

(SUPREME COURT OF INDIA)

Ram Phal Kundu

Vs

Kamal Sharma

HON'BLE JUSTICE S. B. SINHA AND HON'BLE JUSTICE A. S. LAKSHMANAN

23/01/2004

Civil Appeal No. 4262 of 2003

JUDGMENT

The Judgment was delivered by G.P. MATHUR, J.

- This appeal under Section 116A of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act') has been preferred by the returned candidate Ram Phal Kundu against the judgment and order dated 8.5.2003 of High Court of Punjab and Haryana by which the election petition preferred by Kamal Sharma was allowed and the election of the appellant from 50-Safidon Assembly Constituency to the Haryana Vidhan Sabha was set aside and a direction was issued to the Election Commission of India to hold a fresh election for the said constituency.

2. The Election Commission of India issued a notification on 24.1.2000 calling upon the electors of Haryana to elect 90 members to the Haryana Vidhan Sabha including that from 50-Safidon Assembly Constituency (Distt. Jind). The schedule for holding the elections was as under:

Filing of nomination papers	:	27.1.2000	to	3.2.2000
Scrutiny of nomination papers	:			4.2.2000
Last date for withdrawal of candidature	:			7.2.2000
Allotment of Symbols	:	7.2.2000	after	3.00 p.m.
Date of polling, if necessary	:			22.2.2000

Counting

of

votes

:

25.2.2000

3. The appellant Ram Phal Kundu filed his nomination paper as a candidate of Indian National Lok Dal Party (hereinafter referred to as 'Lok Dal Party'). The respondent Kamal Sharma and Bachan Singh, both filed their nomination papers claiming to be candidates of Indian National Congress Party (hereinafter referred to as 'Congress Party'). The Returning Officer accepted the nomination paper of Bachan Singh as candidate of Congress Party and rejected that of Kamal Sharma. The election was held on 22.2.2000 as scheduled and the appellant Ram Phal Kundu secured the highest number of valid votes and was declared to have been elected. Kamal Sharma then filed an election petition under Sections 80, 81 read with Section 100 of the Act for setting aside the election of the appellant Ram Phal Kundu and for declaring his election as void. A further prayer was made that the Election Commission be directed to hold a fresh election to the said Assembly Constituency. After trial of the petition, the High Court allowed the election petition on the ground that the nomination paper of Kamal Sharma was wrongly rejected. Accordingly, the election of the appellant Ram Phal Kundu was set aside and the Election Commission was directed to hold a fresh election.

4. The case set up by Kamal Sharma in the election petition is as follows:

The election petitioner applied to the Congress Committee for sponsoring his name for 50-Safidon Assembly Constituency to contest the election as a candidate of the said party. The Central Election Committee of the party vide Press release dated 2.2.2000 selected him as its candidate for the said Constituency. Shri Motilal Vora, General Secretary of the party issued Form A in the name of Shri Bhupinder Singh Hooda, President, Haryana Pradesh Congress Committee as the authorised person to intimate the names of the candidates to be set up by the party in the election. Shri Bhupinder Singh Hooda then communicated to the Returning Officer, 50-Safidon Assembly Constituency the name of the election petitioner Kamal Sharma as an approved candidate of the Congress Party in Form B. The election petitioner filed this nomination paper as a candidate of Congress Party at 12.20 p.m. on 3.2.2000 before the Returning Officer. During the course of scrutiny proceedings on 4.2.2000 it was revealed that another candidate, namely, Bachan Singh had also filed his nomination paper at 2.50 p.m. on 3.2.2000 claiming himself as a candidate set up by the Congress Party. The scrutiny proceedings were adjourned to 5.2.2000. Shri Bhupinder Singh Hooda filed an affidavit dated 4.2.2000 before the Returning Officer that the election petitioner Kamal Sharma was the only person nominated as a candidate of the Congress Party and any other unsealed authorisation letter of the party submitted by someone else was not valid. Shri Bhupinder Singh Hooda also wrote to the Chief Election Commissioner, New Delhi that Kamal Sharma was the only officially approved candidate of the Congress Party. The scrutiny proceedings were conducted by the Returning Officer on 5.2.2000, who after hearing counsel for the parties, wrote out a hand written order dismissing the objection filed by the election petitioner Kamal Sharma and rejecting his nomination paper. The nomination paper of Bachan Singh as a candidate of the Congress Party was accepted. The election petitioner was the only official candidate of the Congress Party as Forms A and B submitted by him along with his nomination paper were duly signed and stamped by the seal of the party, whereas Form B submitted by Bachan Singh did not bear the seal of the party and was consequently invalid. The Returning Officer committed a grave illegality in overlooking another essential requirement of law that Form B submitted by Bachan Singh had not reached the office of the Chief Electoral Officer, Haryana within the prescribed time limit. The election petitioner then filed a petition before the Chief Election Commissioner, New Delhi on 6.2.2000, who by order dated 7.2.2000 set aside the order dated 5.2.2000 passed by the Returning Officer and directed him to

conduct a fresh scrutiny at 10.00 a.m. on 8.2.2000. The Returning Officer, thereafter, gave notice to election petitioner Kamal Sharma, Bachan Singh and Shri Bhupinder Singh Hooda, who appeared before him and stated that Form B furnished by Bachan Singh was not issued by his approval and that the election petitioner was the only authorised candidate of the party. However, the Returning Officer passed an order at 4.30 p.m. on 8.2.2000 dismissing the objection raised by the election petitioner and allotted the Symbol of the Congress Party to Bachan Singh. The result of the election was declared on 25.2.2000 and out of 85,742/- valid votes polled, the appellant Ram Phal Kundu secured 45,382 valid votes and was declared as elected. In para 25 of the petition it is pleaded that there was no proper authorisation by the Congress Party in favour of Bachan Singh as the Form B submitted by him did not contain the seal of the party and on account of wrongful rejection of the nomination paper of the election petitioner Kamal Sharma, the election of Ram Phal Kundu was vitiated. *

5. The appellant Ram Phal Kundu contested the election petition on the ground, inter alia, that though the election petitioner produced Forms A and B before the Returning Officer that he is the nominee of the Congress Party, but subsequently Bachan Singh produced Forms A and B that he had been nominated by the Congress Party as a candidate for 50-Safidon Assembly Constituency. In Form B submitted by Bachan Singh the nomination of the election petitioner Kamal Sharma was rescinded and it was specifically mentioned that the Congress Party had changed its candidate and had nominated Bachan Singh as its official candidate. The notice in Form B as per amended Clause 13 of Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as 'the Symbols Order') is required to be produced before the Returning Officer before 3.00 p.m. and there is no requirement that the same should also reach or produced before the Chief Electoral Officer. The nomination paper of election petitioner was filed along with requisite forms at 12.20 p.m. on 3.2.2000 whereas Bachan Singh had filed his nomination paper at 2.50 p.m. on 3.2.2000 and had submitted Forms A and B. Thereafter, no further notice in Form B was received by the Returning Officer. The Form B submitted by the election petitioner is dated 2.2.2000 whereas the Form B submitted by Bachan Singh at 2.50 p.m. on 3.2.2000 wherein Shri Bhupinder Singh Hooda had himself mentioned that the candidature of the election petitioner Kamal Sharma was rescinded is dated 3.2.2000. It is further pleaded that the letter of Shri Bhupinder Singh Hooda said to have been submitted on 4.2.2000 before the Returning Officer, is of no consequence and could not be taken into consideration in view of paras 13 and 13A of the Symbols Order which provide that the notice in writing in Form B regarding the declaration of the official candidate has to be made and submitted before the Returning Officer up to 3.00 p.m. on the last date of filing nomination papers and not thereafter. Shri Bhupinder Singh Hooda had not denied his signature on the authorisation Form B in favour of Bachan Singh in the affidavits filed by him on 4th and 5th February, 2000 and the same having been filed subsequent to 3.00 p.m. on the last date of filing of the nomination paper were of no consequence. The fact that the seal of the party was not present in Form B of Bachan Singh was of no consequence as it is not a defect of substantial character and under paras 13 and 13 A of the Symbols Order only the signature of the authorised person is required and it is nowhere provided that the Form must contain the seal of the party. It is also pleaded that the Election Commission of India has no authority to set aside the order of the Returning Officer rejecting a nomination paper and to direct him to reconsider the matter. No appeal or revision lies to the Election Commission of India against an order rejecting a nomination paper. In para 22 it is pleaded that Bachan Singh contested the election as a candidate of the Congress Party and the appellant won the said election by a margin of 8,324 votes, having secured more than 55% of the actual votes polled. The nominee of the Congress Party was very much there in the election fray but the appellant was declared as elected. All the important leaders of Congress Party at the State level and

the national level, including Shri Motilal Vora and others had campaigned for Bachan Singh. In the newspapers of 3.2.2000 it had been reported that the Congress Party had changed its candidate from Kamal Sharma to Bachan Singh.

6. It may be mentioned at the very outset that the election petitioner Kamal Sharma implied the returned candidate Ram Phal Kundu as the sole respondent and no other person was joined as party to the election petition. Though there is not even a whisper against the appellant Ram Phal Kundu and the entire allegations are against Bachan Singh but he was not arrayed as a party to the election petition. # Strictly speaking it is not a case of rejection of nomination paper but of ascertaining who was the candidate of Congress Party as two persons had filed nomination papers claiming to be the candidate of the said party. Since only one person can be a candidate of a political party and after acceptance of the candidature of Bachan Singh, the nomination paper the election petitioner Kamal Sharma could be treated as that on an independent candidate. But as it was not subscribed by 10 proposers being electors of the Constituency, it had to be rejected in view of First Proviso to Sub-section (1) of Section 33 of the Act. The non-joining of Bachan Singh may not result in dismissal of the election petition in terms of Section 82 of the Act. However in absence of Bachan Singh having been joined as party to the election petition, an extremely difficult burden has been placed upon the appellant Ram Phal Kundu, who belongs to rival party (Lok Dal), to lead evidence regarding the internal affairs of Congress Party and to show that the nomination made in favour of Kamal Sharma had been subsequently rescinded and the party had set up Dachan Singh as its official candidate.

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7. The main question which requires consideration is as to which of the two persons, namely, Kamal Sharma or Bachan Singh had been set up by the Congress Party. Paras 13 and 13A of Election Symbols (Reservation and Allotment) Order, 1968, as amended by Clause 3 of Election Symbols (Reservation and Allotment) (Amendment) Order, 1999, which came into force on 20.5.1999, which govern the situation read as under:

"13. When a candidate shall be deemed to be set up by a political party - For the purposes of an election from any parliamentary or assembly constituency to which this Order applies, a candidate shall be deemed to be set up by a political party in any such parliamentary or assembly constituency, if, and only if -

(a) the candidate has made the prescribed declaration to this effect in his nomination paper;

(b) a notice by the political party in writing, in Form B, to that effect has, not later than 3 p.m. on the last date of making nominations, been delivered to the Returning Officer of the constituency;

(c) the said notice in Form B is signed by the President, the Secretary or any other office bearer of the party, and the President, Secretary or such other office bearer sending the notice has been authorised by the party to send the notice;

(d) the name and specimen signature of such authorised person are communicated by the party, in Form A, to the Returning Officer of the constituency, and to the Chief Electoral Officer of the State or Union Territory concerned, not later than 3 p.m. on the last date for making nominations; and

(e) Forms A and B are signed, in ink only, by the said office bearer or person authorised by the party:

Provided that no facsimile signature or signature by means of rubber stamp, etc. of any such office bearer or authorised person shall be accepted and no form transmitted by fax shall be accepted.

13A. Substitution of a candidate by a political party - For the removal of any doubt, it is hereby clarified that a political party which has given a notice in Form B under paragraph 13 in favour of a candidate may rescind that notice and may give a revised notice in Form B in favour of another candidate for the constituency:

*Provided that the revised notice in Form B, clearly indicating therein that the earlier notice in Form B has been rescinded, reaches the Returning Officer of the constituency, not later than 3 p.m. on the last date for making nominations, and the said revised notice in Form B is signed by the authorised person referred to in clause (d) of paragraph 13: **

*Provided further that in case more than one notice in Form B is received by the Returning Officer in respect of two or more candidates, and the political party fails to indicate in such notices in Form B that the earlier notice or notices in Form B, has or have been rescinded, the Returning Officer shall accept the notice in Form B in respect of the candidate whose nomination paper was first delivered to him, and the remaining candidate or candidates in respect of whom also notice or notices in Form B has or have been received by him, shall not be treated as candidates set up by such political party." **

In terms of paras 13 and 13A of the Symbols Orders, a candidate shall be deemed to be set up by a political party if the following conditions are fulfilled:

- (1) The candidate has made the prescribed declaration to that effect in his nomination paper.
- (2) A notice by the political party in Form B to that effect has been delivered to the Returning Officer not later than 3.00 p.m. on the last date for making nomination.
- (3) The notice in Form B is signed by the President, Secretary or any other office bearer of the party and such person sending the notice has been authorised by the party to send the notice.
- (4) The name and specimen signature of such authorised persons are communicated by the party in Form A to (i), the Returning Officer; and (ii) the Chief Electoral Officer of the State or Union Territory concerned not later than 3.00 p.m. on the last date for making nomination.
- (5) A political party which has given a notice in Form B in favour of candidate may rescind that notice and may give a revised notice in form B in favour of another candidate, provided such revised notice in Form B clearly indicating therein that the earlier notice in Form B has been rescinded, reaches the Returning Officer not later than 3.00 p.m. on the last date for making nomination and such revised notice in Form B is signed by the authorised person referred to in Clause (d) of para 13.
- (6) Forms A and B have to be signed in ink only by the office bearer or authorised person. No

fascimile signature or signature by means of rubber stamp and no form transmitted by fax shall be accepted.

It may be noted that while Form A has to be submitted to both the Returning Officer of the Constituency and to the Chief Electoral Officer of the State, but there is no such requirement with regard to Form B. Form B has to be delivered only to the Returning Officer of the Constituency. The Symbols Order has made a specific provision that Forms A and B have to be signed in ink only and signature by means of rubber stamp, etc. shall not be accepted. In terms of the language used in paras 13 and 13A of the Symbols Order there is no requirement of putting the seal of the party in Forms A and B.

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8. There is no dispute that Shri Motilal Vora, General Secretary of the Congress Party had sent a communication in Form A that Shri Bhupinder Singh Hooda had been authorised by the Indian National Congress to intimate the names of the candidates proposed to be set up by the party at the election and the said document Ex. PW2/M is on the record. A notice in Form B in favour of 'Kamal' dated 2.2.2000 signed in ink by Shri Bhupinder Singh Hooda was given by the election petitioner to the Returning Officer at 12.20 p.m. and it is marked as Ex. PW2/L. Another notice in Form B dated 3.2.2000 in favour of Bachan Singh and signed in ink by Shri Bhupinder Singh Hooda was given by Bachan Singh to the Returning Officer at 2.50 p.m. on 3.2.2000 and it is marked as Ex. PW4/A. At the bottom of this form it is mentioned as under:

"The notice in 'Form B' given earlier in favour of Shri Kamal s/o Janardhan as party's approved candidate, Smt. Kusum w/o Kamal as party's substituted candidate is hereby rescinded."

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Below this writing there is signature of Shri Bhupinder Singh Hooda. In his cross-examination PW5 Shri Bhupinder Singh Hooda has admitted that Form B in favour of Bachan Singh contains his signature. He stated as under:

".... It is correct that document Ex. PW4/A which is Form B in favour of Shri Bachan Singh Arya bears my signatures. Volunteered I am admitting only any signatures and not the contents of the Form...."

Towards the end of his cross-examination he stated as under:

"On Form B issued to Shri Bachan Singh Arya I only own signature on this Form but I do not own the contents given in it."

Thus, there is no dispute that Form B submitted by Bachan Singh contained a categorical statement to the effect that the notice given in Form B earlier in favour of Kamal Sharma as party's approved candidate and Smt. Kusum w/o Shri Kamal as party's substitute candidate is rescinded and the said Form B had been signed in ink by Shri Bhupinder Singh Hooda, who had been nominated as authorised person of the Congress Party. There is also no dispute that the Form B submitted by Bachan Singh was later in point of time and had been given at 2.50 p.m. on 3.2.2000 when the last time and date for filing of the nomination paper was 3.00 p.m. on 3.2.2000.

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9. In his statement PW6 Kamal Sharma has stated that in the list released by All India Congress Committee on 2.2.2000 his name was mentioned as a candidate for 50-Safidon Assembly Constituency. In the night he collected Forms A and B from the Camp Office and submitted his nomination paper along with Forms A and B to the Returning Officer. A letter written by Shri Bhupinder Singh Hooda wherein it was mentioned that Kamal Sharma is the candidate of Congress Party from Safidon Constituency and no one else was a candidate, was delivered to the Returning Officer on 4.2.2000. This letter is on the record as Ex. PW2/J and it bears an endorsement by the Returning Officer that the same was received by him at 11.00 a.m. on 4.2.2000. He has also stated that the Returning Officer had a telephonic talk with Shri Hooda and thereafter an affidavit duly sworn by him on 4.2.2000 that Kamal is the only nominated candidate of the Congress Party, was also given. This affidavit also bears the endorsement of the Returning Officer that the same was received by him at 11.00 a.m. on 4.2.2000. PW5 Shri Bhupinder Singh Hooda has deposed that the name of Bachan Singh was under consideration as a Congress candidate but it was never finalised and therefore, no Form B was issued to him and that Kamal Sharma was the candidate of the party. At about 3.30 p.m. on the last date of filing nomination, he received information that two nomination forms had been submitted on behalf of the Congress Party and thereafter he sent a letter through special messenger to the Returning Officer that Kamal Sharma is the official candidate. After receiving a telephonic call from the Returning Officer on 4.2.2000, he informed him that Kamal Sharma is the official candidate and thereafter he sent an affidavit to that effect. He has further deposed that he wrote a letter to the Chief Election Commissioner and Chief Electoral Officer in this regard. Thus, the election petitioner Kamal Sharma has led evidence to show that after it had been revealed that Bachan Singh had also filed his nomination paper as a candidate of the Congress Party, he lodged a protest before the Returning Officer on the next day i.e. 4.2.2000 and Shri Bhupinder Singh Hooda telephoned to him and also sent a letter and an affidavit that only Kamal Sharma was the official candidate. But all these letters and affidavits etc. were received by the Returning Officer on 4.2.2000 and on subsequent dates.

10. The question that arises is whether this evidence, which is all subsequent to the last date of filing of the nomination paper, can be looked into in order to ascertain as to who had been set up as a candidate by the Congress Party.

11. The Election Symbols (Reservation and Allotment) Order, 1968 has been made in exercise of power conferred by Article 324 of the Constitution read with Section 29A of the Representation of the People Act, 1951 and Rules 5 to 10 of the Conduct of Election Rules, 1961 and all other powers enabling it is in this behalf by the Election Commission of India. In Sadiq Ali vs. Election Commission of India and others, , the Court explained the reasons which led to the introduction of the Symbols and it was said that the object is to ensure that the process of election is as general and fair as possible and that no elector should suffer from any handicap in casting his vote in favour of a candidate of his choice. In Roop Lal Sathi vs. Nachhattar Singh, it has been held that the Symbols Order is an order made under the Act.

12. Paras 13 and 13A of the Symbols Order lay down the mechanism for ascertaining when a candidate shall be deemed to be set up by a political party and also the procedure for substitution of a candidate. The opening part of para 13 says in unequivocal terms that for the purpose of an election for any Parliamentary or Assembly Constituency a candidate shall be deemed to be set

up by a political party if and only if the conditions mentioned in sub-paragraphs (a) to (e) are satisfied. Para 13A lays down the procedure for substitution of a candidate and also the requirements of a revised notice in Form B. The second proviso to this paragraph takes care of a situation where more than one notice in Form B is received by the Returning Officer and the political party fails to indicate in such notices in Form B that the earlier notice or notices have been rescinded. Thus, paras 13 and 13A are exhaustive and lay down the complete procedure for determining whether a candidate has been set up by a political party. The Rule laid down in Taylor vs. Taylor 1876 (1) Ch(D) 426 that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden was adopted for the first time in India by the Judicial Committee of the Privy Council in Nazir Ahmad vs. King Emperor 1936 AIR(PC) 253. The question for consideration was whether the oral evidence of a Magistrate regarding the confession made by an accused, which had not been recorded in accordance with the statutory provisions viz. Section 164 Cr.P.C. would be admissible. The First Class Magistrate made rough notes of the confessional statements of the accused which he made on the spot and thereafter he prepared a memo from the rough notes which was put in evidence. The Magistrate also gave oral evidence of the confession made to him by the accused. The procedure of recording confession in accordance with Section 164 Cr.P.C. had not been followed. It was held that Section 164 Cr.P.C. having made specific provision for recording of the confession, oral evidence of the Magistrate and the memorandum made by him could not be taken into consideration and had to be rejected. In State of U.P. vs. Singhara Singh, a Second Class Magistrate not specially empowered had recorded confessional statement of the accused under Section 164 Cr.P.C. The said confession being inadmissible, the prosecution sought to prove the same by the oral evidence of the Magistrate, who deposed about the statement given by the accused. Relying upon the rule laid down in Taylor vs. Taylor (supra) and Nazir Ahmad vs. King Emperor (supra) it was held that Section 164 Cr.P.C. which conferred on a Magistrate the power to record statements or confessions, by necessary implication, prohibited a Magistrate from giving oral evidence of the statements or confessions made to him. This principle has been approved by this Court in a series of decisions and the latest being a Constitution Bench in Commissioner of Income Tax vs. Anjum M.H. Ghaswala 05 (para 27). Applying the said principle, **we are of the opinion that the question as to who shall be deemed to have set up by a political party has to be determined strictly in accordance with paras 13 and 13A of the Symbols Order and extrinsic evidence cannot be looked into for this purpose unless it is pleaded that the signature of the authorised person on Form B had been obtained from him under threat or by playing fraud upon him. Where signature is obtained under threat or by playing fraud, it will be a nullity in the eyes of law and the document would be void.** #

13. The issue can be examined from another angle. In a case where more than one notice in Form B has been received by the Returning Officer in respect of two or more candidates and the political party fails to indicate in such notices that the earlier notice or notices in Form B has or have been rescinded, the decision of controversy by extrinsic evidence would make the second proviso to para 13A wholly redundant. It is well settled principle of interpretation that the legislature is deemed not to waste its words or to say anything in vain. The Courts always presume that the legislature inserted every part of the Statute for a purpose and the legislative intention is that every part of the Statute should have effect. (See J.K. Cotton Spinning & Weaving Mills Co. vs. State of U.P., Moh. Ali Khan vs. The Commissioner of Wealth Tax 9 and C.I.T. vs. Kanpur Coal Syndicate .

14. If instead of deciding the matter in accordance with paras 13 and 13A of the Symbols Order, it is decided on the basis of extrinsic evidence (oral or documentary) given subsequent

to the last date of filing of nomination paper, it is capable of good deal of misuse. #
Government are sometimes formed with razor thin majority or with the support of a small splinter group or of independent candidates. A political party may adopt a device of filing nomination papers of two candidates. If the candidate of the party wins well as good, but if the candidate loses, the other candidate whose nomination paper would have been rejected may file an election petition, lead extrinsic evidence to show that he was the real candidate of the party and thereby get the election of the returned candidate set aside.

15. An election is not just a contest between two persons. The whole constituency is involved in the election process which has to send its representative to the Assembly or Parliament. The entire governmental machinery has to work for smooth holding of the election and huge expenditure is incurred from the public exchequer. The date of polling is declared a public holiday when all government offices, commercial establishments and institutions are closed, resulting in loss of productivity. **Public interest demands that there should be no vagueness or uncertainty regarding the candidature of a person seeking to contest the election as a candidate of a recognised political party. Therefore, this exercise should be done strictly in accordance with paras 13 and 13A of the Symbols Order and extrinsic evidence given in derogation thereof cannot be looked into. #**

16. There is no dispute that along with his nomination paper which was filed at 2.50 p.m. on 3.2.2000 Bachan Singh had submitted Forms A and B and thereafter no further notice in Form B was received by the Returning Officer. Shri Motilal Vora, General Secretary of the Congress Party had issued Form A in the name of Shri Bhupinder Singh Hooda authorising him to intimate the names of the candidates to be set up by the Congress Party in the election. This Form contained the signature of Shri Motilal Vora and also three signatures of Shri Bhupinder Singh Hooda. In Form B it was mentioned that the notice in Form B given earlier in favour of Kamal Sharma is rescinded and this was signed in ink by Shri Bhupinder Singh Hooda. Therefore, in terms of paras 13 and 13A of the Symbols Order Bachan Singh became the candidate of the Congress Party. In his order dated 5.2.2000 passed by the Returning Officer, he said that Bachan Singh had submitted Forms A and B at 2.50 p.m. on 3.2.2000 and thereafter no other nomination paper or Form had been submitted by any person and neither Kamal Sharma nor Shri Hooda had raised any objection regarding the signature on Form B and the only objection was that the same did not contain the seal of the Congress Party. It being not a defect of substantial character, the revised Forms A and B submitted by Bachan Singh will have to be accepted and accordingly Bachan Singh shall be treated as the candidate of the Congress Party. In pursuance of the Order passed by the Chief Election Commissioner on 7.2.2000 the Returning Officer heard the matter again where both the parties appeared with their respective counsel and Shri Hooda was also present. Shri Hooda admitted his signature on Form B submitted by Bachan Singh but stated that he had instructed the person concerned not to give the said Form to Bachan Singh till he gave his consent for the same on telephone and that he never gave any such consent. He also said that as the said Form B did not bear the seal of the Congress Party, it was liable to be rejected and Kamal was the official candidate of the Congress Party. The Returning Officer held that the acceptance of signature on Form B by Shri Hooda established that the same had been issued by him and the explanation offered by him for treating Kamal as the official candidate, was an internal matter of the Congress Party. He accordingly held that Form B submitted by Bachan Singh was perfectly valid and accordingly he shall be treated as the official candidate of the Congress Party and consequently the nomination paper of Kamal Sharma was rightly rejected. **We are of the opinion that the view taken by the Returning Officer in his orders dated 5.2.2000 and 8.2.2000 being in accordance with law was**

perfectly

correct.

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17. Learned counsel for the respondents has laid great stress upon the fact that there was no seal of Congress Party on Form B which was submitted by Bachan Singh to the Returning Officer and consequently his nomination paper was invalid. It may be noticed that para 13 of the Symbols Order does not prescribe that Form B should also contain the seal of the party. In fact, it lays emphasis upon the signature of the person authorised by the party and says that the same should be in ink and that no facsimile signature or signature by means of rubber stamp, etc. shall be accepted and no form transmitted by fax shall be accepted. In the proforma of Form B given in the Symbols Order a note has been appended at the end of the Form which reads as under:

"N.B.

1. This must be delivered to the Returning Officer not later than 3 p.m. on the last date for making nominations.

2. Form must be signed in ink by the office bearer(s) mentioned above. No facsimile signature or signature by means of rubber stamp, etc. of any office bearer shall be accepted.

3. No form transmitted by fax shall be accepted.

4. Para 2 of the Form must be scored off, if not applicable, or must be properly filled, if applicable."

*The Form B which has been submitted by Kamal Sharma no doubt bears seal of the Congress Party, which has been done by an ordinary rubber stamp with the commonly used blue ink pad and there is nothing special about it. Such a seal can easily be prepared or procured by a little effort. It is not a type of seal which may be difficult to emulate and is kept in a safe custody under the charge of a responsible person, which may not be available to anyone. What is important and decisive is the signature in ink of the authorised person and not the seal of the party which can be made by an ordinary rubber stamp by any one. Section 36(4) of the Act 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 absence of the seal of the Congress Party in the nomination paper of Bachan Singh cannot be said to be a defect of a substantial character so as to render it invalid. **

18. The learned counsel for the respondent has submitted that Form B of Bachan Singh did not reach the office of Chief Electoral Officer and, therefore, there was no valid nomination of his. The High Court has gone to the extent of saying that though Bachan Singh had submitted Form A and Form B along with his nomination paper before the Returning Officer but no Form A in respect of his candidature was submitted by him to the Chief Electoral Officer and, therefore, the same would not have the effect of rescinding the candidature of Kamal Sharma. Learned counsel for the respondent has also referred to the amendment in Handbook for Returning Officers by which para 10.3(i) was substituted by the following sub-para:

"Nomination paper filed by a candidate in which he has claimed to have been set up by a recognised National or State Party and which is subscribed by only one elector as proposer will be rejected, if a notice in writing to that effect has not been delivered to the Returning Officer of the Constituency and the Chief Electoral Officer of the State by an authorised office-bearer of that political party by 3.00 P.M. on the last date for making nominations (Notice in Form 'A' is required to be submitted to

the Chief Electoral Officer and the Returning Officer concerned and notice in Form 'B' is to be submitted to the Returning Officer)."

*On the basis of the above amendment of the Handbook it has been urged that Form B was also required to be submitted to the Chief Electoral Officer and as the same had been done by Bachan Singh, his candidature could not be regarded as valid. **

19. We are unable to accept the submission made. The requirement of paras 13 and 13A of the Symbols Order is that Form B should be submitted to the Returning Officer. There is no requirement of the submission of the said Form to the Chief Electoral Officer. The Handbook for Returning Officers contains instructions which have been issued by the Election Commission for the smooth holding of the election and being merely instructions cannot override the provisions of the Statute, Rules or the Order. In fact in the very first para of the first page of the Handbook in Chapter I titled as "PRELIMINARY" it is written as under:

"However, please note that this Handbook cannot be treated as exhaustive in all respects and as substitute for various provisions of election law governing the conduct of election."

The language used in the bracket in the substituted sub-para 10.3(i) clearly mentions that notice in Form B is to be submitted to the Returning Officer alone, which is also the mandate of para 13(b) of the Symbols Order. The requirement of para 13(d) of the Symbols Order is that the party has to communicate the name and specimen signature of the authorised person in Form A to the Returning Officer of the Constituency and to the Chief Electoral Officer of the State and admittedly this had been done.

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20. In view of our finding that Form B submitted by Bachan Singh was perfectly valid and as the same was submitted in the last at 2.50 p.m. on 3.2.2000 and it contained a clear recital that notice in Form B given earlier in favour Kamal Sharma is rescinded, he became the candidate of the Congress Party. The nomination paper of Kamal Sharma, was, therefore, rightly rejected. The appeal consequently deserves to be allowed and the High Court judgment is liable to be set aside. However, as the learned counsel have made submissions on the merits of the case, we will also examine whether the election petitioner has been able to established the case set up by him.

21. Learned counsel for the respondent has submitted that Central Election Committee of the Congress Party had selected the candidates for contesting the election and from 50-Safidon Assembly Constituency, the name of Kamal Sharma had been decided. For this reliance is placed on the testimony of PW4 Punnu Ram who claims to be working as clear in the office of Haryana Pradesh Congress Committee since 1970 and PW5 Shri Bhupinder Singh Hooda. PW4 has deposed that the parliamentary body of All India Congress Committee selects the candidates while PW5 has deposed that the candidature is finally decided by the Central Election Committee of the Congress Party. PW4 has proved a list Ex. PW.4 /C of candidates dated 2.2.2000 which bears the signature of Shri Oscar Fernandes, General Secretary, AICC. At the top of the list it is mentioned - '*AICC Press Release*' *. It is not an original copy but a photocopy. The case of the appellant is that the aforesaid list was not a final list but was some kind of a tentative list and subsequently the Central Election Committee of the Congress Party decided the candidature of Bachan Singh Arya. PW 2 Ravi Shankar, Election Kanungo, District Election Office, Jind has proved a list of the candidates which

was submitted by Bachan Singh before the Returning Officer and is marked as Ex.PW2/S. In this list the name of Bachan Singh Arya is shown as a candidate for 50-Safidon Assembly Constituency. This list also bears the seal of Indian National Congress. It is important to note here that in the list Ex.PW4/C, the names of the candidates for three Constituencies, viz., Nos.2-Naraingarh, 53-Ballabgarh and 54-Palwal were not mentioned and for Constituency No. 51-Faridabad, the name of Gyan Chand was shown. However, the list PW2/S, wherein the name of Bachan Singh Arya has been shown, is a complete list of all the 90 Constituencies wherein the names of the candidates for Constituency Nos.2, 53 and 54 have also been mentioned. The name of A.C. Chaudhary is shown for Constituency No.51 - Faridabad after deletion of the name of Gyan Chand. Both PW4 Punnu Ram and PW5 Shri Bhupinder Singh Hooda have admitted in their statement that the candidature of Gyan Chand was changed and finally A.C. Chaudhary has contested the election as an official candidate for the Congress Party for 51-Faridabad Constituency. PW5 has further admitted that three persons whose names are mentioned in the list Ex.PW2/S for Constituency Nos. 2, 53 and 54 actually contested the Election as the official candidates for Congress Party. This conclusively establishes that the list dated 2.2.2000 (Ex. PW4/C) wherein the name of Kamal Sharma is mentioned as candidate, was not the final list but was some sort of a tentative list and the list was finalised later on. Both the lists, Ex. PW4/C and P:W2/S prima facie appear to have been prepared on the same computer as the letters and method of typing are exactly similar. At the top of Ex. PW2/S it is mentioned - *"The Central Election Committee has selected the following candidates for the ensuing Assembly Elections from Haryana."* * There appears to be no reason to doubt the correctness of list Ex. PW2/S which shows the name of Bachan Singh Arya and not that of Kamal Sharma. When Kamal Sharma was confronted with the situation that in the lists submitted by him (Ex. PW4/C) names of only 87 candidates were mentioned, he replied that he was not aware whether there were three constituencies regarding which decision had not been taken. When further confronted, he stated that it is true that there were 90 constituencies in Haryana. Regarding 51-Faridabad Constituency, he mentioned the name of Gyan Chand Ahuja as Congress candidate. When further cross-examined, he said that he cannot say whether Shri A.C. Chaudhary had fought the election. This shows that he has scant regard to truth and can go to any extent for supporting the list filed by him.

22. It is pleaded by Kamal Sharma in the election petition that after conclusion of the scrutiny proceedings, the Returning Officer passed a detailed order on 5.2.2000 rejecting his nomination paper and, thereafter he preferred a petition before the Chief Election Commission, New Delhi on 6.2.2000. The Election Commission vide its order dated 7.2.2000 accepted his petition and set aside the order dated 5.2.2000 of the Returning Officer and further directed him to hold fresh scrutiny on 8.2.2000 after giving notice and ensuring the presence of Shri Bhupinder Singh Hooda. Learned counsel for the respondent has submitted that when the re-scrutiny was done by the Returning Officer, Shri Bhupinder Singh Hooda was present and he made a statement before him that though Form B submitted by Bachan Singh contained his signature but the same was never validly issued by his office or by the party and that Kamal Sharma was the official candidate of the Congress Party. It has been urged that in view of this clear and categorical stand of Shri Bhupinder Singh Hooda, the Returning Officer committed manifest error of law in maintaining his earlier order wherein the candidature of Kamal Sharma had been rejected. The High Court while dealing with this aspect of the case has observed that "After the categorical stand adopted by Shri Hooda before the Returning Officer and in view of the explicit directions issued by the Election Commission of India vide order Ex. PW1/1 the Returning Officer had really no option but to accept the statement of Shri Hooda and treat the petitioner as an official candidate of the Congress Party." After noticing the statement of Shri Bhupinder Singh Hooda, the High Court held as under:

"The said function was apparently a quasi judicial function and once the re-scrutiny was ordered by the Election Commission of India and the same was conducted in the presence of the various candidates and in the presence of the authorised person of the Congress Party, namely, Shri Bhupinder Singh Hooda, then the Returning Officer was expected to decide the matter keeping in view the various facts and circumstances of the case and the documents on the record and the statement made by Shri Hooda. Apparently, he has not done so. In this view of the matter the order dated February 8, 2000 Ex. PW2/H passed by him, whereby the nomination papers of the petitioner have been rejected, is clearly unsustainable in law and improper under the circumstances of the case." *

In order to appreciate the contention raised by the learned counsel and for judging the correctness of the reasoning given by the High Court, it is necessary to refer to the order of the Election Commission.

23. Kamal Sharma had presented a petition before the Chief Election Commissioner of India on 6.2.2000 praying that the order of the Returning Officer dated 5.2.2000 may be set aside, the objections raised by him be accepted and the candidature of Bachan Singh may be set aside. It was further prayed that he may be declared as official candidate of the Congress Party. The Election Commission passed a detailed order on the very next day i.e. on 7.2.2000 and after noticing the submissions made in the petition issued a direction to the Returning Office to conduct a re-scrutiny. The operative portion of the Order reads as under:

"Now, therefore, the Election Commission hereby directs that the Returning Office for the said 50 Safidon Constituency shall cause a re-scrutiny of the nomination papers of the aforesaid candidates, namely, Shri Kamal and Shri Bachan Singh in accordance with the relevant provisions of the Constitution, Representation of the People Act, 1951 and the Election Symbols (Reservation and Allotment) Order, 1968 and the pronouncements of the Hon'ble Supreme Court, particularly the pronouncement in the case of Rakesh Kumar vs. Sunil Kumar (1999 (2) SCC 489), on the aforementioned issue as to who should be treated as the official candidate of the Indian National Congress. The Returning Officer on re-scrutinising the nomination papers of the aforesaid candidates, shall also take under consequential steps as may become necessary, by treating all earlier proceedings in relation to said candidates, as initio void and redraw the list of validly nominated candidates." *

For passing the aforementioned order, the Election Commission basically relied upon a decision of this Court in Rakesh Kumar vs. Sunil Kumar . It is important to note that in this case the last date of filing nominations was 20.1.1997 and the date of polling was 6.2.1997 and, therefore, the case related to a period prior to the amendment of Symbols Order on 20.5.1999 by which para 13A has been added. Here, two persons, namely, Sunil Kumar and Veer Abhimanyu had submitted Forms A and B claiming to be candidate of Bhartiya Janta Party. At the time of scrutiny, the Returning Officer suo moto raised an objection to the effect that since BJP had set up more than one candidate, therefore, none could be treated as a candidate of said political party and rejected the nomination papers of both Sunil Kumar and Veer Abhimanyu. Sunil Kumar made an application stating that he was the official candidate of the party and he requested for 24 hours time to produce an official confirmation of his candidature but the application was rejected and no time was given, though no other candidate (including Veer Abhimanyu) had raised any objection. It was in these circumstances that it was held by this Court that the Returning Officer ought to have granted him time to meet the

objection in the interest of justice and fair play. This authority can have no application now on account of amendment to the Symbols Order which lays down a complete procedure for acceptance of nomination paper of a candidate set up by a recognised political party and substitution of a candidate. The factual situation here is also different.

24. It may be noticed that the petition by Kamal Sharma was filed on 6.2.2000 and the same was allowed by the Election Commission very next

day i.e. on 7.2.2000 by which a direction was issued to the Returning Officer to hold a fresh scrutiny. There is nothing on record to indicate nor it appears probable that before passing the order, the Election Commission issued by notice to Bachan Singh. Apparently the order was passed behind his back. The order of the Election Commission to the effect that the Returning Officer shall take further consequential steps as may become necessary, by treating all earlier proceedings in relation to said candidates, as ab initio void and redraw the list of validly nominated candidates could not have been passed without giving an opportunity of hearing to Bachan Singh. That apart, it has been held by a catena of decisions of this Court that once the nomination paper of a candidate is rejected, the Act provides for only one remedy, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage. (See N.P. Punnuswami v. Returning Officer, Mohinder Singh Gill v. Chief Election Commission Election Commission v. Shivaji). Therefore, the order passed by the Election Commission on 7.2.2000 was not only illegal but was also without jurisdiction and the respondent Kamal Sharma can get no advantage from the same. There inference drawn and the findings recorded by the High Court on the basis of the order of the Election Commission, therefore, cannot be sustained.

25. Shri Bhupinder Singh Hooda as admitted in his cross-examination that Bachan Singh Arya had contested the election from 50-Safidon Assembly Constituency and had won. He was a Minister when the congress Party was in power. he had also contested in the year 1996 as a Congress candidate but had lost. The statements of PW4 and PW5 show that it is the Central Election Committee of the Congress Party which is the final authority to select a candidate to contest the election. Shri Bhupinder Singh Hooda, being President of the Party, was a member of the Central Election Committee. he, no doubt, supported the candidature of Kamal Sharma but no other member of the Central Election Committee was examined as a witness to prove that he was the final choice of the party. Shri Hooda has admitted that the name of Bachan Singh was under consideration. Before the Returning Officer he had stated that though Form B of Bachan Singh contained his signature but he had instructed that the same should not be issued to him till he gave instructions in that regard on telephone which he never gave, which also shows that there was uncertainty about the candidature. The success or defeat of a political party is good deal attributed to the President of the party. Shri Hooda being the President of Haryana Pradesh Congress Party would certainly be interested in having the election of the winning candidate of the rival party set aside, more so here when he seems to be very much interested in Kamal Sharma. There can be differences amongst the members regarding the choice of a candidate. In this background, Kamal Sharma should have examined other members of the Central Election Committee of Congress Party to substantiate his case that the Party had finally selected him as its candidate and his candidature was never changed. The appellant being of a rival party Lok Dal and having defeated the Congress candidate could not have led this kind of evidence.

26. the election petitioner has examined in all six witnesses, out of whom PW1 Bernard John is Under Secretary of the Election Commission of India, PW 2 Ravi Shankar is the Election Kanungo

in the District Election Office, Jind and PW3 Som Nath Luthra is the Assistant Chief Election Officer, Haryana and these witnesses have no personal knowledge of the controversy raised but have merely proved some documents. Apart from himself, the election petitioner has strongly relied upon the testimony of PW4 Punnu Ram and PW5 Shri Bhupinder Singh Hooda. PW4 Punu Ram, who claims to be Clerk in the office of Haryana Pradesh Congress Committee since 1970, went to the extent of denying the signature of Shri Bhupinder Singh Hooda in Form B which was submitted by Bachan Singh though Shri Hooda himself admitted his signature on the said form at three different places during the course of his cross-examination. When questioned, he stated in his cross-examination that he did not know whether Bachan Singh had earlier contested election from 50-Safidon Constituency or had ever fought election as a candidate of the Congress Party. He further stated that he did not know whether Bachan Singh had ever remained a Minister. It is not possible to believe that a person who had been serving as a Clerk in the Congress office at Chandigarh for 30 years would not be knowing that Bachan Singh had earlier contested election as a Congress candidate twice and had remained a Minister. This shows that he has scant regard for truth and can go to any extent to help the election petitioner. It will, therefore, not be safe to rely upon his testimony. Shri Bhupinder Singh Hooda being President of Haryana Congress Party would not be favourably inclined towards the appellant who is of the rival Lok Dal Party and would certainly be interested in the success of the Election Petition so that the election of the appellant may be set aside. he is, therefore, not an independent witness. **The election petitioner has thus not led any independent evidence of unimpeachable character on which implicit reliance may be placed. #**

27. There is another aspect of the case which deserves notice. Kamal Sharma did not want to contest as an independent candidate but as a candidate of Congress Party. Shri Hooda has clearly admitted in his cross-examination that he instructed all the workers to campaign for the Congress candidates and after withdrawal, Bachan Singh was adopted as the Congress candidate from 50-Safidon Constituency. The evidence adduced by the appellant Ram PHal Kundu shows that all the important Congress leaders like Shri Motilal Vora, Sheila Dixit, Shri Bhajan Lal and others campaigned for Bachan Singh. Thus, a candidate set up by the Congress Party contested the election for whom all the party workers and important leaders campaigned. The appellant secured 45,382 i.e. 55% of the total valid votes polled and thus won by an overwhelming majority. The appellant played absolutely no role of any kind in the rejection of nomination paper of Kamal Sharma on account of acceptance of Bachan Singh as a candidate of Congress Party. It was an inter se dispute between two persons, each claiming to be candidate of the same party. It will be opposite to refer to a well settled principle in election jurisprudence. After referring to earlier decisions in Jagan Nath v. Jaswant Singh and Gajanan Krishanand Bapat v. Dattaji Raghobaji Meghe 19 9595 SCC 347, this Court in Jeet Mohinder Singh v. Harminder Singh Jassi 1999 (9) SCC 381 stated as under:

"The success of a candidate who has won at an election should not be lightly interfered with. Any petition seeking such interference must strictly conform to the requirements of the law. Though the purity of the election process has to be safeguarded and the court shall be vigilant to see that people do not get elected by flagrant breaches of law or by committing corrupt practices, the setting aside of an election involves serious consequences not only for the returned candidate and the constituency, but also for the public at large inasmuch as re-election involves an enormous load on the public funds and administration." *

Therefore, unless the election petitioner fully established his case, it will not be legally correct to set aside the election of the appellant. As discussed earlier, Kamal Sharma has failed to do so.

28. The appeal is, therefore, allowed and the judgment and order dated 8.5.2003 of the High Court is set aside. The election petition filed by Kamal Sharma is dismissed. The appellant will be entitled to his costs both here and in the High Court. #