
certificate. It does not disclose as to when the moot courts were held. If the dates had been disclosed, it would have been possible to know whether the petitioner was present in the office or at the college. The silence does not appear to be innocent.

(23) Lastly, it was contended by the counsel that various other persons who were similarly situate had been enrolled as Advocates. Thus, the action suffers from the vice of discrimination. Is it so ?

(24) The onus of proving that equals have been treated unequally lay on the petitioners. They have not shown that the persons who were similarly situate have been treated differently. Still further, even if it is assumed that the respondents have enrolled certain persons despite the fact that they did not fulfil the prescribed conditions of eligibility, this court cannot compel the respondents to repeat the wrong. No direction to act in violation of a rule can be issued by the court. Resultantly, the plea of discrimination cannot be sustained.

(25) The order was pronounced by us after hearing arguments today. We have now recorded our reasons. The writ petitions are dismissed. In the circumstances, there will be no order as to costs.

R.N.R.

Before J. S. Narang J,

ALTAF HUSSAIN—*Petitioner*

versus

HAMID HUSSAIN—*Respondent*

E. P. No. 13 of 2000

17th August, 2001

Representation of People Act, 1951—S. 100 (1) (c)—Election to the Haryana Legislative Assembly—Rejection of nomination papers—Nomination paper as nominee of a political party filed—Party neither recognised nor registered—Candidate failing to produce ten proposers for treating as a nominee of an independent candidate—Returning Officer correctly rejecting the nomination paper—Nomination paper of a covering candidate of a registered/recognised party filed—

Nomination paper of main candidate accepted—Nomination of covering candidate not signed by 10 proposers—Rejection of nomination paper—Valid.

Held, that the petitioner has categorically admitted that his nomination paper was filed having been proposed as nominee of a political party which admittedly is neither recognised nor registered. Thus, on that ground the nomination paper was not sustainable and that if it was to be treated as a nomination of an independent candidate, signatures of ten proposers were required but the same were not found on the nomination paper on the date of scrutiny and that the order has been correctly passed by the Returning Officer rejecting the nomination paper on account of such irregularity. There is no provision which has been pointed out which could enable the petitioner to rectify the irregularity which is substantial in nature, such act could not be brought within the scope of rebuttal and be defined as deficiency of clerical nature. Thus, the nomination paper having been correctly rejected, no ground as claimed by the petitioner is available to him for declaring the election of the respondent as void.

(Para 22)

Further held, that the argument that nomination paper of Jaibunissa having been validly filed could not have been rejected on the ground that nomination paper of the main candidate having been accepted is not sustainable. Similar argument has been noticed by the apex Court and it has been observed that if the nomination paper of the main candidate/official nominee of the recognised and registered party is accepted, the nomination of the second nominee i.e., the covering candidate of the same party are liable to be rejected. It is only one candidate of a recognised party which can be allowed to contest. Thus, the argument that Returning Officer was required to wait till the date of withdrawal is neither here nor there.

(Para 26)

Altaf Hussain Petitioner in person.

S.C. Kapoor, Senior Advocate, with Ashish Kapoor, Advocate
for the respondent.

JUDGMENT

J. S. Narang, J.

(1) The petitioner has challenged the election of Member of Legislative Assembly Haryana held in the segment defined as 58-Nuh Assembly Constituency in the general elections of Haryana Vidhan Sabha held for electing 90 members. The election was declared to be held *vide* notification issued by the Election Commission of India.

(2) The nomination papers were to be filed by 3rd February, 2000. The scrutiny thereof was fixed for 4th February, 2000 and that the date of withdrawal on or before 7th February, 2000. The poll was to take place on 22nd February, 2000 and that the result was to be declared on 25th February, 2000.

(3) The petitioner contested the election from the aforesaid assembly constituency and in pursuant thereto filed nomination paper along with security money of Rs. 5,000.00. The nomination paper was to be submitted to the Returning Officer, Nuh, on the date so fixed. It is averred by the petitioner that he had filed his nomination papers as a candidate of Rashtriya Lok Dal by assuming that the said party is a recognised and a registered party. Upon scrutiny, the returning Officer disclosed to the petitioner that the Rashtriya Lok dal is not a recognised and a registered party, as such, the name of the petitioner as an independent candidate was required to be proposed by ten proposers. The objection was raised but on account of non compliance of the same, the nomination paper was rejected on 4th February, 2000. It is alleged that he had asked for time of one day to remove the objection. But, no extension was granted nor the copy of the order *vide* which the nomination paper was rejected, was supplied to the petitioner, despite the fact that he waited on 4th February, 2000 for receiving the copy of the order.

(4) It is also alleged that nomination papers of two other candidates namely Mehboob Hasan and Smt. Jaibunissa wife of Habibur Rehman, a substitute candidate of Shri Habibur Rehman were also rejected. Despite similar request having been made by Smt. Jaibunissa and Mehboob Hassan for giving extension of time. It is on 5th February, 2000, a request was made, demanding copy of the order dated 4th February, 2000 passed by Returning Officer.

It is alleged that Returning Officer had stated that nomination paper of the petitioner could be accepted only if he could produce ten persons as proposers upto 5 p.m. and that this requirement was duly complied with at once. It is alleged that nomination paper of the petitioner was accepted by Returning Officer but when he demanded the copy of the orders passed on both the occasions none was supplied but eventually he was informed telephonically at 10.30 p.m. that the nomination paper of the petitioner has been rejected.

(5) The petitioner sent the information/complaint in this regard to the Chief Election Commission of India on 9th February, 2000, but no action was taken by anyone. Thus, the petitioner was denied opportunity to contest election and that respondent Shri Hamid Hussain son of Yassin Khan was elected from the aforesaid constituency on account of material gain at the cost of the petitioner.

(6) The result of the election had been challenged on the ground that the nomination paper has not been subjected to proper scrutiny and that the objection is not tenable that Rashtriya Lok Dal is not a recognised party and that he had ten proposers with him who could have easily affixed their signatures on the nomination paper but no opportunity in this regard was granted. It is further stated that nomination paper of the petitioner has been rejected incorrectly by Returning Officer under political pressure. The conduct of Returning Officer is far too obvious that the nomination papers of similarly situated person namely Smt. Jaibunissa was also improperly rejected to give benefit to the returned candidate.

(7) Notice was issued to the respondent and in pursuant thereto written statement has been filed. The stand of the respondent is that the petition is not sustainable as it lacks disclosure of material facts and that no cause of action has been disclosed, as a sequel thereto, the petition deserves to be dismissed. The allegation that nomination paper of the petitioner had been rejected by Returning Officer with mala fide intention and political pressure has been denied though the denial was required to be made by Returning Officer, who admittedly has not been impleaded as a party to the petition.

(8) Replication has been filed and that mechanical denial to the averments contained in the written statement has been made and the facts averred in the petition have been reiterated.

(9) Upon pleadings of the parties, following issues have been framed :—

- (i) Whether the nomination paper of the petitioner was incorrectly and improperly rejected without following the proper provisions of law applicable ? If so, its effect ?
OPP
- (ii) Whether the nomination papers of Jaibunissa were improperly and incorrectly rejected without following the proper procedure prescribed under the provisions of law ? If so, its effect ?
OPP
- (iii) Whether the election petition lacks material facts and the averments, by virtue of which, does not disclose any cause of action ?
OPP
- (iv) Relief.

(10) No other issue had been claimed by any of the parties on their pleadings.

(11) The petitioner has examined four witnesses including himself and has placed reliance upon some of the documents brought on record through the witnesses. The names of the witnesses and the documents tendered into evidence are as under :—

Sr. No.	Name of Witness & No.	Document produced & Exhibits	Detail of document
1.	Sant Lal PWI	Tendered the Original record.	
2.	Altaf Hussain PW2	PW2/1	Application for copy of order rejecting the nomination paper.
		PW2/2	—do—
		PW2/3	Nomination paper of Altaf Hussain.

Sr. No.	Name of Witness & No.	Document produced & Exhibits	Detail of document
		PW2/4	Form 'B' Notice as to name of candidate set up by political party.
		PW2/5	Form 'A' Communication with regard to authorised persons to intimate name candidates set up by the political parties.
3.	U.S. Sohal PW3	PW3/1	Order passed by the Returning Officer.
		PW3/2	Nomination paper of Jaibunissa.
		PW3/3	Rejection order of nomination paper of Jaibunissa.
		PW3/4	Order passed by the Returning Officer.
4.	Jaibunissa PW4.	—	—
5.	Hamid Hussain RW1	—	—
6.	Asraf Hussain RW2	—	—

(12) The official witness i.e. PW1 Shri Sant Lal produced the documents but the same were not exhibited as he has examined without oath.

(12-A) The petitioner examined himself as PW2 and has corroborated the facts stated in the petition and has categorically stated that he was present at the time of scrutiny of his nomination

papers, which were rejected on the same date i.e. 4th February, 2000. The ground stated for rejection is that the party, which nominated the petitioner, is not a recognised party. He has also averred that he raised objection in writing before Returning Officer and that he had not been supplied copy of the order rejecting his nomination paper. It is averred that the order rejecting nomination paper of the petitioner was dictated in his presence. He did meet Returning Officer on 5th February, 2000 as he wanted to obtain certified copy of the order passed by Returning Officer. It is further averred that Returning Officer had asked him that if the proposal is signed by ten persons (proposers), the nomination paper would be accepted. He brought ten persons on that day before the Returning Officer for affixing signatures on the proposal of the petitioner. All the ten persons affixed their signatures on the nomination form. It is correct that the signatures were affixed by the said persons on 5th February, 2000 in presence of Returning Officer. The Returning Officer had told the petitioner orally that his nomination paper had been accepted but no copy of such order was supplied to the petitioner. It was at 10.30 p.m. on 5th February, 2000, when the petitioner called up Returning Officer telephonically the petitioner was informed that his nomination paper has been rejected. Similarly, nomination paper filed Mehbub Hassan was rejected. Copies of the applications filed before Returning Officer have been exhibited as Exs. PW2/1 to Ex. PW2/2, as the signatures had been proved by the petitioner.

(13) The petitioner could not remember as to whether all the said persons had affixed their signatures on the nomination paper. The nomination paper filed by the petitioner has been admitted and the same has been exhibited as Ex. PW2/3. It has also been admitted by petitioner that one of the proposers thumb marked the nomination paper as a proposer but the said thumb mark has not been attested by any authority. It has also been admitted that the application Ex. PW2/1 bears the date as 5th February, 2000. It has also been admitted that the alleged application stated to have been filed on 4th February, 2000 is not on the record which has been summoned from the District Election Officer. It has been further admitted that along with his nomination papers forms B and A, which have been exhibited as Ex. PW2/4 and PW2/5, were also filed wherein the name of the petitioner does find mention nor bears signatures of the petitioner. It has also been admitted that at the time of filling nomination paper

only one proposer had affixed his signatures. The petitioner could not tell as to on which ground nomination paper of Mehbub Hassan had been rejected.

(14) The petitioner summoned Mr. U.S. Sohal, Returning Officer. The Returning Officer categorically stated that nomination paper filed by the petitioner was received and that at the time of filing of nomination paper the oath was administered to the petitioner. The last date for filing nomination papers was 3rd February, 2000. The scrutiny of nomination papers was carried out on 4th February, 2000 and were scrutinised turnwise. The nomination paper filed by the petitioner was not found in order as the proposal had not been signed by ten persons as required under the statute. The order was passed by him (Returning Officer) on 4th February, 2000 which has been exhibited as Ex. PW3/1 wherein the signatures have been identified by the witness. Similarly, nomination paper filed by Smt. Jabunissa was also scrutinised on the same date. The nomination paper has been identified and has been exhibited as Ex. PW3/2 and the order relating thereto is Ex. PW3/3 where upon the signatures had been identified by the witness. It is stated in examination-in-chief that the petitioner had not come on 4th February, 2000, when his nomination paper was rejected, as such, copy of the order could not be supplied to him. He further corroborated that no application had been received on 4th February, 2000 from the petitioner making any request for deferring rejection of the nomination paper. However, it has been admitted that application had been filed for supplying certified copy of the order *vide* which his nomination paper had been rejected. The application is stated to have been received in the office of the witness. It is admitted that the petitioner had made oral request to the effect that let nomination papers be now signed by ten proposers. The witness further stated that he had acceded to the request and the persons who had been brought by the petitioner had been allowed to affix their signatures in his presence. This request was made on 5th February, 2000, whereafter, the nomination paper was rejected as it was not legally and technically tenable. In this regard, order dated 5th February, 2000 was passed by the witness which has been exhibited as Ex. PW3/4. The said order was passed on the oral request of the petitioner. Copy of the order dated 5th February, 2000 was supplied to the petitioner on the same day in the evening.

(15) It has been admitted by the witness that the voter number of each of the proposers was compared by him with the number contained in the voters' list but no verification or identification of the said proposers was made by calling for any kind of document in support thereof but only the names were compared which had been disclosed by the proposers.

(16) The petitioner has examined Mst. Jaibunissa wife of Habibur Rehaman as PW4. She has not stated anything tangible in examination-in-chief but it has been admitted by her in cross-examination that she and her husband filed nomination papers as nominees of the same party and that her husband was the Official nominee of the said party.

(17) The respondent examined only two witnesses including himself and that no document has been tendered or exhibited. The respondent examined himself as RW1. He has categorically stated that on the date of scrutiny of the nomination paper, the petitioner was not present. The nomination paper of the petitioner was rejected on the ground that he had not been nominated by any recognised party. He has also stated that nomination paper of Mst. Jaibunissa was rejected on the ground that nomination paper of her husband had been accepted as authorised candidate of B.S.P. The third candidate had also been debarred from contesting the election by virtue of the act committed by him in the previous election, as such could not have filed the nomination paper. In cross examination nothing tangible has been elicited not any negative suggestion has been given to the witness. Nothing has been elicited that it is due to his influence nomination paper of the petitioner had been rejected. A categorical denial has been made by the witness to the suggestion that he got the nomination paper of the petitioner rejected on account of political influence.

(17-A) Apart from himself, Shri Asraf Hussain has been examined as RW2. He has stated that he had also filed nomination paper as an independent candidate. He has corroborated the fact that Returning Officer did tell the petitioner that his nomination paper has not been validly presented as the party which is sponsoring him is not a recognised party, therefore, he should file his nomination papers under the signatures of ten persons otherwise his nomination paper would be rejected. It is further averred that the petitioner had

told Returning Officer that whatever orders he may like the same may be passed but he would not like any change. The nomination papers were scrutinised on 4th February, 2000 in the presence of the candidates or their representatives. The petitioner was not present himself or was represented by any representative on that day. The nomination paper of the petitioner was rejected on the ground that he had been proposed by a party which was not recognised. Therefore, his nomination paper would be taken to have been filed by one proposer as an independent candidate whereas under law ten proposers are required to affix their signatures. No tangible cross examination has been made out, as such, nothing has been elicited from said witness.

ISSUE NO. 1

(18) The petitioner has argued that validly filed nomination paper by the petitioner has been incorrectly and improperly rejected by the Returning Officer. Thus, as per sub clause (c) of clause (1) to Section 100 of the Representation of the People Act, 1951, (hereinafter referred to as "the Act") the election of respondent (returned candidate deserves to be declared void. It shall be apposite to notice the aforesaid provision which reads as :—

100. Grounds for declaring election to be void :—

(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) that any nomination has been improperly rejected; or

(d) *** *** ***

(2) *** *** ***

(19) It has been argued that the nomination paper of the petitioner has been duly signed by ten proposers, however, it has been fairly conceded that on the date when the nomination paper was submitted it did not bore signatures of ten proposers. It is only on 5th February, 2000 that ten proposers were allowed by Returning Officer to affix their signatures. Thus, valid nomination paper stood presented

to Returning Officer. Thus, there was no justification for the Returning Officer to reject validly presented nomination paper by the petitioner. It is further contended that no defects can be said to have been found in the nomination paper of the petitioner which could be termed substantially incorrect. It was bounden duty of Returning Officer to look into the nomination paper when presented to him. He was under obligation to satisfy himself that the nomination paper valid in all respects is received by him. However, if any deficiency is pointed out and is allowed to be made good by virtue of the obligation casted on the Returning Officer in pursuant to sub section (4) of section 33 of the Act, the Returning Officer has no choice but to accept the said nomination paper as valid and properly presented. Reliance has been placed upon a judgment of the Apex Court in re : *Ram Awadesh Singh v. Sumitra Devi* (1), and in particular reference has been made to para 13 of the judgment.

(20) On the other hand, learned counsel for the respondent has argued that scrutiny of nomination paper is to be made in pursuant to provisions of law and in this regard reference has been made to Section 26 and also to proviso to Section 33 of the Act. The argument is that Returning Officer is required to decide all objections by way of holding summary enquiry in respect of the objections which may be raised. The objections so raised can be allowed to be rebutted by the nominee himself or through his representative duly authorised in this regard.

(21) It is further argued that Returning Officer can permit that correction only which may fall within the scope and ambit of inaccurate description, clerical, technical or printing error in the electoral roll wherever it is necessarily required to be corrected. However, any deficiency or any irregularity, which is substantial in character, cannot be allowed to be corrected or made up. In this regard, reference has been made to a judgment of the apex Court rendered in re: *Rafiq Khan and another v. Laxmi Narayan Sharma* (2), in which, the Apex Court has held that rejection of nomination paper on the ground that electoral roll number of proposer of the candidate having been wrongly entered in the nomination paper than what it has been mentioned in the electoral roll, shall amount to a defect substantial in nature and

(1) AIR 1972 SC 580

(2) (1997) 2 SCC 228

character, as such, the rejection of nomination paper on such ground by the Returning Officer was found to be in order. In the case at hand, it is admitted that on the date of submitting the nomination paper by the petitioner, it did not contain signatures of ten proposers and "that" in the first instance, it was filed as nominee of a political party, which admittedly was found neither recognised nor registered." Thus, the nomination paper has been correctly rejected by the Returning Officer. It is further argued that in fact Returning Officer was not justified in entertaining any kind of application and permitting the petitioner to bring ten proposers on 5th February, 2000 for affixing signatures when the nomination papers were in the custody of the Returning Officer. Thus, the Returning Officer himself has acceded his jurisdiction and committed an illegality had no course open before him but to reject the nomination paper. My attention has been drawn to the order passed by the Returning Officer which is dated 4th February, 2000 exhibited as Ex. PW3/1 and also Ex. PW3/4 which read as under :—

"Ex. P.W. 3/1

Order

Sh. Altaf Hussain S/O Sh. Tafajul Hussain Villaage Papra . Tehsil Punhana Distt. Gurgaon has filed nomination paper, 58-Nuh Assembly Constituency. As per his nomination Form Part-I his nomination has been subscribed by only one proposer Sh. Saffi Mohammad (Part 125 at Sr. No. 196). As per part-2 of the same form, he has shown himself as a candidate sponsored by the Rashtriya Lok Dal and the Form A and Form B received in this office by due date of nomination i.e. 3rd February, 2000 between 11.00 A.M. to 3.00 P.M. During the course of scrutiny it has been noticed that the part IInd has been blank perhaps on the presumption that he is a sponsored candidate of recognised National or State Party, but as per provision of section 33 of Representation of the People Act, 1951 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 10 proposers being Electors of the Constituency and as per instructions

contained in Hand Book for Returning Officer year 1998 under the head grounds for rejection of nomination papers paragraph 10.1 (viii) the nomination paper must have been subscribed by the required No. of proposers i.e. 10 proposers as stated above.

Keeping in view the above facts the nomination Form Filed by Sh. Altaf Hussain stands to be rejected.

Sd/-

Place : Nuh

Returning Officer

Dated : 4th February, 2000

58-Nuh Assembly Constituency
-cum-SDO (C) Nuh."

Ex. PW3/4

"Opportunity of being heard/rebuttal given to candidate Sh. Altaf Hussain till 5th February, 2000 upto 5.00 P.M.

Sd/- 5th February, 2000

Returning Officer

58-Nuh Assembly Constituency &
Sub Divisional Officer (C) Nuh
Distt. Gurgaon.

Present Sh. Altaf Hussain. He has requested that I may be given opportunity to produce the required ten proposers to remove the objection. He stated that the persons are with him. He may be allowed to make entry in Part-II of the nomination form. He was allowed to do so and he has requested that now he has complied with section 33 of the People Representation Act, 51, this nomination paper be accepted. On examination of the position afresh and consultation with legal persons, Books, rules etc., I have reached to the conclusion that it is legally and technically not tenable being so. Hence I reject the candidature of Sh. Atlaf Hussain again keeping in view the aforesaid facts.

Sd/- 5th February, 2000

Returning Officer

58-Nuh Assembly Constituency &
Sub Divisional Officer (C) Nuh
Distt. Gurgaon."

(22) I have considered rival contentions addressed by the petitioner in person and also by learned counsel for the respondent (returned candidate). I am of the view that the petitioner has not been able to substantiate his argument on the point that his nomination paper had been incorrectly and improperly rejected. He has not been able to convince that in fact his nomination had been validly presented and incorrectly/improperly rejected. The nomination paper had been correctly rejected by the Returning Officer by passing an order of rejection on 4th February, 2000 wherein cogent reason has been expressed. The Returning Officer was not justified in giving indulgence to the petitioner in rebuttal by permitting ten proposers to affix their signatures upon the nomination paper which had come into the custody of the Returning Officer. Thus, Returning Officer exceeded his jurisdiction by giving such indulgence, the irregularity found was substantial in nature. Thus, correct and justifiable order dated 4th February, 2000 has been passed by Returning Officer. The judgment of the apex Court cited by learned counsel for the respondent has laid down the dicta that even wrong mentioning of the electoral number of the proposer amounts to deficiency of substantial nature and that rejection of a nomination paper on such ground has been upheld. In the case at hand, the petitioner has categorically admitted that his nomination paper was filed having been proposed as nominee of a political party which admittedly is neither recognised nor registered. "Thus, on that ground the nomination paper was not sustainable and that if it was to be treated as a nomination of an independent candidate, signatures of ten proposers were required but the same were not found on the nomination paper on the date of scrutiny and that the order has been correctly passed by the Returning Officer rejecting the nomination paper on account of such irregularity." There is no provision which has been pointed out which could enable the petitioner to rectify the irregularity which is substantial in nature, such act could not be brought within the scope of rebuttal and he defined as deficiency of clerical nature. "Thus, the nomination paper having been correctly rejected, no ground as claimed by the petitioner is available to him for declaring the election of the respondent as void." Thus, finding upon Issue No. 1 is returned against the petitioner.

ISSUE NO. 2

(23) Learned petitioner has argued that the nomination paper validly filed by Jaibunissa has been incorrectly rejected by Returning Officer giving the reason that nomination paper of the main candidate of the recognised party have been accepted. It is contended that in

fact the nomination paper filed by Smt. Jaibunissa should not have been rejected till the date of withdrawal. The petitioner has not been able to refer to any such provision in this regard, however, has placed reliance upon a judgment of the apex Court in re : *Rakesh Kumar v. Sunil Kumar* (3), I am afraid this judgment is not at all applicable to the facts of this case. In the case before the Apex Court the question was that the covering candidate of BJP claimed that the symbol reserved for BJP be allotted to him. He had requested for 24 hours time for his official confirmation as official candidate of the party from the office. It is under these circumstances that right of rebuttal was termed as not having been granted and the Returning Officer had rejected the candidature on the ground that the candidate is a covering candidate. "So far as the case of Jaibunissa is concerned she has herself admitted while appearing as a witness in this case that her husband was the main candidate and she was only a covering candidate. "She has not even claimed that her nomination paper had been incorrectly rejected."

(24) On the other hand, learned counsel for the respondent has argued that so far as Jaibunissa is concerned, she has not questioned the order of rejection passed by the Returning Officer. In her cross-examination she has categorically admitted that her husband filed nomination papers as official nominee of the party. Reliance has been placed upon a judgment of the Apex Court rendered in Re: *Ms. Krishna Mohini v. Mohinder Nath Sofat* (4), and that pointed reference has been made to para 34, which reads as under :—

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

(3) AIR 1999 SC 935

(4) AIR 2000 SC 317

proposer or by a number of elector less than 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 the 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. A situation can be visualised where more candidates than one may be aspiring to be the candidates each set up by the same recognised political party. The one in respect of whom notice and communication in forms A and B referable to sub-para (b), (c) and (d) of para 13 of Symbols Order have been filed not later than 3.00 p.m. on the last date for making nominations shall be treated as candidate set up by such political party. His nomination paper, even if subscribed to by single elector as proposer, shall be valid subject to satisfying other conditions as to validity. If any of the requirements contemplated by sub para (b), (c) and (d) of para 13 of the Symbols Order are not complied with by filing the requisite notice and communication, then the candidate shall not be deemed to be one set up by the recognised political party. His nomination, if subscribed by a single elector or electors less than ten, shall be liable to be rejected. If the nomination paper of such a candidate is subscribed to by ten proposers being electors of the constituency within the meaning of first proviso to sub-section (1) of Section 33 of the Act,

then the nomination paper cannot be rejected because an error or omission as regards symbol or choice thereof being a defect not of a substantial character, would not come in the way of the nomination being accepted. The nomination paper shall be accepted as valid and an appropriate symbol to which the candidate may be entitled in accordance with the Symbols Order shall be allotted by the Election Commission.”

(25) I have considered the rival contentions and I am not at all inclined to accept the arguments addressed by the petitioner.

(26) The argument that nomination paper of Jaibunissa having been validly filed could not have been rejected on the ground that nomination paper of the main candidate having been accepted is not sustainable. Similar argument has been noticed by the apex Court and it has been observed that “if the nomination paper of the main candidate/official nominee of the recognised and registered party is accepted, the nomination of the second nominee i.e. the covering candidate of the same party are liable to be rejected. It is only one candidate of a recognised party which can be allowed to contest. Thus, the argument that Returning Officer was required to wait till the date of withdrawal is neither here nor there. The principle as enunciated by the apex Court does not have any scope for expressing any opinion in respect of the aforesaid argument. Thus, finding upon Issue No. 2 is returned against the petitioner.

ISSUE NO. 3

(27) No arguments have been addressed in respect of this issue. However, in view of findings given upon issues No. 1 and 2 and the discussion in respect thereof no material facts can be said to have been disclosed which could culminate into emergence of a cause of action. Thus, finding upon this issue is returned against the petitioner.

RELIEF

(28) In view of the above discussion and findings returned upon the issues, I do not find that any material fact has been disclosed in the petition or any weak averment howsoever has been substantiated by any cogent evidence as nonesover appreciable has

been brought on record for declaring the election result of the respondent i.e. the successful candidate Shri Hamid Hussain, to be invalid or void.

(29) There is no merit in the petition and the same is dismissed with costs which are assessed at Rs. 5000.00.

(30) Certified copy of this judgment be sent to the concerned quarters.

S.C.K.

Before N.K. Sodhi & R. C. Kathuria, JJ

MITHILESH KUMAR & OTHERS—*Petitioners*

versus

STATE OF PUNJAB & OTHERS—*Respondents*

C.W.P. No. 6496 of 2001

29th May, 2001

Constitution of India, 1950—Art. 226—Admission to Technical Education in Engineering & Technology—Fee structure for students admitted to degree programme—Hike in—Students informed of fee structure mentioned in brochure at the time of admission—Notice issued to students alongwith their roll number slips informing the revised fee/fund structures adopted by the Govt. & approved by the Board—Public notice regarding revised fee structure in the press also issued—Detailed fee communicated at the time of counselling—Hike in fee cannot be construed as exorbitant or irrational—Action of respondents is just and principle of promissory estoppel not applicable against the respondents.

Held, that one cannot ignore that hike in fee structure absolutely has no co-relation with regard to the criterion for admission to the Degree Program laid down in the Brochure. The criterion for admission to the Degree Program laid down in the Brochure was not sought to be changed. It is not a case where the petitioners were taken by surprise. Rather, at the first available opportunity and at the time when they received the roll numbers for appearing in the Entrance Test, they were informed by the respondents that the fee/fund structure