

had two incised wounds and one punctured wound and two abrasions. The mere fact that Kartar Singh was not connected with the dispute about the plot of land is not sufficient to hold that he could not have formed a common intention with the others, when he went with them armed. The conviction under s. 302 and s. 307 read with s. 149, can be converted into one under s. 302 and s. 307 read with s. 34, Indian Penal Code.

We therefore see no force in this appeal and accordingly dismiss it.

Appeal dismissed.

RANGILAL CHOUDHURY

v.

DAHU SAO AND OTHERS

(P. B. GAJENDRAGADKAR, K. N. WANCHOO,
K. C. DAS GUPTA and
T. L. VENKATARAMA AIYAR, JJ.)

Election—Defect in the nomination paper—If of a substantial character—Representation of the People Act, 1951 (No. LXIII of 1951), s. 33, sub-s. (4).

The appellant was elected as a member of the Bihar Legislative Assembly in a bye-election from the Dhanbad constituency by a majority of votes while the nomination paper of the respondent was rejected by the Returning Officer on the ground that the respondent's proposer had nominated him for election from the Bihar and not Dhanbad assembly constituency inasmuch as in the nomination paper he wrote the word "Bihar" before the words "assembly constituency" instead of the word "Dhanbad". This defect arose out of a mistake in the Hindi printed form of the nomination paper which did not exactly conform to the form prescribed by the Rules. In an election petition by the respondent the Election Tribunal held that his nomination paper was rightly rejected but on appeal the High Court held that it was improperly rejected. On appeal by special leave,

Held, that in view of the mistake that occurred in the

1961

Kartar Singh
v.
State of Punjab

Raghubar
Dayal J.

1961

April 26.

1961

—
*Rangilal
 Choudhury*
 v.
Dahu Sao

printing of the form and in view of the fact that the name of the constituency for which the election was being held was already in the heading, the defect in the filling up of the form which resulted from a mistake of the proposer in putting the word "Bihar" instead of the word "Dhanbad" was not of a substantial character as contemplated under s. 33 of the Representation of the People Act, 1951.

Held, further, that the defect arising out of the fact that columns nos. 2 and 5 were not properly filled was not of a substantial character as the Returning Officer had no difficulty in checking that the proposer and the candidate were voters on the electoral rolls.

Karnail Singh v. Election Tribunal, Hissar, [1954] 10 E.L.R. 189, relied on.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 20 of 1961.

Appeal by special leave from the judgment and order dated March 25, 1960, of the Patna High Court in Election Appeal No. 4 of 1959.

N. C. Chatterjee, D. P. Singh, M. K. Ramamurthy, R. K. Garg and S. C. Agarwal, for the appellant.

D. Goburdhan, for respondent No. 1.

1961. April 26. The Judgment of the Court was delivered by

Wanchoo J.

WANCHOO, J.—This is an appeal by special leave against the judgment of the Patna High Court in an election matter. The brief facts necessary for present purposes are these. There was a bye-election held on December 21 and 22, 1958, to fill up a vacancy in the Bihar Legislative Assembly from the Dhanbad constituency. Nomination papers for the same were to be filed on or before November 8, 1958. A large number of persons filed their nomination papers on or before that date and among them were the appellant Rangilal Choudhury and the respondent Dahu Sao. In the present appeal we are only concerned with these two. The nomination paper of the respondent was rejected by the returning officer after scrutiny on November 11, 1958. The bye-election was duly held and the appellant was declared elected by a majority of votes. Thereafter the respondent filed an election petition challenging the election of the appellant on a large

number of grounds. In the present appeal we are only concerned with one of the grounds that the nomination paper of the respondent was improperly rejected. The appellant's contention in this connection was that the nomination paper was rightly rejected. The election tribunal held that the nomination paper was rightly rejected and thereafter dismissed the petition. The respondent went in appeal to the High Court, and the main point pressed in appeal was that the election tribunal was wrong in holding that the nomination paper of the respondent was rightly rejected. The High Court agreed with the contention of the respondent that his nomination paper was improperly rejected and therefore allowed the appeal and set aside the election of the appellant. The appellant's application for leave to appeal to this Court having been rejected by the High Court, he applied for and obtained special leave from this Court; and that is how the matter has come up before us.

The only ground on which the nomination paper was rejected by the returning officer was that the proposer had nominated the candidate for election from Bihar and not Dhanbad assembly constituency. The nomination was made on a Hindi form printed for the purpose by the Government. Unfortunately, the printed form did not exactly conform to the Hindi printed form in the Rules framed under the Representation of the People Act, No. LXIII of 1951, (hereinafter called the Act). The heading in the specimen printed form in the Rules requires the name of the State in which the election is held, to be filled in the blank space there; but in the printed form supplied to the respondent the name of the State was already printed in the heading and therefore the blank space had to be filled in with the name of the constituency. The candidate therefore filled in the name of the constituency in the blank space in the heading. Thereafter the proposer filled in the next part of the form which has five columns, after the main part which says that the proposer nominates so and so for such and such constituency. In this main part, the name of the candidate and the name of the constituency

1961
—
*Rangilal
Choudhury*
v.
Dahu Sao
—
Wanchoo J.

1961

*Rangilal
Choudhury*

v.

Dahu Sao

Wanchon J.

have to be filled in by the proposer. In the particular form with which we are concerned now the name of the candidate was rightly filled in but the proposer instead of putting down the name of the constituency, namely Dhanbad, put down the name Bihar there. So the proposal read as if the candidate was being nominated for the Bihar Assembly constituency. The only objection taken before the returning officer was that the proposer had not mentioned the constituency for which he was proposing the candidate for election and therefore the nomination form was defective and should be rejected. This found favour with the returning officer, who rejected the nomination paper as already said, on the ground that the proposer had nominated the candidate for election for Bihar assembly constituency and not Dhanbad assembly constituency. It may be mentioned that it is no one's case that there is any constituency like Bihar assembly constituency. It may also be mentioned that this was a bye-election and not a General Election; and the question whether the nomination paper was rightly rejected will have to be considered in this background.

Now s. 33(1) of the Act requires that a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer shall be filed on or before the date appointed for the nomination. Section 33(4) lays down that 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 roll; and where necessary, direct that any clerical or printing error in the said entries shall be overlooked. Section 36 then prescribes for the scrutiny of nomination papers and sub-s. (2) (b) thereof lays down that the nomination paper shall be rejected if there has been a failure to comply with any

of the provisions of s. 33. But sub-s. (4) lays down that the returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. The result of these provisions is that the proposer and the candidate are expected to file the nomination papers complete in all respects in accordance with the prescribed form; but even if there is some defect in the nomination paper in regard to either the names or the electoral roll numbers, it is the duty of the returning officer to satisfy himself at the time of the presentation of the nomination paper about them and if necessary to allow them to be corrected, in order to bring them into conformity with the corresponding entries in the electoral roll. Thereafter on scrutiny the returning officer has the power to reject the nomination paper on the ground of failure to comply with any of the provisions of s. 33 subject however to this that no nomination paper shall be rejected on the ground of any defect which is not of a substantial character.

The main dispute in the High Court centred on the question whether the defect in this case on the ground of which the returning officer rejected the nomination paper was of a substantial character or not. Generally speaking if the nomination paper does not disclose at all the name of the constituency for which the nomination has been made, the defect would be of a substantial character, for there would then be no way of knowing the constituency for which a candidate is being nominated. But there may be cases where the nomination form shows the constituency for which the nomination is being made though there may be some defect in filling up the form. In such a case it seems to us that if the nomination form discloses the constituency for which the nomination is being made even though the form may not have been properly filled in in that respect, the defect in filling the form would not be of a substantial character. It is true that in this case there was a defect in filling up the blank by the proposer inasmuch as he wrote the word "Bihar" before the words "assembly constituency" instead of

1961

Rangilal
Choudhury

v.

Dahu Sao

Wanchoo J.

1961

*Rangilal
Choudhury*

v.

Dahu Sao

—

Wanchoo J.

the word "Dhanbad", which he should have done; and if there were nothing else in the form to disclose the constituency for which the nomination was being made there would have been a substantial defect in the nomination form which would justify the returning officer in rejecting the same. But the circumstances of the present case are rather peculiar. We have already mentioned that the printed Hindi form which was used in this case printed the heading wrongly inasmuch as the heading was not in accordance with the heading prescribed under the Rules. In the specimen form in the Rules, the blank space is meant for the State in which the election is being held; but because of the mistake in printing the heading in this case, the blank space could only be filled up with the name of the constituency, and that was what was done. This name was filled in apparently by the candidate himself and not by the proposer. But equally clearly the name of the constituency was there when the proposer in his turn came to fill up that part of the form which he had to fill. It seems that the proposer was thus misled, as the name of the constituency was already there in the heading, to write the word "Bihar" in the second blank space in his proposal instead of the word "Dhanbad" to indicate the constituency. That was undoubtedly a defect in the form as filled in by the proposer. The question however is whether in these circumstances it can be called a defect of a substantial character which would justify the rejection of the nomination paper. It seems to us that the defect appeared partly because of the mistake in the printing of the Hindi form which was supplied to the candidates for the purposes of the nomination to this bye-election. The form however as put in clearly shows in the heading the particular assembly constituency for which the election was being held. Then follows the part which has to be filled in by the proposer and there the proposer made a mistake in filling the word "Bihar" instead of the word "Dhanbad" in the blank space relating to the constituency. Considering however that the name of the constituency was already there in the heading, it would in our

opinion be not improper in the circumstances of this case to say that the proposer was nominating the candidate for the constituency which was already mentioned in the heading. It seems to us therefore that in view of the mistake that occurred in the printing of the form and in view of the fact that the name of the constituency for which the election was being held was already in the heading, the mistake of the proposer in putting in the word "Bihar" instead of the word "Dhanbad", which resulted in a defect in the filling up of the form was not of a substantial character and that it was quite clear on the form in this case that the nomination was for the Dhanbad assembly constituency. The returning officer does not seem to have attached any importance to the name of the constituency in the heading in this case and also seems to have ignored the fact that this was a bye-election to one constituency, when he came to consider the defect which undoubtedly was there in this respect in the nomination paper. We therefore agree with the High Court that in the peculiar circumstances created by the mistake in printing the Hindi nomination form by the Government, the defect which has occurred in this case is not of a substantial character and it was quite clear that the nomination paper was for the Dhanbad assembly constituency and was in consequence improperly rejected by the returning officer.

As we have already said, this was the only ground on which the nomination paper was challenged as defective before the returning officer; but before the election tribunal the appellant also contended that the nomination paper was defective as columns 2 and 5 of the part which has to be filled in by the proposer were not properly filled in and were defective; and it was urged that the defect there was substantial and therefore even if the reason for the rejection of the nomination paper as given by the returning officer was not substantial, these defects were substantial and the rejection should be upheld on the ground of these defects. Column 2 requires the electoral roll number of the proposer and column 5 of the candidate to be

1961

—
*Rangilal
Choudhury*
v.*Dahu Sio*
—*Wanchoo J.*

1961

Rangilal
Choudhury

v.

Dahu Sao

Wanchoo J.

filled in there. Further according to the directions given in the form columns 2 and 5 should contain the name of the constituency, the part of the electoral roll and the serial number in that part. The purpose of this provision is that the returning officer should be able readily to check that the proposer and the candidate are voters on the electoral roll. In the present case only the serial number and the house number are mentioned in columns 2 and 5 and not the name of the constituency and the number of the part. Undoubtedly therefore there was a defect in these two columns. Apparently the constituency was the same, *viz.*, Dhanbad, as will appear from the address given in column 4. No part number could be given as the electoral roll in this particular case was not numbered by Parts. The question is whether in these circumstances this defect can be called a defect of a substantial character. In this connection we cannot ignore the provisions of s. 33(4) of the Act, which casts a duty on the returning officer 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 roll and gives him the power to permit the removal of any defect in this connection. The returning officer does not seem to have noted this defect in the form for if he had done so he would have given an opportunity to the proposer to make the corrections. It is true that the failure of the returning officer to give this opportunity for correction does not mean that the defect can be ignored, if it is of a substantial character. But considering the purpose for which the electoral roll numbers are given, it seems that the returning officer found no difficulty in checking that the proposer as well as the candidate was a voter on the electoral rolls. The High Court in this connection referred to the evidence of the respondent who stated that when his nomination paper was taken up for scrutiny, the returning officer compared the names in the nomination paper with those in the electoral rolls. It seems therefore that in this case the returning officer found no difficulty in tracing the names of the proposer and the candidate

in the electoral rolls and that is why no objection was raised before him as to the defect in columns 2 and 5. In the circumstances it must be held that the defect was of an unsubstantial character and would not result in the rejection of the nomination paper. We may in this connection refer to *Karnail Singh v. Election Tribunal, Hissar and Others* ⁽¹⁾, where this Court observed that it was quite clear on the evidence that there was no difficulty in identifying the candidate and the candidate himself pointed out to the returning officer his own name in the electoral rolls. Therefore the defect in columns 2 and 5 was in the circumstances held to be a technical one and not of a substantial character. The principle of that case in our opinion applies to the present case also, for there is no doubt here that the returning officer found no difficulty in identifying the proposer as well as the candidate and as a matter of fact the evidence is that the candidate himself pointed out the place in the electoral rolls where his name was entered. We therefore agree with the High Court that in the circumstances of this case the defects in columns 2 and 5 were of an unsubstantial character and the rejection of the nomination paper cannot be upheld on this further ground, which was not even urged before the returning officer.

We therefore dismiss the appeal. In these circumstances we pass no order as to costs.

Appeal dismissed.

1961
—
Rangilal
Choudhury
v.
Dahu Sao
—
Wanchoo

(1) [1954] 10 E.L.R. 189.