SUPREME COURT OF INDIA

Sathi Vijay Kumar

Vs.

Tota Singh

C.A.No.4093 of 2004

(CJI Y.K. Sabharwal,C.K. Thakker and R.V. Raveendran JJ.)

08.12.2006

JUDGMENT

C.K. THAKKER, J.

All these appeals have been instituted by the aggrieved appellants against separate orders passed by the High Court of Punjab & Haryana at Chandigarh.

To appreciate the issues raised in the present appeals, relevant facts may be stated in brief.

Sathi Vijay Kumar, appellant in Civil Appeal No. 4093 of 2004 was a candidate in the general election of the Punjab Constituent Assembly from 99, Moga Constituency scheduled to be held in February, 2002. According to the appellant, the Election Commission of India issued a notification for holding election in the State of Punjab. The last date for filing nomination papers as per the programme was January 23, 2002. The appellant filed his nomination paper as a candidate of the Indian National Congress whereas Tota Singh, respondent No.1 was the candidate set up by Shiromani Akali Dal (Badal). The nomination papers were scrutinized on January 24, 2002. The last date for withdrawal of candidature was January 28, 2002. Polling took place on February 13, 2002. Votes were counted on February 24, 2002 and the results were also declared on the same day. The appellant secured 42,275 votes, while respondent No.1 secured 42,579 votes. Thus, there was a difference of 304 votes. Accordingly, the first respondent was declared as successful candidate.

On April 8, 2002, the appellant filed a petition being Election Petition No. 13 of 2002 in the High Court of Punjab & Haryana at Chandigarh challenging the election of the first respondent, inter alia, on the ground of corrupt practice. Likewise, one Rampal Dhawan also filed a petition being Election Petition No. 4 of 2002 against the first respondent. So far as Election Petition No. 13 is concerned, the election petitioner (appellant herein) alleged that the first respondent had committed several irregularities and illegalities and at his instance, the authorities had indulged in committing such illegalities to favour the first respondent and increased chances of his being declared as returned candidate and thereby the first respondent got elected by committing corrupt practice. It is also the allegation of the election petitioner that those illegalities and irregularities had materially affected the result and the election of the returned candidate was required to be declared void under the provisions of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act') read

with the Conduct of the Election Rules, 1961 (hereinafter referred to as 'the Rules'). Similar was the case of the election petitioner in Election Petition No. 4 of 2004. He also prayed to set aside the election of the successful candidate-respondent No.1 herein.

The first respondent filed written statement, inter alia, contending that election petitions filed by the petitioners were not maintainable at law and were liable to be dismissed at the threshold. It was contended that necessary parties who were required to be joined in the election petitions were not joined inasmuch as Brijinder Singh had filed nomination form which had been scrutinized and had been accepted after such scrutiny had not been joined as party respondent. In absence of Brijinder Singh in the election petition as one of the respondents, the petitions were liable to be rejected. It was also contended that since allegations of corrupt practice had been levelled against Brijinder Singh, it was obligatory on the election petitioners to make him a party-respondent which was not done. The said defect was of a fundamental nature and the petitions could not be entertained by the High Court.

In respect of Election Petition No. 13 of 2004, it was further contended by the first respondent that the petition was liable to be dismissed on the ground that it did not disclose cause of action. Material facts and full particulars as required by the Act had not been set out in the election petition which went to the root of the matter requiring the dismissal of the petition. It was also the case of the first respondent that pleadings in certain paragraphs were vague, unnecessary, frivolous or vexatious which would tend to prejudice, embarrass or delay fair trial of the election petition and were otherwise an abuse of process of the Court and, therefore, they were required to be deleted.

Replication was filed by the petitioner denying the averments made by the first respondent in his written statement and reiterating that material facts and full particulars had been given in the petition. Allegations were specific and positive, several illegalities and irregularities had been committed and result of the election had been materially affected. It was, therefore, submitted that the election petition was required to be decided in accordance with law on merits.

The High Court, on January 13, 2003 framed as many as twelve issues in Election Petition No.13 of 2004. Since we are concerned in the present appeals only with regard to preliminary issues, as the High Court decided the petition on those issues, we are not considering the issues other than preliminary issues dealt with and decided by the High Court. Preliminary issues were issue Nos. 1 to 6 and they were as under;

1. Whether the election petition is liable to be dismissed under Section 86(1) of the Representation of People Act, 1951 for non joinder of Brijinder Singh, a candidate in the said election as the respondent in the election petition?

2. Whether paragraphs 7, 8, 9, 12 and 14 are vague, do not constituency illegality and irregularity and do no disclose any cause of action and triable issue and as such are liable to be struck off from the pleading?

3. Whether paragraph 10, 13 alongwith sub paras alleging corrupt practices are vague, deficient in material facts and are liable to be struck off from the pleadings?

4. Whether paragraph 11 alongwith its sub paras are vague, deficient in material facts and are liable to be struck off from the pleadings?

5. Whether paragraphs 15 to 17 are vague, do not disclose any cause of action and triable issue and are liable to be struck off from the pleadings, if so to what effect?

6. Whether the petition is liable to be dismissed if the issue No.1 to 5 are decided in favour of the respondent No.1?

The High Court heard the learned counsel for the parties on the above issues. As to issue No.1 regarding joining of Brijinder Singh as party-respondent in both the election petitions, the High Court held that non- joinder of Brijinder Singh as party respondent could not be held to be fatal and the election petitions could not be dismissed on that ground inasmuch as Brijinder Singh was a 'substitute' candidate set up by the same political party i.e., Shiromani Akali Dal (Badal) which had set up Tota Singh-first respondent, whose nomination paper had been accepted after scrutiny. Brijinder Singh, was the son of Tota Singh. He had withdrawn his candidature on the date of withdrawal after the nomination paper of his father was accepted as a candidate belonged to Shiromani Akali Dal (Badal). The said order was passed by the High Court on May 2, 2003. Against the said order, the returned candidate Tota Singh has filed two appeals (Civil Appeal Nos. 5999 and 6000 of 2004). We will deal with the said matters at an appropriate stage.

The Court then considered issue Nos. 2 to 5 and concluded in issue No.6 that considering the pleadings of the parties and in the light of the statutory provisions as well as the law laid down by this Court, paragraphs 12, 13(a), 11 and 17 forming subject matter of issues 2, 3, 4 and 5 were liable to be struck out from pleadings. Accordingly, an order was passed on February 27, 2004 striking out pleadings. In Civil Appeal No. 4039 of 2004, the election petitioner of Election Petition No. 13 of 2002 has challenged the said order.

On July 12, 2004, leave was granted by this Court, printing was dispensed with and appeal was ordered to be heard on SLP paper book. Time was granted to file additional documents. In the meanwhile, two SLPs were filed by the returned candidate against a finding recorded against him on Preliminary Issue No.1. The present appeal was ordered to be heard along with those SLPs which were also admitted by granting leave on September 10, 2004 (Civil Appeal Nos.5999 and 6000 of 2004).

We have heard the learned counsel for the parties. In Civil Appeal No. 4093 of 2004, it was contended by the learned counsel for the appellant that the High Court committed an error of law in striking out pleadings in paragraphs 12, 13(a), 11 and 17. He submitted that material facts and particulars had been stated in the election petition in the said paras. Pleadings were express and specific on the point disclosing cause of action and raising triable issues. They could neither be said to be vague, embarrassing, vexatious, frivolous or unnecessary and could not have been struck off. It was also stated that full details have been set out in the election petition itself as to how illegalities had been committed by the returned candidate and the election authorities had obliged him by increasing his chances to get elected. It was also alleged in the petition that illegalities committed by the first respondent materially affected the result of the election. But for such illegalities, the election petitioner would have been elected. Regarding corrupt practice, sufficient particulars have been stated in the petition. The High Court was wholly wrong in ordering striking off certain paragraphs. The appeal, therefore, deserves to be allowed by setting aside the order of the High Court and by directing the Court to consider the allegations levelled by the appellant in the election petition and to decide the petition on merits in accordance with law.

So far as the non-joinder of Brijinder Singh as party respondent is concerned, it was submitted by the learned counsel that the High Court was wholly justified in rejecting the contention of the returned candidate in view of the fact that Brijinder Singh was a 'substitute' candidate of the same party to which the returned candidate belonged and as soon as nomination paper of Tota Singh was accepted after scrutiny and the said political party was represented through Tota Singh, Brijinder Singh could not be said to be a candidate belonged to the said political party and the petition could not have been dismissed on that ground.

The learned counsel for the first respondent, on the other hand, supported the order passed by the High Court on the reasoning and conclusions on issue Nos. 2 to 6. He submitted that material facts and full particulars as required by the Act, had not been stated with sufficient precision. According to the counsel, vague, unnecessary and vexatious averments have been made which were not in consonance with the provisions of Order VI, Rule 16 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code'). The Court minutely considered the pleadings keeping in view the relevant decisions and finally came to the conclusion that certain paragraphs were required to be struck off. Such an order could not be said to be illegal or contrary to law requiring interference by this Court. He, therefore, submitted that the appeal filed by the election petitioner was liable to be dismissed.

Regarding appeals against preliminary issue No.1, it was submitted by the counsel that the High Court was wrong in rejecting the preliminary objection raised by the returned candidate. According to the counsel, once the nomination papers were scrutinized and the nomination paper of Brijinder Singh was found to be in order and was accepted, the High Court could not have held that Brijinder Singh was not a candidate at the election as he was a 'substitute' candidate and non-joinder of Brijinder Singh was immaterial. Even if it is assumed that acceptance of nomination paper of Brijinder Singh was not in accordance with law, the fact could not be ignored that such nomination paper had been accepted by the Returning Officer. Once it was done, other questions as to whether he was a candidate belonged to the same party or was a substitute or was son of the appellant or the fact that he subsequently withdrew his nomination paper were totally immaterial and irrelevant as far as the maintainability of election petitions were concerned. Since the High Court decided issue No.1 against the returned candidate which was not in accordance with law, the order deserves to be set aside by allowing the appeals of the first respondent holding both the election petitions not maintainable.

Before we deal with the contentions of the parties, it would be appropriate to consider the relevant provisions of the Act. Part I is Preliminary. Part II deals with qualifications and disqualifications for membership of Parliament and of State Legislatures. While Part III provides for issuance of notifications for elections, Part IV relates to administrative machinery for the conduct of elections. Conduct of elections has been dealt with in Part V. Section 30 requires the Election Commission to issue a notification in the Official Gazette fixing the last date for making nominations, the date for scrutiny of nominations, the last day for the withdrawal of candidatures, the date or dates of poll and the date before which the election should be completed.

Section 33 provides for presentation of nomination paper and requirement for a valid nomination, the relevant part thereof reads thus;

33. Presentation of nomination paper and requirements for a valid nomination.(1) On or before the

date appointed under clause (a) of Section 30 each candidate shall, either in person or by his proposer, between the hours of eleven O'clock in the forenoon and three O'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under Section 31, a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer:

Provided that a candidate not set up by a recognized political party, shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is subscribed by ten proposers being electors of the constituency.

Section 36 relates to scrutiny of nomination. It requires the Returning Officer to examine nomination papers and to decide all objections which may be made to any nomination. It also empowers him either on objection being taken or suo motu, after such summary inquiry, if any, as he thinks necessary, to reject any nomination, inter alia on the ground that there has been a failure to comply with any of the provisions of Section 33.

Sub-section (8) of Section 36 then provides; "(8) Immediately after all the nomination papers have been scrutinized and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated Candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board.

Section 37 allows withdrawal of candidature. Section 38 directs the Returning Officer to prepare and publish a list of contesting candidates.

Part VI relates to 'Disputes regarding elections'. Section 79 defines certain expressions, including 'candidate' to mean "a person who has been or claims to have been duly nominated as a candidate at any election". Section 80 requires any election to be questioned only by way of election petition. Under Section 80A, it is the High Court which can try election petitions. Section 81 provides for presentation of election petition and prescribes the period of limitation.

Section 82 declares as to who shall be joined as respondents to such election petition. The said section reads thus;

"82. Parties to the petition.A petitioner shall join as respondents to his petition- (a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates ; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition."

Section 83 deals with contents of petition. It is also a material provision and may be reproduced; "83. Contents of petition. (1) An Election petition (a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a

statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings: provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition." Section 100 enumerates the grounds on which election of a returned candidate may be challenged and declared void. Commission of corrupt practice is one of the grounds for declaring an election void. Section 123 declares certain practices as "deemed to be corrupt practices". The material part of the section reads thus;--

123. Corrupt practices. The following shall be deemed to be corrupt practices for the purposes of this Act:

(1) to (6) (7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely:- (a) gazetted officers;

(b) to (g)

Sub-Section (8) of Section 123 relates to booth capturing which is an offence punishable under Section 135-A of the Act.

Now it is true that the Act does not make any provision as to striking out pleadings. Section 83 of the Act mandates that every election petition should contain concise statement of material facts and set forth full particulars of any corrupt practice that the petitioner alleges. Section 86 requires the High Court to dismiss an election petition which does not comply with the provisions of Section 81 (petition barred by limitation), or Section 82 (non joinder of parties) or Section 117 (failure to deposit security for costs). But as held by this Court in several cases, Section 86 is not exhaustive as to the grounds of dismissal of an election petition in limine. Moreover, the provisions of the Code have been made applicable to the trial of election petitions by virtue of Section 87 of the Act. A number of election petitions were, therefore, dismissed on the ground that they did not disclose cause of action as required by Order VII, Rule 11 of the Code. So far as striking out pleadings is concerned, the provision is found in Rule 16 of Order VI which reads thus:

16. Striking out pleadings.The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court.

The above provision empowers a Court to strike out any pleading if it is unnecessary, scandalous, frivolous or vexatious or tend to prejudice, embarrass or delay fair trial of the suit or is otherwise an abuse of the process of the Court. The underlying object of the rule is to ensure that every party to a suit should present his pleading in an intelligible form without causing embarrassment to his adversary [vide Davy v. Garrett, (1878) 7 Ch D 473 : 47 LJ Ch 218]. Bare reading of Rule 16 of Order VI makes it clear that the Court may order striking off pleadings in the following circumstances;

(i) Where such pleading is unnecessary, scandalous, frivolous or vexatious; or

(b) Where such pleading tends to prejudice, embarrass or delay fair trial of the suit; or

(c) Where such pleading is otherwise an abuse of the process of the Court.

In Halsbury's Laws of England, (4th Edn.; Vol. 9; para 38), it has been stated:

"Certain acts of a lesser nature may also constitute an abuse of process as, for instance, initiating or carrying on proceedings which are wanting in bona fides or which are frivolous, vexatious, a oppressive. In such cases the court has extensive alternative powers to prevent an abuse of its process by striking out or staying proceedings or by prohibiting the taking of further proceedings without leave. Where the court by exercising its statutory powers, its powers under rules of court, or its inherent jurisdiction, can give an adequate remedy, it will not in general punish the abuse as a adequate of court. On the other hand, where an irregularity or misuse of process amounts to an offence against justice, extending its influence beyond the parties to the action, it may be punished as a contempt".

In Supreme Court Practice, 1995, p.344 (Sweet & Maxwell), it has been observed;

"This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will, in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material".

Since the general principles as to pleadings in civil suits apply to election petitions as well, the pleadings which are required to be struck off under Rule 16 of Order VI in a suit can also be ordered to be struck off in an election petition. In appropriate cases, therefore, an election tribunal (High Court) may invoke the power under Order VI, Rule 16 of the Code.

This Court in Azhar Hussain v. Rajiv Gandhi, (1986) Supp SCC 315 indicated that the whole purpose of conferment of such powers i.e. either to dismiss election petitions in limine or striking out unnecessary, scandalous, frivolous or vexatious pleadings is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and does not embarrass the returned candidate. "The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose". It was also observed that such hanging sword of the election petition on the returned candidate would not keep him sufficiently free to devote his

whole-hearted attention to matters of public importance which clamour for his attention in his capacity as an elected representative of the concerned constituency. The precious time and attention demanded by his elected office would be diverted to matters pertaining to the contest of the election petition. Instead of being engaged in a campaign to relieve the distress of the people in general and of the residents of his constituency who voted him into office in particular, and instead of resolving their problems, he would be engaged in defending himself in the litigation pending against him. The fact that an election petition calling into question his election is pending, may, in a given case, act as a psychological factor and may not permit him to act with full freedom. The Court, in these circumstances, may exercise the power of striking out pleadings in appropriate cases if it is warranted in the facts and circumstances of the case.

At the same time, however, it cannot be overlooked that normally a Court cannot direct parties as to how they should prepare their pleadings. If the parties have not offended the rules of pleadings by making averments or raising arguable issues, the Court would not order striking out pleadings. The power to strike out pleadings is extraordinary in nature and must be exercised by the Court sparingly and with extreme care, caution and circumspection [vide Roop Lal v. Nachhatar Singh, (1982) 3 SCC 487 : AIR 1982 SC 1559; K.K. Modi v. K.N. Modi, (1998) 3 SCC 573 : AIR 1998 SC 1297; United Bank of India v. Naresh Kumar, (1996) 6 SCC 660 : AIR 1997 SC 3].

More than a century back, in Knowles v. Roberts, (1888) 38 Ch D 263, Bowen L.J. said:

"It seems to me that the rule that the Court is not to dictate to parties how they should frame their case, is one that ought always to be preserved sacred. But that rule is, of course, subject to this modification and limitation, that the parties must not offend against the rules of pleading which have been laid down by the law; and if a party introduces a pleading which is unnecessary, and it tends to prejudice, embarrass and delay the trial of the action, it then becomes a pleading which is beyond his right. It is a recognized principle that a defendant may claim ex debito justitiae to have the plaintiff's claim presented in an intelligible form, so that he may not be embarrassed in meeting it; and the Court ought to be strict even to severity in taking care to prevent pleadings from degenerating into the old oppressive pleadings of the Court of Chancery".

In the case on hand, in our opinion, the election petitioner has stated in his election petition all material facts disclosing the cause of action. The High Court has also not dismissed the petition on the ground that it did not disclose the cause of action as required by Section 83 of the Act read with Order VII, Rule 11 of the Code. While considering issue Nos. 2 to 5, the High Court held that pleadings in paragraphs 12, 13(a), 11 and 17 were required to be struck off being unnecessary and tend to cause delay in disposal of the election petition. It is, therefore, necessary to consider as to whether the High Court was right in coming to the said conclusion. In paragraph 12, the election petitioner has alleged that names of several electors were deleted on the date of polling "without there being any order of the Electoral Registration Officer". According to the election petitioner, the said fact came to the notice of the petitioner on the date of polling when many electors who had gone to cast their votes had to come back as their names were deleted from the electoral rolls. The petitioner has also averred that he made an application for supply of copies of the orders on March 7, 2002 and again prayed for inspection of record on March 9, 2002 but neither copies were supplied nor inspection was permitted. According to the petitioner, his doubts got confirmed that "a mischief on large scale has been done in the electoral rolls". The petitioner, however, persisted with his efforts and it was only after the orders of the District Magistrate that some copies of the orders pertaining to the deletion of voters were supplied to him. They related to 586 electors whose names

and other details were given in Schedule 'A' annexed to the petition. According to the petitioner, deletion of the names clearly showed that there were no orders in existence on the date of the poll or even at the time of filing of nomination papers and those electors were "wrongly denied" the right to vote. It, according to the petitioner, amounted to wrongful refusal of votes. The petitioner then stated; "Since the margin by which the respondent No.1 has been declared elected is only 305, this refusal has resulted in materially affecting the result of the election in so far as the respondent is concerned". The petitioner also stated that a newspaper 'Dainik Bhaskar' which came to know about the fact, reported that officers were trying to cover their illegalities committed in connection with the deletion and addition of electors in the electoral roll of 99-Moga Assembly Constituency. The copies of the orders supplied to the petitioner clearly established that fact. The first respondent contended that the allegations in paragraph 12 did not constitute "any triable issue" and did not "disclose any cause of action" and it was unnecessarily incorporated to prejudice, embarrass or delay the fair trial of the petition. It was, therefore, required to be struck off under Order VI, Rule 16 of the Code.

The High Court considered the question and held that the petitioner no doubt alleged that the names of many existing voters were deleted without there being any order of the Electoral Registration Officer. It also noted that in the Schedule 'A' attached to the election petition, the names of 586 electorals were mentioned which contained reasons for the deletion; such as, death, marriage, shifting, etc. The High Court, thereafter, surprisingly observed; "There is no whisper in respect of any of the voter having been wrongly deleted inasmuch as it has not been alleged that such voter is alive but his name has been wrongly deleted or that particular person is still residing in the village but his vote has been deleted". The High Court proceeded to observe that even if the argument of the petitioner that the deletion of these voters furnished a cause of action to the petitioner under Section 100(1)(d)(iii) is accepted, still it was incumbent upon the petitioner to plead that names of voters mentioned in Schedule 'A' have been deleted on account of non-existent reason. According to the High Court, it was not enough for the petitioner to state that the names of the electorals mentioned in Schedule 'A' had been "wrongly deleted".

The High Court further stated that it was not enough for the petitioner to show that the names of electorals were wrongly deleted but reasons were required to be pleaded by the petitioner with sufficient exactitude. The allegations of the petitioner that the names have been deleted by ante-dating the record would not sufficiently disclose the material particulars. The allegation regarding antedating the electoral rolls was incomplete and vague. According to the High Court, the averments in para No.12 of the election petition would only delay the trial and they were unnecessary for the purpose of decision of the election petition. Para 12 was, therefore, ordered to be struck out.

We fail to appreciate the reasoning as also the conclusion arrived at by the High Court. When the election petitioner has expressly stated that names of as many as 586 electors had been deleted wrongly and the entire list of those electors had been placed on record as Schedule 'A', by no stretch of imagination, it can be said that the allegation was vague or incomplete. We have seen the original record containing Schedule 'A' to the election petition, wherein sufficient particulars as to serial number, house number, name of voters, sex, age, remarks etc., have been mentioned. We also fail to understand the observation of the High Court that it was not sufficient to allege that the names have been wrongly deleted and "one or the other reasons" must be pleaded by the petitioner for such deletion. The action of deletion was not taken by the petitioner. His grievance was that the said 586 names were already in the voters' list and were wrongly deleted. What was contended by the petitioner was that their names could not have been deleted and the action was illegal and contrary

to law. In fact, he wanted to know the grounds/reasons as to why the names had been deleted. He prayed for supply of copies of the orders on March 7, 2002 and again for inspection of record on March 9, 2002 but neither copies were supplied nor was inspection allowed. His doubts, hence, got confirmed that 'mischief' on large scale had been committed while preparing election rolls. In our opinion, therefore, the High Court was wholly wrong in observing that the allegation regarding deletion of 586 voters from the voters' list was vague. To us, the High Court was equally wrong in holding that the allegation of antedating the election rolls, was "incomplete and vague". In our view, when it was alleged that names of certain electors were wrongly deleted and all particulars relating to excluded electors numbering 586 were placed in Schedule 'A' along with the election petition, it could not be said that the particulars were incomplete or vague and the pleading liable to be struck down. Regarding averments in paragraph 13(a) of the election petition, the petitioner has stated that the first respondent was guilty of having committed corrupt practice of obtaining assistance of a gazetted officer, namely, Jaspal Singh Jassi, who was not only the Returning Officer of 99 Moga Constituency but the Electoral Registration Officer as well. The first respondent got votes of many electors, who were supporters of the Congress (I) candidate i.e., the petitioner. Deletion was got done through Jaspal Singh Jassi after filing of nomination paper by respondent No.1 without there being any order to that effect. When the electors went to their respective booths, they could not exercise their right to vote as their names stood deleted. It was also his case that to justify the decision of deletion of names as mentioned in Schedule 'A', orders were passed much after the declaration of results and were antedated by the Electoral Registration Officer. The petition then stated; "The assistance obtained by Shri Tota Singh, respondent No.1, was for furtherance of prospects of his election and, thus, Shri Tota Singh is guilty of corrupt practice within the meaning of Section 123(7) of the Act".

The first respondent, in his written statement denied the allegation of the election petitioner. According to him, electoral rolls of the State was maintained in pursuance of the orders of the Election Commission of India and there was no illegality.

The High Court considered the ground and held that the allegation of corrupt practice pertaining to the assistance of a gazetted officer did not disclose material fact so as to disclose a complete cause of action to prove the allegation of the corrupt practice within the meaning of Section 123(7) of the Act.

The High Court observed; "It has not been alleged by the petitioner that such Electoral Registration Officer has acted with the consent of respondent No.1 and in furtherance of the prospects of his election". The High Court also stated that "it has not been alleged by the petitioner that the procedure meant for revision of electoral rolls has not been followed. The only allegation is that the electoral rolls had been antedated". The High Court then made the following observations; "Mere fact that a Gazetted Officer was discharging the duties of Electoral Registration Officer and under whose authority, votes have been deleted does not disclose a corrupt practice on the part of the returned candidate. No particulars have been disclosed that such gazetted officer was acting on behalf of returned candidate. It is also not disclosed that such deletion of names has materially affected the election of the returned candidate".

We are unable to appreciate the approach of the High Court. The allegations in the election petition are clear that the first respondent was guilty of corrupt practice of obtaining assistance of a Gazetted Officer, namely, Jaspal Singh Jassi who was a Returning Officer as well as Electoral Registration Officer. It was also alleged that the first respondent got names of several electors (586) in Schedule

'A' wrongly deleted. The said fact came to light only when the electors had gone to exercise their right to vote but could not exercise it in view of deletion of their names. It was also averred in the petition that orders were passed subsequently and were antedated and the said action was taken by Mr. Jassi with a view to furtherance of the prospects of the election of respondent No.1. In our view, therefore, material facts and full particulars as required by Section 83 read with Section 123(7) had been set out in the election petition and the High Court was wrong in deleting paragraph 13(a) of the election petition.

The High Court observed that it was not alleged by the petitioner that Electoral Registration Officer had acted with the consent of the first respondent for the furtherance of the prospects of the first respondent. With respect, the High Court was wrong in interpreting and applying the ambit and scope of sub- section (7) of Section 123 of the Act. The provision has been reproduced in the earlier part of the judgment. It enacts that it would be deemed to be a corrupt practice if assistance is sought from a gazetted officer in certain cases. Such assistance may be sought either by (i) a candidate; or (ii) his agent; or (iii) any person with the consent of a candidate or his election agent for the furtherance of the prospects of the candidate's election. Thus, consent of the candidate is required only in those cases where such assistance is sought by 'any other person', i.e. other than the candidate himself (or his election agent). And it is obvious because where the candidate himself (or his election agent) is seeking assistance of a gazetted officer, the question of consent does not arise. In the case on hand, the allegation of the election-petitioner is that the first respondent himself has obtained assistance of a gazetted officer (Mr. Jassi) "for furtherance of prospects of his election". The High Court was, therefore, legally wrong in ordering deletion of para 13(a) on the basis of construction of Section 123(7) of the Act.

The High Court has also ordered deletion of para 11 of the election petition. In para 11 (a), the election petitioner has stated that one Harish Kumar, respondent No.5 in the election petition had filed his nomination paper as an independent candidate. In case of an independent candidate, nomination paper was required to be subscribed by ten proposers. In case one or more of the proposers were unable to write their names, they should put their thumb mark in which case, it should be done in the presence of Returning Officer or such other officer as may be specified in that behalf by the Election Commission. Nomination paper of Harish Kumar was thumb marked by four proposers. Neither the thumb impression had been identified, nor it has been attested. The nomination paper of Harish Kumar was, therefore, invalid and wrongly accepted. Harish Kumar obtained 66 votes. Had he not contested the election, majority of those votes were likely to be polled in favour of the petitioner. Wrongful acceptance of nomination paper of Harish Kumar, therefore, according to the petitioner, had materially affected the result of the election.

In para 11(b), the election-petitioner stated that one Harnek Singh had filed his nomination paper as an independent candidate. Out of ten proposers, one was Smt. Prakash Kaur. Normally, she used to put her thumb impression but someone else had written her name on the nomination form. That clearly went to show that ten proposers had not subscribed nomination of Harnek Singh and his nomination paper was wrongly accepted. Harnek Singh secured 150 votes. The petitioner asserted that more than 100 of the said votes would have been polled in his favour. Thus, wrongful acceptance of the nomination paper of Harnek Singh had materially affected the result of the election. In the written statement, the first respondent has stated that the averments made in paragraphs 11 (a) and (b) were totally vague and deficient in material particulars. It has not materially affected the result of the returned candidate.

The High Court ordered striking down paragraph 11 observing that the petitioner had not disclosed that those voters were the voters of the petitioner and improper acceptance of the nomination papers of two candidates had materially affected the result of the election. Then referring to Shiv Charan Singh v. Angad Singh, (1988) 2 SCC 12 and Santosh Yadav v. Narender Singh, AIR 2002 SC 241, the Court held that it may be difficult but the onus is still on the election-petitioner to discharge burden and to prove how many of the voters who had voted for a candidate whose nomination paper was improperly accepted would have voted in favour of the petitioner. Since there was no allegation of the kind, para No.11 was wholly unnecessary and would delay the fair trial of the case and therefore required to be deleted. In our opinion, the High Court was not right in deleting the above para relying on Shiv Charan and Santosh Yadav. Neither of the above cases related to striking out pleadings. What was held by this Court in those cases was that when an election petitioner alleges that there was improper acceptance of nomination paper of some candidate and had the said illegal acceptance been not allowed, the voters would have voted in favour of the petitioner, the burden of proof was on the election petitioner. This Court observed that though it was very difficult for the election petitioner to prove such fact, nonetheless, the onus was on him and he had to discharge it. We are here not at the stage of trial but only at the stage of pleadings. The ratio laid down in the above cases, therefore, in our considered opinion, has no application in the case on hand and the High Court was wrong in invoking the law laid down in the aforesaid decisions.

Finally, in paragraph 17 of the election petition, the petitioner has stated that 22 ballot papers were received by post and were counted at the commencement of the counting as required under the Rules. He further stated that the ballot papers were not shown to the petitioner or his election agent and 20 out of 22 ballot papers were rejected by the Returning Officer saying that they were 'not accompanied by requisite declaration'. The election petitioner then stated that majority of the postal ballot papers pertained to the electors who had been posted outside the constituency on election duty who were fully conversant with the procedure of casting postal ballots. The High Court held that the averments in paragraph 17 were required to be struck off. According to the High Court, out of 22 postal ballot papers, 20 were rejected on the ground that they were not accompanied by requisite declaration. Rule 54A of the Rules requires postal ballot papers to be accompanied by requisite declaration. The petitioner had not pointed out any illegality in the rejection of the votes on account of non- furnishing of declaration. It was also not his case that two ballot papers were not counted. According to the High Court, therefore, the averments in paragraph 17 were unnecessary and would cause delay of the trial of the case and were ordered to be deleted. We are of the view that the High Court was not wrong in ordering striking off paragraph 17. When the Returning Officer has passed the order that out of 22 postal ballot papers, 20 did not contain the requisite declaration as envisaged by Rule 54A, they were liable to be rejected and if the said action had been taken, it could not be said to be contrary to law. It was not the case of the petitioner that in spite of requisite declaration, postal ballot papers were rejected. On the contrary, election-petitioner himself stated that 20 ballot papers came to be rejected "saying that the ballot papers were not accompanied by requisite declaration". He only stated that the majority of the postal ballot papers were of those electors who had been posted outside the constituency and were fully conversant with voting procedure. In our opinion, that was wholly irrelevant and immaterial. The authorities were required to follow the Rules and when rule was followed, the High Court was right in striking out the said paragraph observing that the action has been taken in consonance with Rule 54A of the Rules.

So far as Civil Appeal Nos. 5999-6000 of 2004 are concerned, they have been filed by the returned candidate Tota Singh against the decision on preliminary issue No.1 as to maintainability of petitions. As already noted in Election Petition No. 4 of 2004, as also in Election Petition No. 13 of

2004, the High Court considered the issue as to maintainability of petitions on the ground that Brijinder Singh, who was one of the candidates at the election, had not been joined as party respondent.

The learned counsel for the appellant contended that Section 82 of the Act requires a candidate to be joined as party respondent in an election petition against whom allegations of corrupt practice has been levelled. Since allegations had been levelled against Brijinder Singh of corrupt practice, he had to be joined as one of the respondents, even though he had withdrawn his candidature at a subsequent stage. As he was a 'candidate' within the meaning of Clause (b) of Section 79 of the Act, non-joinder of Brijinder Singh was a vital defect and the High Court had committed an error of law in holding the petitions maintainable in absence of Brijinder Singh on record.

The learned counsel for the respondents, however, supported the view taken by the High Court and submitted that Brijinder Singh could not be said to be 'duly nominated' candidate at the election. Non-joinder of Brijinder Singh was of no consequence and the High Court was right in overruling preliminary objection as to maintainability of petitions against the returned candidate.

The High Court, in our opinion, rightly considered the question, whether Brijinder Singh could be said to be a 'duly nominated candidate' within the meaning of Section 79(b) of the Act and whether non-joinder of Brijinder Singh would result in non-suiting the election petitioners on the ground that such petition could not be said to be in accordance with law. The High Court considered the relevant provisions of the Act as amended in 1996 and Rules and came to the conclusion that Brijinder Singh was not a candidate duly nominated by a political party i.e., Shiromani Akali Dal (Badal). The High Court was right in observing that once a nomination paper of Tota Singh was scrutinized and accepted, nomination paper of Brijinder Singh, who was a 'substitute' candidate of the same political party, could not have been accepted and as such he could not become duly nominated candidate.

In Krishna Mohini v. Mohinder Nath Sofat; (2000) 1 SCC 145 : AIR 2000 SC 317; a three-judge Bench of this Court had an occasion to consider the amendment in the Act, particularly, provisions relating to candidates set up by recognized political parties and allotment of symbols to them.

Speaking for the Court, Lahoti, J. (as His Lordship then was) stated;

"24. The first and third provisos to sub- section (1) of Section 33 have been added by the Representation of the People (Amendment) Act, 1996 (Act 21 of 1996) w.e.f. 1-8-1996. Prior to this, there was only one proviso which is now the second proviso in the present form.

25. In exercise of the powers conferred by Article 324 of the Constitution read with Section 29A of the Representation of the People Act, 1951 and Rules 5 and 10 of the Conduct of Elections Rules, 1961 and all other powers enabling it in this behalf, the Election Commission of India has issued the Election Symbols (Reservation and Allotment) Order, 1968(hereinafter referred to as the "Symbols Order", for short). This order provides for allotment of symbols to the contesting candidates, for classification of symbols into ^ reserved symbol--reserved for exclusive allotment to contesting candidates set up by a recognised political party, and free symbol --which is a symbol other than a reserved symbol. Para 6 classifies political parties into recognised and unrecognised political parties. To be a recognised political party in a State, a political party must satisfy the conditions specified in Clause (A) or Clause (B) of sub-para (2) of Para 6 of the Symbols Order. A recognised political party may be a National party or a State party. A candidate set up " by a recognised party in

an election contest can choose only a symbol reserved for that political party. Candidates set up by political parties other than recognised ones and independent candidates are entitled to free symbols. A candidate other than a candidate set up by a recognised National or State Party in that State or a candidate set up by a State party at elections in other State, has to choose and to be allotted a free symbol. A free symbol chosen by only one candidate must be allotted to him and to no one else. Where the same free symbol has been chosen by several candidates at such election the manner how the symbol shall be allotted as amongst those several candidates is laid down in sub-para 3 of para 12 of the Symbols Order.

26. Para 13 of the Symbols Order [as substituted by O.N. 203-E dt. 5.8.1996, and effective at the relevant time] provides as under :

13. When a candidate shall be deemed to be set up by a political party.For the purposes of this Order, a candidate shall be deemed to be set up by a political party if, and only if,--

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

(b) a notice in writing to that effect has, not later than 3 p.m. on last, date for making nominations, been delivered to the Returning Officer of the constituency and the Chief Electoral Officer of the State;

(c) the said notice is signed by the President, the Secretary or any other office bearer of the party and the President, the Secretary or such other office bearer is authorised by the party to sent such notice; and

(d) the name and specimen signature of such authorised person are communicated to the Returning Officer of the constituency and to the Chief Electoral Officer of the State not later than 3.00 p.m. on the last date for making nominations.

27. For the purpose of Symbols Order, as defined in Clause (h) of Para 2, "Political Party" means an association or body of individual citizens of India registered with the Commission as a political party under Section 29A of the Representation of the People Act, 1951. The scheme of the Symbols Order shows that it does not deal with unregistered political parties. It deals with registered political parties by sub-dividing them into recognised and unrecognised political parties and with independent candidates. To be entitled to the benefit of allotment of symbols reserved to a recognised political party, the candidate has to be one set up by a recognised political party and in a manner prescribed by Para 13 of the Symbols Order. The privilege enjoyed by a candidate set up by a recognised political party, as spelt out by a combined reading of Section 33 of the Act with the provisions of Symbols Order, is that his nomination paper is complete, inter alia, if proposed by an elector, (i.e., one only) of the Constituency, If the candidate be one not set up by a recognised political party, i.e., if he be a candidate set up by an unrecognized political party or be an independent candidate, his nomination paper must be subscribed by ten proposers being electors of the Constituency. Nomination paper filed by a candidate set up by an unrecognised political party or an independent candidate, cannot be proposed by a single elector of the Constituency or by electors less than ten". Consequent upon the amendments in the Representation of the People Act, 1950 and 1951 in 1996, the Election Commission issued a Circular on August 9, 1996 for the guidance of Electoral Officers. Paras 7, 14 and 15 of the Circular are relevant, which read thus;

7. Under the amended Section 33 of the Representation of the People Act, 1951, the nomination of a candidate at the election to the House of the People or a State Legislative Assembly shall be required to be subscribed by

(i) One elector of the constituency as proposer, if the candidate has been set up either by a recognised National Party or by a recognised State party in the State or States in which it is recognised as a State party :

(ii) ten (10) electors of the constituency as proposers, if the candidate has been set up by a registered-unrecognised political party or if he is an independent candidate.

14. It may be further noted that having regard to the changed law, the Returning Officer will have to be satisfied at the time of the scrutiny of nominations whether a candidate who claims to have been set up by a recognised National or State party and whose nomination paper is subscribed only by one elector as proposer has in fact been duly set up by such recognised party or not, so as to decide the validity or otherwise of his nomination paper. Therefore, it is essential that the political parties intimate the names of the candidates set up by them to the Returning Officers concerned and Chief Electoral Officer of the State well before the date of scrutiny of nominations. Accordingly, the Commission has decided that all political parties must hereafter give the formal intimation in regard to the candidates set up by them to the aforesaid authorities NOT LATER THAN 3.00 P.M. ON THE LAST DATE FOR MAKING NOMINATIONS IN FORMS 'A1 AND 'B' prescribed for the purpose by the Commission under para 13 of the Election Symbols (Reservation and Allotment) Order, 1968. The said para 13 of the Symbols Order has also been amended by the Commission accordingly.

15. As a result of the aforesaid amendments made to the Forms of nomination paper and paragraph 13 of the Symbols Order, certain consequential amendments have also become necessary in the above referred Forms 'A' and 'B' in which the political parties give formal intimation with regard to the candidates set up by them. A copy each of the revised Forms 'A' is also enclosed herewith for your information and use at all future elections. It will be observed from the revised Form 'B' that the parties have still been given an option in that Form to intimate the name of the substitute candidate who will step-in, if the nomination of the main approved candidate of the party is rejected on scrutiny. But such substitute candidate shall be deemed to have been set up by the party, only if all the requirements under the said para 13, as amended, of the Election Symbols (Reservation and Allotment) Order, 1968 have been fulfilled in his case. If, however, the nomination of the main approved candidate of the party is found valid on scrutiny, the substitute candidate shall not be deemed to have been set up by that party for the purposes of the amended Section 33 of the Representation of the People Act, 1951 and his nomination paper will be scrutinised by the Returning Officer having regard to the other provisions of that Act.

Instructions were also issued to Returning Officers in the form of 'Handbook for Returning Officers for Election to the House of People and State Legislative Assemblies'. Para 10 of Chapter VI (Scrutiny) enumerates the grounds for rejection of nomination papers.

The Handbook took note of change in law and recited;

"In view of the change in law whereby the nomination papers of candidates set up by recognized National and State Parties are required to be subscribed by only one elector as proposer and of other

candidates by ten electors as propose".

It noted that certain clarifications were sought from the Commission regarding setting up of candidates by political parties. Clarification relating to a nomination paper of a substitute candidate set up by a recognized political party is relevant and reads thus; (vii) The nomination paper of a substitute candidate of a recognised political party will be rejected if the nomination paper of the main approved candidate of that recognised political party is accepted. However, if such substitute candidate has also filed another nomination paper subscribed by ten electors as proposers, this latter nomination paper will be scrutinised independently by treating the candidate as an independent candidate. Further, if the nomination paper of the main approved candidate of the party is rejected, then also the nomination paper of the substitute candidate will be accepted, provided that the party has intimated his name as its substitute candidate in Form 'A' and 'B' filed before 3 p.m. on the last date for making nominations.

The High Court considered the relevant case-law on the point on which reliance was placed by the parties. The learned counsel for the returned candidate referred to decisions of this Court in Har Swarup & Another v. Brij Bhushan Saran & Others, (1967) 1 SCR 342 : AIR 1967 SC 836, Mohan Raj v. Surendra Kumar Taparia & Ors., (1969) 1 SCR 630 : AIR 1969 SC 677; Ram Partap Chander v. Chaudhary Lalla Ram & Ors., (1998) 8 SCC 564, Gadnis Bhawani Shankar v. Faleiro Eduardo Martinho, (2000) 7 SCC 472 : AIR 2000 SC 2502 and Patangrao Kadam v. Prithviraj Sayajirao Yadav Deshmukh & Ors., AIR 2001 SC 1121. In all the above cases, this Court held that all candidates including those who had withdrawn from candidature should be made parties to the election petitions if allegations of corrupt practice have been levelled against them. We have gone through those cases and in our opinion, the High Court was right in observing that in all those cases, nomination papers of the candidates were found to be in conformity with law and thus they were all treated as 'duly nominated candidates'. Subsequently, however, they had withdrawn their nominations. In the light of the said fact, this Court held that they ought to have been joined as party respondents in election petitions as required by Section 82 of the Act.

In our opinion, the High Court was right in deciding the issue keeping in view the amended provisions of the Act, the Rules, Circular dated August 9, 1996 and relevant provisions of the 'Handbook'. As already noted, in view of change in law, clarifications had been made on nomination papers of candidates set up by recognized National and State political parties that such nomination papers are required to be subscribed by only one elector as proposer and for other candidates, it is required to be proposed by ten electors. Clarification (vii) extracted hereinabove clearly states that once nomination paper of the 'main approved candidate' of recognized political party is accepted, the nomination paper of a 'substitute' candidate of the said party has to be rejected. The instructions, however, state that if such substitute candidate has also filed Part II of the nomination paper or filed another nomination paper subscribed by ten electors as proposers, his nomination paper has to be scrutinized independently by treating the candidate as an independent candidate. Again, if the nomination paper of the main approved candidate of a political party is rejected, then also, the nomination paper of the substitute candidate has to be accepted provided that the party has intimated his name as its substitute candidate in Forms 'A' and 'B'.

In the instant case, a list of nominated candidates had been forwarded which makes it clear that Tota Singh was shown to be a 'candidate' of Shiromani Akali Dal (Badal) while Brijinder Singh was described as 'substitute' of Shiromani Akali Dal (Badal). As nomination paper of Tota Singh had been accepted, Brijinder Singh, substitute of Tota Singh cannot be said to be a duly nominated

candidate of the said party. In an affidavit-in-reply filed by the first respondent, it was stated that when Tota Singh was a candidate of Shriomani Akali Dal (Badal), Brijinder Singh was rightly shown as substitute candidate for Tota Singh belonged to Shriomani Akali Dal (Badal). According to the deponent, "there cannot be two candidates for one recognized party". It was also stated that nomination form of Brijinder Singh was proposed by one man only i.e., Shri Gurmail Singh. Since it was not proposed by minimum number of ten electors, it could not be said to be in accordance with Section 33 (1) of the Act and Brijinder Singh could not be said to be duly nominated candidate.

An affidavit-in-rejoinder was filed by the appellant and alongwith the said affidavit, certain documents were filed including Annexure P/8 in Form No. 4 (Rule 8) (List of validly nominated candidates), wherein nomination of Brijinder Singh was shown as a candidate of Shriomani Akali Dal. It may be stated that under the head 'Candidates of recognized National and State political parties', two names have been shown belonged to Shriomani Akali Dal at serial No. 5 & 7, (i) Tota Sngh and (ii) Brijinder Singh respectively. The appellant has also annexed in the rejoinder affidavit at Annexure P/9, Form No. 7A under Rule 10 (1) ('List of contesting candidates') in which name of Tota Singh only appears. It was the case of the returned candidate-appellant herein that after acceptance of nomination of Brijinder Singh by the Returning Officer, he withdrew his nomination and hence he did not remain as one of the contesting candidates. On the basis of the above documents, it was contended that even if there was an error on the part of the Returning Officer in accepting nomination paper of Brijinder Singh, it was of no consequence. Once nomination paper of Brijinder Singh was accepted, the law requires him to be joined as a party respondent in case allegations of corrupt practice have been levelled against him. It was also submitted by the learned counsel that even if two candidates cannot be set up by one political party for one constituency and cannot be granted election symbol, a different symbol could be allotted to Brijinder Singh. That, however, cannot be a ground for holding that Brijinder Singh was not a candidate belonged to Shiromani Akali Dal (Badal) once his nomination paper had been accepted. The High Court, in our opinion, rightly rejected the contention of the returned candidate. Apart from the statutory provisions, Election Manual and provisions as to grant of Election Symbol, the point is also concluded by various decisions of this Court. In Charan Lal Sahu v. Neelam Sanjeeva Reddy, (1978) 2 SCC 500, a larger Bench of this Court considered the relevant provisions of the Presidential and Vice-Presidential Election Act, 1952 and held that if the nomination paper of a person is not in consonance with the relevant provisions of the law, he could not be said to be a candidate who has locus standi to challenge the election of the President. In Charan Lal Sahu v. Giani Zail Singh, (1984) 1 SCC 390, again, a similar question came up for consideration before this Court. Reiterating the earlier view, the Court dismissed the petition. An argument similar to one which has been made before us had also been advanced by the petitioner in that case. The Court, however, rejected it observing that it was not well founded.

The Court observed;

"The petitioners, however, contend that even if it is held that they were not duly nominated as candidates, their petitions cannot be dismissed on that ground since they "claim to have been duly nominated". It is true that, in the matter of claim to candidacy, a person who claims to have been duly nominated is on par with a person who, in fact, was duly nominated. But, the claim to have been duly nominated cannot be made by a person whose nomination paper does not comply with the mandatory requirements of Section 5-B (1)(a) of the Act. That is to say, a person whose nomination paper, admittedly, was not subscribed by the requisite number of electors as proposers and seconders cannot claim that he was duly nominated. Such a claim can only be made by a person who can show

that his nomination paper conformed to the provisions of Section 5-B and yet it was rejected, that is, wrongly rejected by the Returning Officer. To illustrate, if the Returning Officer rejects a nomination paper on the ground that one of the ten subscribers who had proposed the nomination is not an elector, the petitioner can claim to have been duly nominated if he proves that the said proposer was in fact an 'elector'. Thus, the occasion for a person to make a claim that he was duly nominated can arise only if his nomination paper complies with the statutory requirements which govern the filing of nomination papers and not otherwise. The claim that he was 'duly' nominated necessarily implies and involves the claim that his nomination paper conformed to the requirements of the statute. Therefore, a contestant whose nomination paper is not subscribed by at least ten electors as proposers and ten electors as seconders, as required by Section 5-B (1)(a) of the Act, cannot claim to have been duly nominated, any more than a contestant who had not subscribed his assent to his own nomination can. The claim of a contestant that he was duly nominated must arise out of his compliance with the provisions of the Act. It cannot arise out of the violation of the Act. Otherwise, a person who had not filed any nomination paper at all but who had only informed the Returning Officer orally that he desired to contest the election could also contend that he "claims to have been duly nominated as a candidate".

Recently, in Charan Lal Sahu v. Dr. A.P.J. Abdul Kalam & Ors., (2003) 1 SCC 609, this Court was called upon to consider a similar question. Following earlier decisions, this Court held that since the nomination paper of the petitioner was not in consonance with law as it was not subscribed by requisite number of electors as proposers, he could not be regarded as a person who had been duly nominated candidate at the election. He, therefore, could not present election petition and the petition was held non-maintainable.

In Krishna Mohini, referred to above, the Court stated;

"34. The distinction between nomination filed by a candidate set up by a recognised political party and a candidate not set up by a recognised political party is precise. A perusal of first proviso to Sub-section (1) of Section 33 of the Act makes it clear that a candidate not set up by a recognised political party, meaning thereby a candidate set up by an unrecognised political party or an independent candidate, in order to be duly nominated for election must have his nomination paper subscribed by ten proposers being electors of the Constituency. If such nomination paper be subscribed by only one elector as proposer or by a number of electors less then ten, then it will amount to non-compliance with the provisions of Section 33. A candidate, who is merely a substitute or a cover candidate set up by a recognised political party, may file his nomination paper proposed by only one elector of the Constituency. If the nomination paper of the approved candidate of that political party is accepted, the nomination paper filed by the substitute or cover candidate, shall be liable to be rejected because there can be only one candidate set up by a recognised political party. In order to be a candidate set up by a registered and recognised political party so as to take advantage of being proposed by a single elector, all the four requirements set out in Clauses (a), (b), (c) and (d) of Para 13 of the Symbols Order must be satisfied. If any one or more of the requirements are not satisfied, the benefit of nomination being proposed by a single elector is not available to him".

In view of the settled legal position, in our opinion, the High Court was right in rejecting the contention of the returned candidate that non-joinder of Brijinder Singh as party respondent was of no consequence as he could not be regarded as 'duly nominated candidate' by a political party i.e., Shriomani Akali Dal (Badal). That part of the decision, therefore, does not deserve interference.

There is, however, one disturbing feature and it is that the first respondent, along with the affidavit-in- rejoinder, placed certain documents on record which we have already referred to, in the form of "List of validly nominated candidates" (P/8) and "List of contesting candidates"(P/9). We have called for the original record and did not find those documents there. It is thus clear that they did not form part of the record before the High Court. If it is so, the appellant ought to have made proper application and prayer to produce them. An appropriate order could have been passed by this Court on such application. Neither any application was made nor permission was sought and the documents were placed along with the affidavit-in-rejoinder. We are, however, not taking serious view of the matter in the light of the fact that before the High Court, it was stated that Brijinder Singh had withdrawn his nomination paper on January 28, 2002 and thus that fact was before the High Court. P/8 produced with the affidavit- in-rejoinder in this Court preceded the withdrawal while P/9 was the consequence of withdrawal of nomination by Brijinder Singh. We, therefore, leave the matter there. For the foregoing reasons, Civil Appeal No. 4093 of 2004 is partly allowed and the order passed by the High Court of Punjab & Haryana ordering deletion of paragraphs 11, 12 and 13(a) of the Election Petition No. 13 of 2004 is set aside. It is ordered that those paragraphs cannot be said to be unnecessary or causing delay in disposing election petition and were not required to be struck down as held by the High Court. They will continue to be the part of Election Petition No. 13 of 2004. So far as paragraph 17 of the petition is concerned, the direction of the High Court deleting that para is confirmed. The appeal is accordingly allowed to that extent with costs.

So far as Civil Appeal Nos. 5999-6000 of 2004 are concerned, they are dismissed. In view of the circumstances mentioned by us hereinabove, however, the appellant will pay costs to the first respondent in both the appeals which is quantified at Rs.50,000/- in each appeal.