversy before me is whether the election petition has challenged the entries in the electoral roll and if no whether this Court has

jurisdiction to entertain and try the petition. The various decisions which are relied on by Mr. Lala have laid down in no uncertain terms that entries

found in the electoral roll are final they are not open to challenge in a proceeding challenging the vlidity of the election.

22. The first decision cited by Mr. Lala is in the case of Kanailal Bhattacharjee Vs. Nikhil Das and Another, . There the Court considered the

scope of section 30 of the Representation of the People Act, 1950. There the petitioner was an elector of the Burtolla Assembly Constituency in

Calcutta. He challenged the election of Nikhil Das, the respondent No 1 to the West Bengal Legislative Assembly election in the General election

of 1967 from the Burtolla Constituency. The principal ground on which the petition was based is that Nikhil Das's name appeared in the Electoral

Roll of the Taltola Constituency in Calcutta. In this Electoral Roll, the address of Nikhil Das has been shown as 124C, Dharmatalla Street, but

Nikhil Das never was ordinarily resident at the said premises. The petitioner asked, inter-alia, for a declaration that the election of the respondent

No. 1 was void. One of the issues raised was whether this Court has any jurisdiction to entertain or try the said petitioner and questions involved

therein. S. P. Mitra, J. as His Lordship then was, after considering the various provisions of the 1950 and 1951 Acts held as follows :

Upon considering the relevant statutory provisions and the authorities aforesaid it is at least clear that a violation or non-observance purely of the

Act of 1950 or any rules made thereunder is outside the purview of section 100(1) (d) (iv) of the Representation of the People Act, 1951, and, as

such, an Election Court which derives its jurisdiction from the 1951 Act is not entitled to look into that violation or non-observance.

23. A contention was also raised in that case by the petitioner that assuming that non-residence of a voter is not infraction of the Constitution it is

an infraction of the 1951 Act itself and as such comes within the scope of section 100(1)(d) (iv) of the 1951 Act. Dealing with the said contention,

it was contended that elector in relation to a constituency means a person whose name is entered in the Electoral Roll of that Constituency for the

time being in force and is not subject to any of the disqualifications mentioned in section 16 of the 1950 Act. It was contended that the expression

entered in the electoral roll"" means lawfully entered and the person cannot be lawfully entered in the electoral roll, unless -

(a) he is at least 21 years of age and

(b) he is ordinarily resident in the Constituency.

24. The learned Judge dealing with the said contention held as follows :

When Mr. Siddhartha Ray says that the words ""is entered in the electoral roll"" in section 2(e) of the 1951 Act should be construed as lawfully

entered in the electoral roll, he is really asking me to legislate. The definition of an elector in section 2(e), it seems to me, is relevant for the purpose

of section like S. 8(c) according to the provision a person shall not be qualified to fill a seat, other than reserved seat, in the legislative Assembly of

a State unless ""he is an elector for any Assembly constituency in that State""; here elector means in terms of Section 2(e) any person whose name is

entered or appears in the electoral roll. But it is possible that although a person's name appears in the electoral roll, he suffers from,

disqualifications under the Constitution or under the 1951 Act. That is why in Section 100(1)(a) of the Act of 1951 it is provided that an election

may be declared void on the ground ""that on the date of his election a returned canddate was not qualified, or was disqualified, to be chosen to fill

the seat under the Constitution or this Act..."". The preambles to the 1950 and to the 1951 Act when compared side by side, make it clear that the

Act of 1951 has nothing to do with the preparation of the electoral roll itself. In the premises, I am unable to accept this last contention of Mr.

Siddhartha Ray.

25. After considering the provisions of Section 30 of the 1950 Act, the learned Judge held as follows :

To my mind the above observations unambiguously establish that a High Court trying election petitions under the 1951 Act is in a similar position.

It has no jurisdiction to question the legality of inclusion of a person's name in an electoral roll except where it can be shown that there has been a

violation of an express provision of the Constitution.

The learned Judge held :

For all the reasons aforesaid I am of opinion that the result of the election in the instant case has not been materially affected either by non-

compliance with the provisions of the Constitution or by non-compliance with the Act of 1951 or any rules or orders made under the Act of 1951.

I am further of opinion that this Court has no jurisdiction to entertain or try the present petition or questions involved therein. These are my answers

to issues Nos. 4 and 5.

26. In that case the learned Judge also held that having regard to the decisions on issues of jurisdiction it was unnecessary to discuss any other

issue raised in the petition. The learned Judge however decided the other issues as evidence was taken on those issues.

27. The next decision cited by Mr. Lala is in the case of Wopansao Vs. N.L. Odyuo and Others, . In that case, the election was challenged, inter-

alia, on the ground that wives of some of the personnel of the 12th Battalion, Assam Rifles, were not eligible to be enrolled as voters in the

Electoral Roll in view of the provisions of Section 20(3) of the 1950 Act and some of the voters were not citizens of India and therefore, the votes

cast by them were void. There the Supreme Court held as follows :

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 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 Vs. B.M. Krishnamurthy and Others, , held that the finality of the electoral roll cannot 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 Vs. Kundan Singh and Others, 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 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.

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 Assam Rifles as voters in Wokha Constituency because the

service personnel u/s 20(3) of the 1950 Act would 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. The gist of the appellant's contention is that the members having

service qualification cannot be registered as voters in the constituency in which they are posted or stationed in service and the Electoral 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.

28. The next decision is in the case of Kabul Singh Vs. Kundan Singh and Others, . There in the election petition, the validity of the Returning

Officer's declaration that the appellant has been duly elected to the Punjab Legislative Council was challenged.

There the Supreme Court held as follows :

It is not the case of the appellant that Tarsem Singh had. incurred any of the disqualifications mentioned therein (S. 16 of the 1950 Act). No other

provision of law in the Act or in any other law was brought to our notice disqualifying him from exercising his vote. The right to vote being purely a

statutory right, the validity of any vote has to be examined on the basis of the provisions of the Act. We cannot travel outside those provisions to

find out whether a particular vote was a valid vote or not. In view of Section 3G of the 1950 Act, Civil Courts have no jurisdiction to entertain or

adjudicate upon any question whether any 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 any authority appointed under that

Act for the revision of any such roll. Part III of the 1950 Act deals with the preparation of rolls in a constituency. The provisions contained therein

prescribe the qualifications for being registered as a voter (Section 19), disqualifications which disentitle a person from being registered as a voter

(Section 16), revision of the rolls (Section 21), correction of entries in the electoral rolls (Section 22), inclusion of the names in the electoral rolls

(Section 23), appeals against orders passed by the concerned authorities under Sections 22 and 23 (Section 24). Sections 14 to 24 of the 1950

Act are integrated provisions. They form a complete code by themselves in the matter of preparation and maintenance of electoral rolls. It is clear

from those provisions that the entries found in the electoral roll are final and they are not open to challenge either before a Civil Court or before a

Tribunal which considers the validity of any election. In B.M. Ramaswamy Vs. B.M. Krishnamurthy and Others, , this Court came to the

conclusion that the finality of the electoral roll cannot be challenged in a proceeding challenging the validity of the election.

29. Another decision cited is in the case of Ram Awadesh Singh v. Sumitra Devi reported in AIR 1972 SC 580. There the principal questions that

arose for decision were whether the defects found in the nomination paper of the appellant are of substantial character within the meaning of that

expression in Section 36(4) of the Act, and whether it is established that the acceptance of the nomination of the appellant had materially affected

the result of the election.

In that case, the Supreme Court held :

The first question that we have got to decide is whether the defects found in the nomination paper of the appellant are of substantial character. As

mentioned earlier, the appellant was fully qualified to be nominated for the election. The only thing said against his nomination is that his nomination

paper was not properly filled in. We have earlier seen that a duty is imposed on the Returning Officer by sub-s. (4) of S. 33 to look into the

nomination paper when it is presented and to satisfy himself that the names and the electoral roll numbers of the candidate and that of the proposer

as entered in the nomination paper are the same as those entered in the electoral roll. In this case it is proved that the Returning Officer did look

into the nomination paper but unfortunately he also did not notice that the name of the appellant had been removed from the electoral roll of Arrah

constituency. If he did noticed that fact, he would have asked the appellant either to correct the mistake or to file a fresh nomination papers. We

have earlier noticed that the appellant filed his nomination paper on the 6th of January 1969 and the last date for filing the nomination paper was the

8th of that month. That being so, there would have been no difficulty for him either to correct the nomination paper filed or to file a fresh nomination

paper. We have earlier noticed that the appellant had with him a certified copy of the electoral roll of the Sandesh Constituency and he had shown

the same to the Returning Officer. Mistakes complained of occurred because both the appellant as well as the Returning Officer merely looked into

the main voters list but overlooked the deletion noted in a separate list. But the implication of Section 33(4) is that a wrong entry in a nomination

paper as regards the name of the candidate or the proposer or their electoral roll numbers is not a matter of substantial importance. That is why the

legislature requires the Returning Officer to look into them and if there are any mistakes to get them corrected. What is of importance in an election

is that the candidate should possess all the prescribed qualifications and that he should not have incurred any of the disqualifications mentioned

either in the Constitution or in the Act. The other information required to be given in the nomination paper is only to satisfy the Returning Officer

that the candidate possesses the prescribed qualification and that he is not otherwise disqualified. In other words that information relate to the proof

of the required qualifications.

30. Mr. Lala has also relied on a decision of the Supreme Court in the case of Viveka Nand Giri v. Nawal Kishore Sahi, reported in AIR 1984

SC 85 6, where the Supreme Court held that the rejection of the nomination paper of the candidate for election on the ground of difference in the

age in the electoral roll and the nomination paper would be improper, as the defect was not of a substantial character within the meaning of Section

36(4). Consequently the election of the returned candidate would be void under S. 100(1)(c). The difference in the age of the candidate as entered

in the electoral roll and the nomination paper would fall under the category of "inaccurate description" mentioned in the proviso to Section 33(4)

and it would be obligatory on the part of the Returning Officer to have it corrected or to overlook it having regard to the language of the proviso.

The Supreme Court held:

As the rejection of the nomination paper No. 42 was not on the ground that there was any difficulty as regards identity on account of the difference

in the age mentioned in the electoral roll and the nomination paper we are clearly of the opinion that the rejection of the nomination paper on the

ground of difference in the age was improper, for having regard to provisions of S. 36(4) of the Act the defect is not of a substantial character and

we hold the appellant's election is consequently void under S. 100(1)(c) of the Act on the ground of improper rejection of the nomination paper. It

is for this reason that we dismissed the appeal without any order as to costs.

31. I have considered the rival contentions. The Election Petitioner has not disputed that the returned candidate is Deoki Nandan Poddar but what

he says is that the name of father of Deoki Nandan Poddar, the Respondent No. 1 is not Gurupratap but Ghashi Ram and he is not of the age as

shown in the electoral roll nor does he reside at 116/1/1, Mahatma Gandhi Road, Calcutta. It is the submission of Mr. Dutt that he is not disputing

the propositions laid down by this Court as well as by the Supreme Court in the decisions relied on by Mr. Lala but the said principles will not

apply to the facts of this case as the election petitioner has not challenged the entries in the electoral roll. His contention is that these entries do not

relate to Deokinandan Poddar, the returned candidate. It is difficult to accept this contention on the evidence produced before the Returning

Officer as well as before this Court. As a matter of fact the election petitioner has if not directly but indirectly, challenged the entries in the electoral

roll which are conclusive. The election petitioner has challenged the finding of the Returning Officer at the time of scrutiny of the nomination paper.

The finding of the Returning Officer is based on the evidence produced before him. No evidence was produced before the Returning Officer to

show that apart from the Respondent No. 1 there was another person in the name of Deokinandan Poddar residing at No. 116/1/1, Mahatma

Gandhi Road, Calcutta. The Returning Officer considered the affidavit evidence and other documentary evidence produced before him and

rejected the objection of the election petitioner holding that the Respondent No. 1 was a resident of 116/1/1, Mahatma Gandhi Road, Calcutta. As

laid down by the Supreme Court in Ram Awadesh Singh (supra) that what is of importance in an election is that the candidate should possess all

the prescribed qualifications and that he should not have incurred any of the dis-qualifications. The candidate has to be an elector of any of the

constituencies.. Section 19 of the Representation of the People Act 1950, provides that every person who is not less than 21 years of age on the

qualifying date and is ordinarily resident in a constituency, shall be entitled to be registered in the electoral roll for that constituency. Thus, two

conditions are to be fulfilled by an elector; one as regards his age and the other his ordinary residence in the constituency. u/s 20(7) of the Act of

1950 if in any case a question arises as to whether a person is ordinarily resident at any relevant time, the question shall be determined with

reference to all the facts of the case and to such Rules as may be made in this behalf by the Central Government in consultation with the election

commission. Under the Representation of the People Act, 1951, an elector in relation to a constituency means a person whose name is entered in

the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in Section 16 of the

Act of 1950. Section 16 of the 1950 Act provides that a person shall be disqualified for registration in the electoral roll if he

(a) is not a citizen of India; or

(b) is of unsound mind and stands so declared by a competent Court, or

(c) is for the time being disqualified from voting under any provisions of any law relating to corrupt practices and other offences" in connection with

the election.

32. It is nobody's case that the respondent No. 1 has any disqualification for registration in an electoral roll u/s 16 of the 1950 Act. Two

conditions as indicated earlier are to be scrutinised by the Returning Officer as to whether the candidate has attained the age of 21 and whether he

is ordinarily resident in a constituency. Since the respondent No. 1 admittedly was not an elector of the Jorasanko constituency wherefrom he

sought the election, he was required to submit a certified copy of the electoral roll of the constituency where he is an elector. The Election

Petitioner has not disputed that the respondent No. 1 is Deokinandan Poddar. What the election petitioner contends is that the respondent No. 1

although he is deokinandan Poddar but he is not the Deokinandan Poddar as referred. to in the electoral roll and this contention is raised on the

footing that the respondent No. 1 is not the son of Gurupratap and the age recorded is not correct and he is not a resident of No. 116/1/1,

Mahatma Gandhi Road, Calcutta. Thus in substance challenges the entries in the electoral rolls. Once it is hold by the Returning Officer on the

evidence that the Respondent No. 1 was a resident of No. 116/1/1, Mahatma Gandhi Road, Calcutta, the mistake if any in the name of the father

of the respondent No. 1 or his age is more in accurate description clerical or technical or printing error which can be ignored by the Returning

Officer. It has to be borne in mind that the Returning Officer has to decide a question raised before him on the evidence adduced within the

specified time. Apart from the three affidavits filed by the Respondent No. 1 other documentary evidence which were produced before the

Returning Officer are, inter alia, (i) licence for the acquisition, possession and carrying of arms or ammunitions, (ii) driving licence and (iii) the

identity card of the Respondent No. 1 as a Member of the Legislative Assembly issued by the Secretary of the Legislative Assembly under the

Authority of the Speaker.. The Arms Licence shows that the respondent No. 1 is a resident of No. 116/1/1, Mahatma Gandhi Road, Calcutta.

This licence was issued on 12th February, 1971 and on the licence itself the photograph of the Respondent No. 1 is affixed. This licence was

renewed from time to time. The driving licence of the Respondent No. 1 with his photograph attached on it also shows that his residential address

is No. 116/1/1, Mahatma Gandhi Road, Calcutta. The Respondent No. 1 was elected as a Member of the West Bengal Legislative Assembly in

1969, 1971 and 1972 but he lost in 1977. The Secretary of the Legislative Assembly issued identify card in 1969, 1971 and 1972 to the

Respondent No. 1 showing therein that Deokinandan Poddar of Jorasanko Constituency is the resident of No. 116/1/1, Mahatma Gandhi Road.

The affidavits which have been filed in support of the case of the election petitioner only stated that Deokinandan Podder who had filed nomination

paper was the son of one Late Ghasi Ram, a resident of 80D, Sarat Bose Road and not the son of Gurupratap a resident of 116/1/1, Mahatma

Gandhi Road, Calcutta. On the contrary the father affidavits filed supporting the Respondent No. 1 stated that of the Deokinandan Poddar was

also known as Ghasilal. It has been stated categorically that at premises No. 116/1/1, Mahatma Gandhi Road, Calcutta there never was and there

is no other person by the same name other than the Respondent No. 1. On the basis of the aforesaid affidavits the Returning Officer came to the

conclusion ""that there is no doubt that the candidate is named Deokinandan Poddar. It is also admitted by all that he is in possession of the part of

the premises bearing No. 116/1/1, Mahatma Gandhi Road, Calcutta."" Once it is held that the Respondent No. 1 is the resident of 116/1/1,

Mahatma Gandhi Road, Calcutta the other question arises is whether the name of his father or the age was correctly recorded or not. Admittedly

the respondent No. 1 was elected as Member of the West Bengal Legislative Assembly in 1969, 1971 and 1972. Therefore in 1969 he could not

have been less than 21 years of age. The entry in the electoral roll as regards age is conclusive in the sense that age of the elector is not below 21

years and he has no disqualification as regards age. Thus the tests of residence and age are satisfied.

33. Several documents have been produced in this Court which also support the finding of the Returning Officer as regards the residence of the

Respondent No. 1 at the said premises. The Electoral Roll of 157 Vidyasagar Assembly Constituency for 1976 shows that Deokinandan Poddar

is a resident of 116/ 1/1, Mahatma Gandhi Road, Calcutta and name of his father is recorded as Ghashila Poddar. When Mahatma Gandhi Road

was within 33-Bowbazar assembly Constituency in 1971, the electoral roll of 1971 shows that the respondent No. 1 resides at premises No.

116/1/1, Mahatma Gandhi Road, Calcutta and name of his father is recorded as Ghasila Poddar. The voter list of Corporation of Calcutta for the

year 1979-80 shows that the Respondent No. 1 is a resident of 116/1/1, Mahatma Gandhi Road. The electoral roll of 157-Vidyasagar

Constituency for 1980 also shows that the Respondent No. 1 resides in the said premises and the father's name is recorded as Ghasilal. One of

the documents relied on by the Election Petitioner himself is a certified copy of electoral roll of 1981 where the enumeration after recording the

name of the Respondent No. 1 and his father's name as Gurupratap as resident of 116/1/1 (1st floor) and age on 1.1.81 as 50 has made the

following remarks;

Ex - M.L.A.

This person is not at here now

thus at best it can be said that there is a mistake as regards the recording of the name of the father of the Respondent No. 1. The name of his father

has been incorrectly recorded in the electoral roll of 1982. But the fact remains that the respondent No. 1 is a resident of premises No. 116/1/1,

Mahatma Gandhi Road, Calcutta. That apart there are certain other evidence which would also go to show that the finding of the Returning Officer

is correct. Rule 64 of the Conduct of Election Rules, 1961 provides that the Returning Officer shall declare the election in the prescribed Form and

complete and certify the return of Action in Form 21E and send the signed copy thereof to the Election Commissioner and Chief Electoral Officer.

The prescribed Form for return of election under Rule 64 of the said Rules provides that the name of the candidate the valid votes polled against

each candidate shall be furnished. That apart the total number of valid votes polled, total number of rejected votes, total number of tendered votes

are also to be mentioned therein. Thereafter a declaration has to be appended by the returning Officer giving the name of the candidate returned

and the address of the candidate. In the 1969 election, the Returning Officer had given the certificate on 11th February, 1969 in the return of

election that ""deokinandan Poddar of 116/1/1, Mahatma Gandhi Road, Calcutta-7, has been elected to fill the seat"" (from 131-Jorasanko

Assembly Constituency). Similar certificate was also issued on 12th March, 1971 after 1971 election.

34. I have referred to the evidence which was relied on by the Returning Officer and the evidence which has been disclosed in this proceeding only

to emphasise that the dispute was as to whether the respondent no. 1 was an ordinary resident at premises no. 116/1, Mahatma Gandhi Road,

Calcutta at the material time. In view of section 20(7) of the 1950 Act such dispute if raised has to be decided by the Returning Officer. No name

could be included in the Electoral Roll unless the person concerned has completed 21 years of age at the material time and is an ordinary resident

in a Constituency. Accordingly, the Returning Officer was concerned only to find out whether the candidate was a resident of the premises in

question as the certified copy of the Electoral Roll of 157 Vidyasagar Constituency was produced before him by the respondent no. 1. It cannot

be disputed that the respondent No. 1 was elected in the Elections held in the elections of 1969, 1971 and 1972 showing his address at No.

116/1, Mahatma Gandhi Road, Calcutta. He could not have been elected unless he was an Elector of a constituency. By challenging that the

Respondent No. 1 was not a resident of No 116/1, Mahatma Gandhi Road, Calcutta, the election petitioner has in my judgment challenged the

entries in the Electoral roll. u/s 36(7) of the 1951 Act, the Returning Officer at the time of Scrutiny of the nomination has to proceed on the basis

of a certified copy in the entry in the Electoral roll which is conclusive evidence of the fact that the person referred to in that entry is an elector for

that Constituency. That is what has been done by the Returning Officer on the evidence produced before him. I am, therefore, unable to accept the

contention of Mr. Dutt that the election-petitioner has not challenged the illegality of the entries in the Electoral Roll but he has disputed that such

entries ""do not relate to the respondent No. 1.

35. Even assuming that the name of the father of the Respondent No. 1 was not correctly recorded, this will not in any way affect the validity of the

nomination paper. Section 33 of the 1951 Act deals with the presentation of nomination papers and requirements of a valid nomination paper.

Section 33(4) provides that on the presentation of a nomination paper, the Returning Officer shall satisfy himself that the name and electoral roll

numbers of the candidates and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls. The proviso to

Section 33(4) is material for the purpose of this case which is in the following terms :

Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or

any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in

regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll

or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such

or to be commonly understood and the Returning Officer shall permit any such misnomer or inaccurate description or clerical, technical or printing

error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the

electoral roll or in the nomination paper shall be overlooked.

36. Under Rule 4 of the Conduct of Election Rules, 1961, every nomination paper shall be completed in the prescribed form. The prescribed form

for filing a nomination paper for Assembly Election is in form 28. The material part of the said nomination paper is as follows

NOMINATION PAPER

Election to the Legislative Assembly of (State)

I nominate as a candidate for election to the Legislative Assembly from the assembly constituency.

Candidate's name

His postal address

His name is entered at Serial No Part No of the electoral roll for the assembly constituency.

My name is and it is entered at S. No in Part No of the electoral roll for the assembly constituency.

Date:

(Signature of proposer).

37. It is thus evident that in the nomination paper, the name of the candidate and his postal address are to be given and the declaration has to be

furnished by the candidate as regards his age. The name of the father is not at all material so far as the candidate is concerned.

38. In view of section 30 of the 1950 Act this Court cannot adjudicate upon a question whether a person is or is not entitled to register himself in

the Electoral Roll in the Constituency or to question the illegality of the action taken by or under the authority of the Electoral Registration Officer.

If the respondent no. I was not a resident of premises no. 116/1/1, Mahatma Gandhi Road, Calcutta as claimed and shown by him then the

Electoral Registration Officer might have committed illegality but that question cannot be gone into or adjudicated upon by this Court in a

proceeding challenging the validity of the Election. If the contention of Mr. Dutt is accepted, then this Court has to adjudicate upon the finality of

the Electoral Roll which is not permissible under the provisions of the 1950 Act.

39. As laid down by the Supreme Court in the cases of Ram Awadesh Singh v. Sumitra Devi (Supra) and Vivekanand Giri v. Nawal Kishore Sahi

(Supra) that a wrong entry in a nomination paper even as regards the name of the candidate or the proposer or their electoral roll numbers or the

age is not a matter of substantial importance. At the time of scrutiny of the nomination paper, the Returning Officer has to find out whether the

candidate has possessed all the prescribed qualifications and he has not incurred any of the disqualifications either under the Representation of the

People Act or under the Constitution. The Returning Officer has satisfied himself that the candidate being the respondent no. 1 possesses the

prescribed qualifications and that he was not otherwise disqualified. Had the nomination paper of the respondent no. 1 been rejected because of

the difference in the age as recorded in the Electoral Roll and as shown in the nomination paper such discrepancy would have come under the

category of inaccurate description mentioned in proviso to section 33(4) of the 1951 Act, and rejection of the nomination paper on that ground

would have been improper. There was no dispute as regards the identity of the respondent no. 1 before the Returning Officer as he was elected

from the said Constituency thrice earlier. The name of the father of the candidate is not required to be mentioned in the nomination paper and this

mistake in the father's name is immaterial and of no consequence at all.

40. Before I part with this case I would like to refer one other aspect of this case. The objection raised by the election petitioner was with regard

to the validity of the nomination paper filed by the respondent no. 1. At the time of scrutiny the election-petitioner and the respondent no. 1 relied

on certain affidavits and documentary evidence. Even assuming that this Court can go into the question which was decided by the Returning

Officer, unless it could be shown that the finding given by the Returning Officer is not warranted by the evidence produced before him, this Court

cannot, in any event, set aside the finding of the Returning Officer in this regard. The validity or otherwise of the finding of the Returning Officer has

to be judged in the light of the evidence adduced before him and not in the light of the subsequent facts which might be brought in the election

petition. For the reasons aforesaid Issues No. 1(a) and 1(b) are answered in the negative. In other words this Court has no jurisdiction to entertain

and try the present petition. Since I have held that this Court has no jurisdiction to entertain and try this petition in view of the allegations made in

the petition, the other issues do not call for determination and are not answered.

This petition is, therefore, dismissed with costs.