

RAJASTHAN HIGH COURT

Hari Mohan Sharma

Vs.

Prabhu Lal Karsolia

SB Election Petn. No. 5 of 1999

(Ashok Parihar, J.)

20.03.2002

ORDER

Ashok Parihar, J.

1. Legislative Assembly Elections, including Nainwa Assembly Constituency of the Rajasthan Vidhan Sabha, were held in the month of November, 1998. As per the programme notified by the Election Commission, nomination papers were to be filed up to 3.00 P.M. of 6-11-1998. Scrutiny of the nomination papers was to take place on 7-11-1998. the last date for withdrawal of candidature was 9-11-1998. The election (polling) took place on 25-11-1998 and the results were declared on 28-11-1998. Respondent, Mr. Prabhu Lal Karsolia, was declared elected defeating his nearest rival Mr. Hari Mohan Sharma, the petitioner, by 6335 votes.

2. The present election petition has been filed by the petitioner mainly on the ground of improper rejection of the nomination paper of one Mr. Mahendra Singh Gurjar. The petitioner filed his nomination paper as a candidate of the Indian National congress, a registered and recognized political party. The respondent filed his nomination paper as a candidate of the Bharitya Janta Party. Four more candidates had filed their nomination papers, among whom, one Mr. Mahendra Singh Gurjar had filed his nomination paper on 6-11-1998 at 11.15 A. M. with a letter of authorization from a recognized political party i.e. Janta Dal of which Mr. Sharad Yadav had been the President at the relevant time.

3. On the same date, another candidate namely; Mr. Ashiq Hussain also filed his nomination paper at 2.45 P.M. with an authorization letter from the same recognized political party i.e. Janta Dal and the letter of authorization again been signed by the

President of the Party Mr. Sharad Yadav. Mr. Ashiq Hussain also submitted a letter dated 5-11-1998, addressed to the concerned Returning Officer, signed by Mr. Sharad Yadav, President, Janta Dal. In the above letter dated 5-11-1998, the Returning Officer of the Nainwa Assembly Constituency had been informed that Mr. Ashiq Hussain is the authorized candidate on behalf of Janta Dal and, if any other person has submitted the nomination paper on behalf of this party, the same may be rejected.

4. Before the scrutiny could take place, on 7-11-1998, at the 11.00 A. M., Mr. Mahendra Singh Gurjar submitted another letter dated 6-11-1998, written by Mr. Sharad Yadav, President, Janta Dal, to the Returning Officer, Nainwa Assembly Constituency, informing that now Mr. Mahendra Singh Gurjar is finally authorized candidate on behalf of Janta Dal and earlier authorization in favor of Mr. Mohemmad Ashiq Khan should be treated as cancelled. The above letter of authorization dated 6-11-1998, as submitted by Mr. Mahendra Singh Gurjar at 11.00 A. M. on 7-12-1998 was not accepted by the Returning Officer on the ground that same has not been filed in time i.e. before 3.00 P.M. on 6-11-1998, the last date for filing of nomination papers.

5. After scrutiny of the nomination papers, the Returning Officer rejected the nomination paper as submitted by Mr. Mahendra Singh Gurjar on the ground that he had not submitted the valid authorization from the concerned recognised political party in time. As per the nomination papers received till 3.00 P. M. on 6-11-1998, the last date for filling of nomination papers, the President, Janta Dal, had declared Mr. Ashiq Hussain as the authorized candidate on behalf of Janta Dal, Mr. Mahendra Singh Gurjar could not be treated as authorized candidate on behalf of the same party. Mr. Mahendra Singh Gurjar has also not been able to get the signatures of 10 proposer on his nomination paper, as such, his nomination paper cannot be accepted as an independent candidate also.

6. Subsequently, Mr. Ashiq Hussain, whose nomination paper was accepted by the Returning Officer, also withdrew his nomination paper before the last date for withdrawal of the nomination papers. Thus, only four candidates, including that of the petitioner and the respondent, remained in the contest in the above election.

7. As has already been mentioned above, the present election petition has been filed mainly on the ground of improper rejection of the nomination paper of Mr. Mahendra Singh Gurjar with the following prayers :-

- i) to declare the nomination paper submitted by Mahendra Singh Gurjar has been wrongly rejected by the Returning Officer of Nainwa (104) Assembly Constituency and to declare that the requirement of rule 13(b) of Election Symbol (Reservation and Allotment) Order, 1968 in so far as it requires the notice in writing to be delivered up to 3 p.m. on the last date of nomination is *ultra vires* and unconstitutional if it means that after this time the political party has no authority to decide and communicate its decision about finally authorized candidate to the returning officer till the time of scrutiny and withdrawal of candidates;
- ii) to declare void and set aside the Election of respondent as Member of Rajasthan Legislative Assembly from Nainwa (104) Assembly Constituency of Rajasthan;
- iii) to issue direction for holding of Election in accordance with the law of Nainwa (104) Assembly Constituency to the Election Commission of India;
- iv) any other ancillary/consequential relief which may be deemed just and proper in the circumstances may be granted in favour of the petitioner including the costs of Election petition."

8. After hearing learned counsel for the parties, this court framed following issues in the present petition, vide order dated 9-8-2000:-

1. Whether the nomination paper of Mahendra Singh Gurjar was improperly rejected by the Returning Officer?
2. Whether validity of any provision of the Representation of the People Act, 1951 or any rule made there under can be challenged in an Election Petition?
3. Relief?"

9. Issue No. 2 as to whether validity of any provision of the Representation of the People Act, 1951 (hereinafter to be referred to as 'the Act of 1951') or any rule made there under can be challenged in an Election Petition was decided as preliminary issue against the petitioner by a detailed order dated 18-12- 2000.

10. Petitioner examined himself along with one Mr. Ram Babu Sharma, who was the Election Agent of the petitioner in the above elections. Respondent examined himself only.

11. Mr. N. K. Joshi, learned counsel appearing on behalf of the petitioner, has submitted that by improper rejection of nomination paper of Mr. Mahendra Singh Gurjar, the election to the Nainwa Assembly Constituency in the present case is liable

to be declared void as per the provisions of Section 100 (1)(c) of the Act of 1951. The contention of Mr. Joshi has been that Mr. Mahendra Singh Gurjar had filed his nomination paper in a proper form along with the letter of authorization before the expiry of the time for filing of nomination papers, as such, his nomination paper could not have been rejected by the Returning Officer. It has further been contended by Mr. Joshi that Mr. Mahendra Singh Gurjar had also submitted the final letter of authorization from Janta Dal (Sharad Yadav) dated 6-11-1998 before the Returning Officer on 7-11-1998 at 11.00 A. M. before the scrutiny took place. It has been contended that process of authorization by a recognized political party does not end at the expiry of the time fixed for filing of the nomination papers and the political parties are at liberty to nominate their candidates up to the time of Scrutiny of nomination papers. It has also been contended by Mr. Joshi that if the the disqualifications are to be seen as on the date of scrutiny of the nomination papers then final authorization by a recognized political party should also be considered till the time of scrutiny of the nomination papers.

12. While heavily relying on the judgment of the Hon'ble Supreme Court in the case of *Rakesh Kumar v. Sunil Kumar*"¹ Mr. Joshi has submitted that the Returning Officer ought to have given an opportunity to Mr. Mahendra Singh Gurjar to prove his authorization and could have postponed the scrutiny for 24 hours as per the provisions of the Act of 1951 and, even otherwise, the letter dated 6-11-1998, written by the President of the Janta Dal (Sharad Yadav) to the Returning Officer, as submitted by Mr. Mahendra Singh Gurjar on 7-11-1998 at 11.00 A. M., before scrutiny of the nomination papers could have been considered as final authorization.

13. Mr. J. S. Rastogi, learned counsel appearing on behalf of the respondent, on the other hand, while supporting the rejection of the nomination paper of Mr. Mahendra Singh Gurjar, has contended that proper authorization by the Janta Dal (Sharad Yadav) in favour of Mr. Mahendra Singh Gurjar had not been submitted along with the nomination paper before expiry of the time fixed for filing of nomination papers. It has further been contended by Mr. Rastogi that though violation of the principles of natural justice has not been pleaded in the election petition, yet, even Mr. Mahendra Singh Gurjar or to that of any other candidate had not sought any further opportunity or raised any objections at the time of scrutiny of nomination papers in regard to improper rejection of nomination paper of Mr. Mahendra Singh Gurjar on the ground of not filing proper authorization on behalf of a recognized political party. Mr. Rastogi has relied on the judgment of the Hon'ble Supreme Court in the case of *Krishna*

Mohini (MS) v. Mohinder Nath Sofat" ² and judgment of this court in the case of Premraj State of Rajasthan 2000 RLR (3) 432 : (2000 AIHC 4674) as also the judgement of the learned single Judge of Punjab and Haryana High Court in the case of *Altaf Hussain v. Hamid Hussain*" ³

14. After having carefully considered the submissions made by learned counsel for the parties, I have gone through the material on record as also the judgments cited at the Bar.

15. A very short controversy, as raised in the present election petition, is whether a recognized political party has to indicate its final authorization in favor of a candidate before the expiry of the time fixed for filing of nomination papers or the liberty is given to the party to indicate its final authorization in favor of a candidate till the scrutiny of the nomination papers.

16. The provisions of Sections 33 and 36 of the Act of 1951, in so far as relevant in the present case, are extracted and reproduced here as under :-

"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 recognised 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:

Provided further that no nomination paper shall be delivered to the returning officer on a day which is a public holiday :

Provided also that in the case of a local authorities' constituency, graduates' constituency or teachers' constituency, the reference to an elector of the constituency as proposer" shall be construed as a reference to ten per cent of the electors of the constituency or ten such electors, whichever is less, as proposers'.

36. Scrutiny of nominations. - (1) On the date fixed for the scrutiny of

nominations under Section 30, the candidates, their election agents, one proposer of each candidate and one other person duly authorised in writing by each candidate, but no other person, may attend at such time and place as the Returning Officer may appoint; and the Returning Officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in Section 33.

(2) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary enquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds -

(a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely -

Articles 84, 102, 173 and 191,

Part II of this Act and Sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963);

or

(b) that there has been a failure to comply with any of the provisions of Section 33 or Section 34;

or

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

(3) (not reproduced)

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

(Emphasis mine)"

17. The relevant provisions of the Conduct of Elections Rules, 1961 (hereinafter to be referred to as 'the Rules of 1961') are extracted and reproduced hereasunder :-

"4. Nomination paper.- Every nomination paper presented under sub-section (1) of Section 33 shall be completed in such one of the forms 2A to 2E as may be appropriate :

Provided that a failure to complete or defect in completing, the declaration as to symbols in a nomination paper in Form 2A or Form 2B shall not be deemed to be a defect of a substantial character within the meaning of sub-section (4) of

Section 36."

In exercise of the powers conferred by Article 324 of the Constitution of India read with Section 29-A of the Act of 1951 and Rules 5 and 10 of the Rules of 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 to be referred to as 'the Symbols Order'). The order provides for allotment of symbols to the contesting candidates, for classification of symbols into reserved symbols - reserved for exclusive allotment to contesting candidates set up by a recognized political party, and free symbol - which is a symbol other than a reserved symbol. Para 6 classifies political parties into recognized and unrecognized political parties. To be a recognized 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 recognized political party may be a national party or a State party. A candidate set up by a recognized party in an election contest can choose only a symbol reserved for that political party. Candidates set up by political parties other than recognized ones and independent candidates are entitled to free symbols. A candidate other than a candidate set up by a recognized national or State party in that State or a candidate set up by a State party at elections in other (sic another) 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.

19. Para 13 of the Symbols Order (as substituted by ON No. 203-E, dated 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 purpose 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 authorized by the party to send such notice; and
- (d) the name and specimen signature of such authorized 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."

20. For the purpose of the 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 29-A of the Act of 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 recognized and unrecognized political parties and with independent candidates. To be entitled to the benefit of allotment of symbols reserved to a recognized political party, the candidate has to be one set up by a recognized political party and in a manner prescribed by para 13 of the Symbols Order. The privilege enjoyed by a candidate set up by a recognized political party as spelt out by a combined reading of Section 33 of the Act of 1951 with the provisions of the 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 recognized political party, i.e. if he be a candidate set up by an unrecognized 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 unrecognized political party or an independent candidate, cannot be proposed by a single elector of the constituency or by electors less than ten.

21. The historical background and the Objects and Reasons leading to the issuance of the Symbols Order have been traced and set out by the Hon'ble Supreme Court in the case of *Sadiq Ali v. Election Commission of India*"⁵ In the above case, in paras 20 and 21, it had been observed at Page 195 of AIR :-

"20. Perusal of the different paragraphs of the Symbols Order makes it manifest that they provide, as is made clear by its preamble, for specification, reservation, choice and allotment of symbols at elections in Parliamentary and Assembly constituencies as well as for the recognition of political parties in relation thereto and for matters connected therewith. One such matter is the decision of a dispute when two rival sections or groups of a recognized political party claim to be that party for the purpose of the Symbols Order.

21. It may be pertinent to find out the reasons which led to the introduction of symbols. It is well known that overwhelming majority of the electorate are

illiterate. It was realized that in view of the handicap of illiteracy, it might not be possible for the illiterate voters to cast their votes in favor of the candidate of their choice unless there was some pictorial representation on the ballot paper itself whereby such voters might identify the candidate of their choice. Symbols were accordingly brought into use. Symbols or emblems are not a peculiar feature of the election law of India. In some countries, details in the form of letters of alphabet or numbers are added against the name of each candidate while in others, resort is made to symbols or emblems. The object is to ensure that the process of election is as genuine and fair as possible and that no elector should suffer from any handicap in casting his vote in favor of a candidate of his choice. Although the purpose which accounts for the origin of symbols was of a limited character, the symbol of each political party with the passage of time acquired a great value because the bulk of the electorate associated the political party at the time of elections with its symbol."

22. A candidate may be aspiring for being set up by a recognized political party. He can pin his hopes for being sponsored by such political party up to the hour by which the time for filing the nomination paper expires. If he fails to obtain such sponsorship by the recognized political party in accordance with the provisions contained in para 13 of the Symbols Order, then he has the choice of continuing his candidature as an independent candidate subject to his satisfying the requirement of having been proposed by ten electors of the constituency and other requirements as to the validity of a nomination paper. If he does not withdraw his candidature, then he would be a candidate validly nominated. Such a candidate who has not been able to secure sponsorship by a recognized political party at the time of filing his nomination papers but is still hopeful of securing such sponsorship, has the choice of filing nomination paper more than one. In one of the nomination papers subscribed by one elector of the constituency he may declare himself to have been set up by a recognized political party. He may file yet another nomination paper declaring his candidature as an independent subscribed by ten electors of the constituency as proposers. A single nomination paper though containing a declaration by the candidate of his having been set up by a recognized political party, may itself be subscribed by ten electors of the constituency as proposers. In either case, his nomination would be valid insofar as the aspect of proposing is concerned.

23. Consequent upon amendments having been made in the Representation of the People Acts, 1950 and 1951 by the Amendment Act, 1996 (Act 21 of 1996) with

effect from 1-8-1996, the Election Commission of India issued a circular dated 9-8-1996 for the guidance of the Chief Electoral Officers of all the States and the Union Territories. Paras 7, 14 and 15 thereof are relevant for the purpose, which are extracted and reproduced here asunder :-

"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 recognized national party or by a recognized State party in the State or States in which it is recognized as a State party;
- (ii) ten (10) electors of the constituency as proposers if the candidate has been set up by a registered unrecognized 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 by a recognized 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 recognized 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 'A' 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 para 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' and 'B' 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 scrutinized by the Returning Officer having regard to the other provisions of that Act."

24. So are the instructions for the guidance of the Returning Officers contained in the Handbook for Returning Officers, 1998 vide paras 10.3 (iii), 10.3(iv) and 10.3 (vii) of chapter VI as under :-

"(iii) If a candidate has filed one nomination paper with both Parts I and II thereof filled and he fails to bring notice in Forms 'A' and 'B' from the authorized office-bearer of the political party concerned, the nomination paper may be accepted if Part II is properly filled and subscribed by ten electors as proposers, as there will be substantial compliance with the provisions of Section 33 of the Representation of the People Act, 1951.

(iv) if a candidate, who filed his nomination paper as candidate claiming to be set up by an unrecognized political party, fails to bring in his favor a notice from the political party concerned in Forms 'A' and 'B', his nomination paper will be accepted if it is subscribed by ten electors as proposers, and he would be deemed to be an independent candidate.

(vii) the nomination paper of a substitute candidate of a recognized political party will be rejected if the nomination paper of the main approved candidate of that recognized 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 scrutinized 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 Forms 'A' and 'B' filed before 3 p.m. on the last date for making nominations."

25. Thus, the above said circulars and guidelines issued by the Election Commission of India have also been consistent with the statutory provisions and brings out the correct position of law. All the formalities by a candidate have to be completed before the expiry of the time fixed for filing of nomination papers, that also in prescribed Form.

26. In the present case, Mr. Mahendra Singh Gurjar had filed his nomination paper at 11.15 A. M. on 6-11-1998, the last date for filing of nomination papers. The authorization as filed by him along with the nomination paper does not bear the date of issuing such authorization on behalf of a recognized political party. Mr. Ashiq Hussain had also filed his nomination paper on the same date i.e. 6-11-1998 at 2.45 P. M. Mr. Hussain had also submitted a letter written by the President, Janta Dal (Sharad Yadav),. dated 5-11-1998, to the Returning Officer, Nainwa Assembly constituency along with his nomination paper at 2.45 P. M. on 6-11-1998 itself. In the above letter, it has clearly been mentioned that Mr. Ashiq Hussain is the authorized candidate on behalf of Janta Dal and if, any other nomination has been filed on behalf of the party by any other person, the same may be treated as cancelled.

27. It was only on 7-11-1998 at 11.00 A. M., the date on which scrutiny of the nomination papers was to take place, Mr. Mahendra Singh Gurjar submitted a letter dated 6-11-1998, written by the President, Janta Dal before the concerned Returning Officer. In the above letter, Mr. Mahendra Singh Gurjar was notified to be the candidate on behalf of Janta Dal and the earlier authorization made in favor of Mr. Mohemmad Ashiq Khan has been treated as cancelled. Without going into the controversy as to whether the letter dated 6-11-1998, as submitted by Mr. Mahendra Singh Gurjar on 7-11-1998 at 11.00 A. M. before the Returning Officer, refers to Mr. Ashiq Hussain or one Mr. Mohemmad Ashiq Khan, in my opinion, as per the provisions and scheme of the Act of 1951, the Returning Officer could not have accepted the said letter dated 6-11-1998 as the said letter, alleged to have been written on 6-11-1998 has been submitted on 7-11-1998 before the Returning Officer, after the expiry of the time fixed for filing of nomination papers. The last letter dated 5-11-1998, as written by the President, Janta Dal (Sharad Yadav) to the Returning Officer in favor of Mr. Ashiq Hussain had been filed along with nomination paper by Mr. Ashiq Hussain before expiry of the time fixed for filing of the nomination papers. In the letter dated 5-11-1998 it has clearly been mentioned that the authorization made in favor of Mr. Ashiq Hussain should be treated as valid authorization on behalf of that

political party. Since only one candidate could be authorized to contest the election on behalf of a recognized political party and Mr. Mahendra Singh Gurjar having failed to submit the authorization till the expiry of the time fixed for filing of nomination papers and, further, the nomination paper also not been proposed and signed by 10 electors so as to treat him as an independent candidate, his nomination paper has rightly been rejected by the Returning Officer. The submission of Mr. N. K. Joshi, learned counsel for the petitioner, in this regard, is based on misappreciation of the correct scope and purport of the relevant provisions of law and hence cannot be accepted.

28. So far as the contention as to no opportunity been given to Mr. Mahendra Singh Gurjar by the Returning Officer is concerned, the Hon'ble Supreme Court in the case of Rakesh Kumar (supra) itself has observed that the Returning Officer would have been justified in rejecting the nomination paper of a candidate had the candidate either not sought an opportunity to rebut the objection raised by the Returning Officer or was unable to rebut the objection within the time allowed by the Returning Officer. The facts in the case of Rakesh Kumar (supra) were altogether different, wherein, an opportunity was sought in writing by the candidate and the same having been refused by the Returning Officer, the election was set aside on the ground of violation of principles of natural justice. However, in the present case, neither Mr. Mahendra Singh Gurjar or to say any other candidate raised any objection nor sought any opportunity for clarifying the position in regard to final authorization on behalf of the recognized political party i.e. Janta Dal (Sharad Yadav). Under the circumstances, the burden was on the petitioner to prove as to which of the candidate had the final authorization to contest the election on behalf of Janta Dal (Sharad Yadav) at expiry of the time fixed for filing of nomination papers.

29. As has already been observed above and also noted by Hon'ble Supreme Court in the case of Krishna Mohini (supra), a candidate, who has not been able to secure sponsorship by a recognized political party upto the time of filing of the nomination paper, but still hopeful of securing such sponsorship has the choice of filing nomination paper more than one and, in one of the nomination papers subscribed by one elector of the constituency, he may declare himself to have been set up by a recognized political party. He may file yet another nomination paper, subscribed by 10 electors of the constituency as proposers, declaring his candidature as an independent candidate. A single nomination paper, though containing a declaration by the candidate of his having been set up by the recognized political party, may itself be

subscribed by 10 electors of the constituency as proposers. However, in the present case, no such precaution was taken by Mr. Mahendra Singh Gurjar.

30. After having considered entire facts and circumstances and the material available on record, in view of the scheme of the Act of 1951 and the law laid down by the Hon'ble Supreme Court, in my opinion, no illegality or impropriety has been committed by the Returning Officer in rejecting the nomination paper of Mr. Mahendra Singh Gurjar. The issue No. 1 is, therefore, also decided against the petitioner.

31. Thus, the election of the respondent Mr. Prabhu Lal Karsolia, as a Member of the Legislative Assembly, from the Nainwa (104) Assembly Constituency of Rajasthan, in the present case, cannot be declared as void on the grounds set out in the present election petition.

32. Accordingly, the election petition is dismissed with costs, assessed at Rs. 5,000/- (Rupees Five Thousand only).

Petition dismissed.

Cases Referred.

1. AIR 1999 SC 935
2. (2000) 1 SCC 145
3. AIR 2002 Punjab and Haryana 29
4. ([1972] 4 SCC 664): AIR 1972 SC 187
5. ([1972] 4 SCC 664): AIR 1972 SC 187