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would be of no avail to them when the alienation is not binding on the whole estate but only on the woman's estate of Rashmoni."

In our opinion the view taken by the High Court is quite proper. On this finding the security bond could operate only on the widow's estate of Rashmoni and it was that interest alone which passed to the purchaser at the mortgage sale. The subsequent transferee could not claim to have acquired any higher right than what his predecessor had and it is immaterial whether he *bona fide* paid the purchase money or took proper legal advice. The result is that in our opinion the decision of the High Court is right and this appeal must stand dismissed with costs.

Appeal dismissed.

RATTAN ANMOL SINGH AND ANOTHER

v.

ATMA RAM AND OTHERS.

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May 21.

[MUKHERJEA, VIVIAN BOSE and VENKATARAMA AYYAR JJ.]

Representation of the People Act, 1951 (XLIII of 1951), ss. 2 (1)(k), 33(1) and (2), 36(2)(d) and (4)—Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, r. 2(2)—Nomination paper—Subscribed by illiterate proposer and seconder—Containing thumb-mark instead of signatures—No attestation thereof—Validity of—Attestation—Whether a necessary formality—At what stage it must exist—Whether can be validated at scrutiny stage.

Under section 33(1) of the Representation of the People Act, 1951, each nomination paper should be "subscribed" by a proposer and a seconder. Where the proposer and the seconder of a nomination paper (as in the present case) are illiterate and so place thumb-marks instead of signatures and those thumb-marks are not attested, the nomination paper is invalid as attestation in the prescribed manner in such a case is necessary because of rule 2(2) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, which requires it.

Signing, whenever signature is necessary, must be in strict accordance with the requirements of the Act and where the signature cannot be written it must be authorised in the manner prescribed by the Rules.

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Attestation is not a mere technical or unsubstantial requirement within the meaning of section 36(4) of the Act and cannot be dispensed with.

The attestation and the satisfaction must exist at the presentation stage and a total omission of such an essential feature cannot be subsequently validated at the scrutiny stage any more than the omission of a candidate to sign at all could have been.

Section 36 of the Act is mandatory and enjoins the Returning Officer to refuse any nomination when there has been "any failure to comply with any of the provisions of section 33."

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 213A and 213B of 1953.

Appeals by Special Leave against the Judgment and Order dated the 24th June, 1953, of the Election Tribunal, Ludhiana, in Election Petition No. 153 of 1952.

C. K. Daphtary, Solicitor-General for India, (Harbans Singh Doabia and *Rajinder Narain,* with him) for the appellant in Civil Appeal No. 213A.

Tilak Raj Bhasin and *Harbans Singh* for respondent No. 2 in Civil Appeal No. 213A and the appellant in Civil Appeal No. 213B.

Naunit Lal for respondents Nos. 3 and 19 in both the appeals.

1954. May 21. The Judgment of the Court was delivered by

BOSE J.—These are two appeals against the decision of the Election Tribunal at Ludhiana.

The contest was for two seats in the Punjab Legislative Assembly. The constituency is a double member constituency, one seat being general and the other reserved for a Scheduled Caste. The first respondent is Atma Ram. He was a candidate for the reserved seat but his nomination was rejected by the Returning Officer at the scrutiny stage and so he was unable to contest the election. The successful candidates were Rattan Anmol Singh, the appellant in Civil Appeal No. 213-A of 1953, for the general seat and Ram Prakash, the appellant in Civil Appeal No. 213-B of 1953, for the reserved. Atma Ram filed the present election petition. The Election Tribunal decided in

his favour by a majority of two to one and declared the whole election void. Rattan Anmol Singh and Ram Prakash appeal here.

The main question we have to decide is whether the Returning Officer was right in rejecting the petitioner's nomination papers. The facts which led him to do so are as follows. The Rules require that each nomination paper should be "subscribed" by a proposer and a seconder. The petitioner put in four papers. In each case, the proposer and seconder were illiterate and so placed a thumb-mark instead of a signature. But these thumb-marks were not "attested". The Returning Officer held that without "attestation" they are invalid and so rejected them. The main question is whether he was right in so holding. A subsidiary question also arises, namely, whether, assuming attestation to be necessary under the Rules, an omission to obtain the required attestation amounts to a technical defect of an unsubstantial character which the Returning Officer was bound to disregard under section 36(4) of the Representation of the People Act, 1951 (XLIII of 1951).

Section 33(1) of the Act requires each candidate to

"deliver to the Returning Officer.....a nomination paper completed in the prescribed form and subscribed by the candidate himself as assenting to the nomination and by two persons referred to in sub-section (2) as proposer and seconder."

Sub-section (2) says that—

"any person whose name is registered etc..... may subscribe as proposer or seconder as many nomination papers as there are vacancies to be filled....."

The controversy centres on the word "subscribed" which has not been defined in the Act.

The prescribed nomination form referred to in sub-section (1) of section 33 is to be found in Schedule II. In this form we have the following :—

"9. Name of the proposer

.....

12. Signature of the proposer

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13. Name of the seconder

.....

16. Signature of the seconder."

The Oxford English Dictionary sets out thirteen shades of meaning to the word "subscribe", most of them either obsolete or now rarely used. The only two which can have any real relation to the present matter are the following :

1. "To write (one's name or mark) on, originally at the bottom of a document, especially as a witness or contesting party ; to sign one's name to."

This meaning is described as "rare."

2. "To sign one's name to ; to signify assent or adhesion to by signing one's name ; to attest by signing."

This appears to be its modern meaning, and is also one of the meanings given to the word "sign", namely "to attest or confirm by adding one's signature ; to affix one's name to (a document) etc."

One also finds the following in Stround's Judicial Dictionary, 3rd edition :

"Subscribe. (1) 'Subscribe' means to write under something in accordance with prescribed regulations where any such exist.....But though this is the strict primary meaning of the word, it may sometimes, *e.g.,* in the attestation of a will, be construed as 'to give assent to, or to attest' or 'written upon'....."

"(3) 'Subscription is a method of signing ; it is not the only method' ; a stamped, or other mechanical impression of a signature is good, in the case of electioneering papers....."

It is clear that the word can be used in various senses to indicate different modes of signing and that it includes the placing of a mark. The General Clauses Act also says that—

" 'sign'.....with reference to a person who is unable to write his name, includes 'mark' ".

But this is subject to there being nothing repugnant in the subject or context of the Act. In our opinion, the crux of the matter lies there. We have to see

from the Act itself whether "sign" and "subscribe" mean the same thing and whether they can be taken to include the placing of a mark. The majority decision of the Tribunal holds that "sign" and "subscribe" are not used in the same sense in the Act because a special meaning has been given to the word "sign" and none to the word "subscribe", therefore, we must use "subscribe" in its ordinary meaning; and its ordinary meaning is to "sign" but not to "sign" in the special way prescribed by the Act but in the ordinary way; therefore we must look to the General Clauses Act for its ordinary meaning and that shows that when it is used in its ordinary sense it includes the making of a mark.

We agree with the learned Chairman of the Tribunal that this is fallacious reasoning. The General Clauses Act does not define the word "subscribe" any more than the Representation of the People Act, and if it is improper to exclude the special meaning given to "sign" in the Representation of the People Act because the word "sign" is defined and not "subscribe," it is equally improper to import the special definition of "sign" in the General Clauses Act because that also defines only "sign" and not "subscribe," and also because the "subject" and "context" of the Representation of the People Act show that the writing of a signature and the making of a mark are to be treated differently.

The learned counsel for the respondent analysed the Act for us and pointed out that the word "subscribe" is only used in Chapter I of Part V dealing with the Nomination of Candidates while in every other place the word "sign" is used. We do not know why this should be unless, as was suggested by the learned Solicitor-General, the Legislature wished to underline the fact that the proposer and seconder are not merely signing by way of attesting the candidate's signature to the nomination form but are actually themselves putting the man forward as a suitable candidate for election and as a person for whom they are prepared to vouch, also that the candidate's signature imports more than a mere vouching for the accuracy of the

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facts entered in the form. It imports assent to his nomination. We think the learned Solicitor-General is probably right because section 33 speaks of

"a nomination paper completed in the prescribed form and subscribed by the candidate himself as *assenting to the nomination.*"

But however that may be, it is evident from the form that "signatures" are required. It is also evident from the definition of "sign" that the Legislature attached special importance to the fact that in the case of illiterate persons unable to write their names it is necessary to guard against misrepresentation and fraud by requiring that their signatures should be formally authenticated in a particular way. A special statutory cloak of protection is thrown around them just as the ordinary law clothes pardanishin women and illiterate and ignorant persons and others likely to be imposed on, with special protective covering.

Now it is to be observed that section 2 calls itself an "interpretation" section. It says—

"(1) In this Act, unless the context otherwise requires

.....

(k) 'sign' in relation to a person who is unable to write his name means authenticate in such manner as may be prescribed."

It is evident then that wherever the element of "signing" has to be incorporated into any provision of the Act it must be construed in the sense set out above. Therefore, whether "subscribe" is a synonym for "sign" or whether it means "sign" plus something else, namely a particular assent, the element of "signing" has to be present: the schedule places that beyond doubt because it requires certain "signatures." We are consequently of opinion that the "signing," whenever a "signature" is necesary, must be in strict accordance with the requirements of the Act and that where the signature cannot be written it must be authorised in the manner prescribed by the Rules. Whether this attaches exaggerated importance to the authorisation is not for us to decide. What is beyond

dispute is that this is regarded as a matter of special moment and that special provision has been made to meet such cases. We are therefore bound to give full effect to this policy.

Now if "subscribe" can mean both signing, properly so called, and the placing of a mark (and it is clear that the word can be used in both senses), then we feel that we must give effect to the general policy of the Act by drawing the same distinction between signing and the making of a mark as the Act itself does in the definition of "sign." It is true the word "subscribe" is not defined but it is equally clear, when the Act is read as a whole along with the form in the second schedule, that "subscribe" can only be used in the sense of making a signature and as the Act tells us quite clearly how the different types of "signature" are to be made, we are bound to give effect to it. In the case of a person who is unable to write his name his "signature" must be authenticated in "such manner as may be prescribed." The prescribed manner is to be found in rule 2(2) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951. It runs as follows :

"For the purposes of the Act or these rules, a person who is unable to write his name shall, unless otherwise expressly provided in these rules, be deemed to have signed an instrument or other paper if he has placed a mark on such instrument or other paper in the presence of the Returning Officer or the presiding officer or such other officer as may be specified in this behalf by the Election Commission and such officer *on being satisfied as to his identity* has *attested* the mark as being the mark of such person."

In view of this we are clear that attestation in the prescribed manner is required in the case of proposers and seconders who are not able to write their names.

The four nomination papers we are concerned with were not "signed" by the proposers and seconders in the usual way by writing their names, and as their marks are not attested it is evident that they have not been "signed" in the special way which the Act

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requires in such cases. If they are not "signed" either in one way or the other, then it is clear that they have not been "subscribed" because "subscribing" imports a "signature" and as the Act sets out the only kinds of "signatures" which it will recognise as "signing" for the purposes of the Act, we are left with the position that there are no valid signatures of either a proposer or a seconder in any one of the four nomination papers. The Returning Officer was therefore bound to reject them under section 36(2)(d) of the Act because there was a failure to comply with section 33, unless he could and should have had resort to section 36(4).

That sub-section is as follows :

"The Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character."

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 in 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. In our opinion, this provision is as necessary and as substantial as attestation in the cases of a will or a mortgage and is on the same footing as the "subscribing" required in the case of the candidate himself. If there is no signature and no mark the form would have to be rejected and their

absence could not be dismissed as technical and unsubstantial. The "satisfaction" of the Returning Officer which the rules require is not, in our opinion, any the less important and imperative.

The next question is whether the attestation can be compelled by the persons concerned at the scrutiny stage. It must be accepted that no attempt was made at the presentation stage to satisfy the Returning Officer about the identity of these persons but evidence was led to show that this was attempted at the scrutiny stage. The Returning Officer denies this, but even if the identities could have been proved to his satisfaction at that stage it would have been too late because the attestation and the satisfaction must exist at the presentation stage and a total omission of such an essential feature cannot be subsequently validated any more than the omission of a candidate to sign at all could have been. Section 36 is mandatory and enjoins the Returning Officer to refuse any nomination when there has been

"*any* failure to comply with *any* of the provisions of section 33....." The only jurisdiction the Returning Officer has at the scrutiny stage is to see whether the nominations are in order and to hear and decide objections. He cannot at that stage remedy essential defects or permit them to be remedied. It is true he is not to reject any nomination paper on the ground of any technical defect which is not of a substantial character but he cannot remedy the defect. He must leave it as it is. If it is technical and unsubstantial it will not matter. If it is not, it cannot be set right.

We agree with the Chairman of the Election Tribunal that the Returning Officer rightly rejected these nomination papers. The appeals are allowed with costs and the order of the Election Tribunal declaring the elections of the two successful candidates to be wholly void is set aside. The election petition is dismissed, also with costs.

Appeals allowed.