
case. The judgments of the Supreme Court in hire purchase cases holding that in a hire purchase agreement, the owner cannot be guilty of theft of his own property, will not be applicable to cases where the transaction is, in substance, a loan transaction, as in a loan transaction, the ownership will be of the borrower and the principle applicable to a hire purchase agreement will not apply.

(33) Though in view of above conclusions, this petition for quashing is liable to be dismissed, if the petitioner makes a statement before the trial Court that he will proceed for enforcing his right through the Court and will not insist on forcible repossession, the trial Court will drop the proceedings having regard to facts and circumstances of the case.

(34) This petition to disposed of accordingly.

R. N. R.

Before M. L. Singhal, J

VED SINGH—*Petitioner*

versus

JITENDER SINGH AND OTHERS—*Respondents*

E.P. No. 7 OF 2000

15th March, 2002

Representation of People Act, 1951—Ss. 36(2), 80, 81, 83, 86 and 100—Code of Civil Procedure, 1908—O.7 Rl. 11, O.6 Rls. 2 and 16—Election of Haryana Legislative Assembly—Respondent No. 1 declared elected by a thin margin of 740 Votes—Challenge thereto—Allegation of improper acceptance of the nomination papers of two candidates—Petitioner failing to establish that such wrong acceptance has materially affected the result of the election—S. 83(a) of the 1951 Act provides that an election petition shall contain a concise statement of material facts on which the petitioner relies—Petitioner failing to mention all the material facts in support of his claim that if the two

candidates thrown out of the arena of contest the petitioner would have polled all the votes polled by them—Petition does not disclose any cause of action and liable to be rejected.

Held that, the election petition is bereft of the material facts constituting cause of action to the petitioner for challenging the election of returned candidate. Failure to mention all the material facts in support of his claim that if respondents No. 2 and 5 had been thrown out of the arena of contest, he would have polled all the votes polled by them in their favour, would impinge upon the continuance of this election petition. This election petition discloses no triable issue. This petition is liable to be rejected and is accordingly rejected under Order VII Rule 11 read with Order VI Rule 16 CPC on the ground of its being vague and not giving material facts and particulars constituting complete cause of action and virtually disclosing no cause of action.

(Para 39)

Sukhbir Singh, Advocate for the Petitioner.

Hawa Singh Hooda, Senior Advocate with Anil Rathee,
Advocate for respondent No. 1.

Shish Pal Laler, Advocate for respondent No. 2.

S.P. Khatri, Advocate for Respondent No. 3.

S.S. Kharb, Advocate for Respondent No. 4.

Ramesh Hooda, Advocate for Respondent No. 5.

JUDGMENT

M. L. SINGHAL, J.

(1) Through this petition filed under section 80/81 read with section 100 of the Representation of People Act, 1951 (hereinafter referred to as the Act). Ved Singh petitioner has prayed for the setting aside of the election of respondent No. 1 Jitender Singh to Haryana Vidhan Sabha from 40-Kailana Assembly Constituency. He has further prayed that it be declared that his election to 40-Kailana Assembly Constituency to the Haryana Vidhan Sabha is void. He has

prayed that he (Jitender Singh) be unseated and he (Ved Singh) be declared to have been elected in his stead.

(2) Elections to fill up the Haryana Vidhan Sabha took place in the year 2000. For 40-Kailana Assembly Constituency, the petitioner was one of the candidates. He contested on Indian National Lok Dal (INLD) ticket. He is resident of village Pipli Khera. His name is entered at Serial No. 632 Part No. 108 of 40-Kailana Assembly Constituency. Election programme issued by the Election Commission of India, was as follows :—

Last date of filing of nominations	:	3-2-2000
Scrutiny of nominations	:	4-2-2000
Last date of withdrawal of nominations	:	7-2-2000
Date of polling	:	22-2-2000

(3) Petitioner, respondents and other candidates belonging to different political parties and the independents filed their nominations papers. After the date of withdrawal, only the petitioner and the five respondents were left in the election fray. Counting was held on 25th February, 2000. After counting respondent No. 1 Jitender Singh was declared elected over his nearest rival (who was the petitioner) by a thin margin of 740 votes. Petitioner is stated to have polled 34,913 votes while respondent No. 1 is stated to have polled 35,653 votes. Daya Nand respondent No. 2 is said to have polled 953 votes. Nirpal respondent is said to have polled 621 votes. Nirmal Rani respondent No. 4 is said to have polled 10,145 votes. Mahabir Singh Sharma, respondent No. 5 is said to have polled 1,035 votes. Respondent No. 1, Jitender Singh was a candidate sponsored by the Indian National Congress. Name of Daya Nand was proposed by Shri Ram Kishan whose name was entered at Serial No. 205, Part No. 134 of the electoral roll of 40-Kailana Assembly Constituency. Name of Daya Nand was entered at Serial No. 203 Part No. 134 of the Electoral roll of 40-Kailana Assembly Constituency. Daya Nand filed his nomination paper in the office of SDO Civil Ganaur at 2.45 P.M. on 2nd February, 2000 as a candidate of Bahujan Samaj Party. Daya Nand is alleged to have taken/subscribed oath at 2.50 P.M. on 2nd February, 2000. Nomination paper of Shri Daya Nand is Annexure P-1 to this petition. A true translated copy of annexure is Annexure

P1/T. Certified copy of oath form of Daya Nand is annexed as Annexure P-2 to this petition and the true translated copy thereof is annexed as Annexure P-2/T. Mahabir Singh Sharma son of Shri Kanwal Singh respondent No. 5 also filed his nomination papers as an independent candidate and his name figures at Serial No. 467 of electoral roll of Part No. 100 of 40-Kailana Assembly Constituency. Mahabir Singh Sharma filed nomination papers on 3rd February, 2000 at 2.25 P.M. before the returning officer. His name was proposed by Yag Dutt, Ravinder, Krishan Chand and others who are electors registered in that constituency. Certified copy of the nomination papers filed by Mahabir Singh Sharma as an independent candidate is annexed as Annexure P-3 and the true translated copy thereof is annexed as Annexure P-3/T. The oath form submitted by Mahabir Singh Sharma is annexed as Annexure P-4 to this election petition and the true translated copy thereof is annexed as Annexure P-4/T to this election petition. It is alleged that Shri Daya Nand has not taken/subscribed oath and the statement of his oath form is only a paper transaction. From the oath form of Daya Nand, it emerges that he has not subscribed oath either in the name of God or on solemn affirmation as one of these options has not been scored. A candidate can either make and subscribe oath or on affirmation. He cannot make and subscribe oath and affirmation together. Oath taken by Daya Nand did not conduce to the provisions of Article 173 of the Constitution of India. As such, Shri Daya Nand was not qualified to be chosen to fill up a seat to the Haryana Vidhan Sabha from 40-Kailana Assembly Constituency. Shri Daya Nand did not subscribe oath as required under Article 173 of the Constitution of India. Oath taken/subscribed by him was no oath in the eye of law as it is not in tune with the form set out for the purpose in the Third Schedule to the Constitution of India. As far as Mahabir Singh Sharma respondent No. 5 is concerned, he did not take any oath at all before the returning officer, as such, he was not qualified under Article 173 of the Constitution of India to be chosen to fill up seat to the Haryana Vidhan Sabha from 40-Kailana Assembly Constituency. At the time of scrutiny of the nomination papers that took place on 4th February, 2000, the petitioner's election agent namely one Satbir Singh was present. He pointed to the SDO (Civil), Gaur that the nomination papers filed by Shri Daya Nand and Shri Mahabir Singh Sharma were not in order and they had been wrongly accepted by the returning officer. They should have been rejected as

Daya Nand did not take/subscribe oath in tune with the provisions of Article 173 of the Constitution of India. It was pointed out to the returning officer by Shri Satbir Singh that the taking of improper oath by Shri Daya Nand and the taking of no oath by Shri Mahabir Singh Sharma went to the root and their nominations should be rejected and they should be kept out of this election fray. It was the duty of the returning officer to examine the nomination papers and decide all the objections made in regard to the nomination papers and after summary inquiry, to reject the nomination papers on ground as mentioned in sub-section (2) of Section 36 of the Act. Form of oath or affirmation to be made by a candidate for election to the legislature of a State is set out in the Third Schedule to the Constitution of India :—

(4) Daya Nand and Mahabir Singh Sharma were not qualified to be members of the Haryana Vidhan Sabha as no oath was taken/subscribed by them as envisaged in Schedule Third to the Constitution of India. Their nominations were liable to be rejected under section 36(2) of the Act. Improper acceptance of their nomination papers by the returning officer affected adversely the election prospects of the petitioner. Mahabir Singh Sharma is a worker of the Indian National Lok Dal. He was aspirant of contesting the election on the symbol of Indian National Lok Dal but when no ticket was allotted to him by that party, he turned a rebel and put in nomination papers as independent candidate. Had the nomination papers put in by Mahabir Singh Sharma been rejected, all the votes which he had polled, would have been polled in favour of the petitioner who was a candidate put up by the Indian National Lok Dal. None of those votes would have been polled in favour of the returned candidate. As regards Daya Nand, he belongs to Jat caste and is resident of village Purkhas Rathi. Village Purkhas Rathi is stronghold of Indian National Lok Dal. In the earlier elections also, majority of the votes of village Purkhas Rathi were being polled in favour of the candidates belonging to Indian National Lok Dal (erstwhile Samta Party). Further the majority of votes polled in favour of Daya Nand in the other parts of the constituency would have been polled in favour of the petitioner. No vote polled in favour of Daya Nand would have been polled in favour of the returned candidate whose political ideology is different than that of the Indian National Lok Dal. It is alleged in this election petition that if the nomination papers filed by Daya Nand and Mahabir Singh Sharma had been rejected, he would have been declared elected

from 40-Kailana constituency. Due to improper acceptances of the nomination papers of Daya Nand and Mahabir Singh Sharma respondents, the election of the returned candidate i.e. Jitender Singh was materially affected. It is alleged in this election petition that he (petitioner) was defeated by a thin margin of 740 votes. Daya Nand got 953 votes and Mahabir Singh Sharma got 1,035 votes. 1988 votes polled by them would have gone en-block in his favour as he was a candidate put up by the Indian National Lok Dal. If Daya Nand had been thrown out of the election fray, 953 votes polled by him would have been polled by the petitioner as village Purkhas Rathi was a stronghold of the Indian National Lok Dal while petitioner was a candidate put up by the Indian National Lok Dal. Similarly, 1,035 votes polled by Mahabir Singh Sharma would have been polled by him if Mahabir Singh Sharma had been thrown out of the election fray, on rejection of his nomination paper, as Mahabir Singh Sharma was a worker of the Indian National Lok Dal. He put up a banner of revolt, put himself up as an "independent candidate". By putting himself up as an independent candidate, he spoiled the prospects of the victory of the petitioner who was a candidate put up by the Indian National Lok Dal. Votes polled by Mahabir Singh Sharma would have been polled by the petitioner.

(5) Respondent Jitender Singh the returned candidate, contested this petition urging that his election to the Haryana Vidhan Sabha could be challenged only on grounds mentioned in Section 100(1) and Section 101 of the Act. Ground on which he has challenged his election is not covered by any of the provisions of Section 100(1) and Section 101 of the Act. Election petition lacks in all the material facts which are required to be pleaded as required under section 81 read with Section 83 of the Act. Election petition, as framed, discloses no cause of action and as such is liable to be rejected under section 86 of the Act read with order 7 rule 11 CPC. Election petition does not contain a concise statement of the material facts required under section 83 of the Act, as such the election petition deserves to be dismissed. It was denied that the oath taken by Daya Nand was not in tune with the oath form set out in Third Schedule to the Constitution of India. Oath taken/subscribed by him is in tune with the oath form set out in Third Schedule to the Constitution of India. It was denied that Mahabir Singh Sharma did not take/subscribe oath at all. No objection was raised at the time of scrutiny of the nomination papers

that the oath taken by Daya Nand was improper and that Mahabir Singh Sharma did not take any oath at all. When Mahabir Singh Sharma took oath before the returning officer Sarvshri Balister Kumar Tyagi, Chattar Singh, Chand Ram and so on were present. Similarly when Daya Nand was administered oath Babu Ram Tyagi, Inder Singh and so on were present. Their nomination papers were quite in order. It was denied that they were improperly accepted by the returning officer. It is not disclosed in the election petition as to what objection was raised before the returning officer regarding the nomination papers of any candidate and by whom the objections were raised and as such the averments are vague, unnecessary and frivolous and these are liable to be struck out from the pleadings as envisaged in order 6 rule 16 CPC. It was urged that this constituency had earlier been represented a number of times by his father Ch. Rajender Singh Malik, as such he (returned candidate) had great influence in this area including village Purkhas Rathi. Not only this, Ch. Lahari Singh, who was the real brother of the grandfather of the returned candidate, had also represented this constituency a number of times and as such had great influence in village Purkhas Rathi and due to the past political background of the returned candidate, he had overwhelming influence in this area including this village than the election petitioner. This village Purkhas Rathee is near the village of the returned candidate and he had influence in this village.

(6) Respondent No. 5 Mahabir Singh Sharma filed written statement to this election petition where through he supported the averments of the petitioner. It was stated that if he (respondent No. 5) had not contested the election, votes polled in his favour would have been polled in favour of the petitioner. In that situation, the petitioner could have been elected. It was urged that he presented the nomination form before the returning officer. Due to rush of the supporters of the other candidates, he handed over the form to the clerical staff and it was not signed by the returning officer. Non-taking of oath before the returning officer was a mere irregularity and it did not incur disqualification. Nirmala Rani, respondent No. 4 put in written statement through which she also supported the plank of the election petitioner. It was urged that respondent No. 5 was a worker of the Indian National Lok Dal and he filed nomination papers as an independent candidate when Indian National Lok Dal had not allotted him a ticket. If respondent No. 5 had not contested election, almost

all the votes polled in his favour would have been polled in favour of the petitioner. Similarly, if Daya Nand had not contested, votes polled by him would have been polled by the petitioner. Daya Nand, respondent No. 2 filed written statement through which it was urged that he took/subscribed oath as envisaged under Article 173(1) of the Constitution of India. Oath taken/subscribed by him was in tune with the oath form set out in Third Schedule of the Constitution of India. He made solemn affirmation as "Satya Nishthapurvak Partigya Karta Hun". The returning officer, after administering oath to him, issued receipt after tearing the same from his nomination paper in token of the fact that he had submitted his nomination paper and he was duly administered oath as required under Article 173 of the Constitution of India. When he was taking oath before the returning officer, no objection was raised as to the defect the oath taken by him was suffering. His nomination paper was rightly accepted by the returning officer on 4th February, 2000. It was alleged that it was beyond his comprehension how votes polled in his favour would have been polled by the election petitioner if the nomination paper put in by him had been rejected. Voters have their own choice. Averments made by the election petitioner are imaginary. Even he (respondent No. 2) can say that if the nomination paper of the petitioner had been rejected, he would have secured all the votes which were polled in favour of the petitioner.

(7) On the pleadings of the parties, the following preliminary issues were framed :—

- (1) Whether the election petition lacks material facts and particulars which are necessary to constitute complete cause of action for setting aside the election of Respondent No. 1 within the meaning of sections 81 and 83 read with Section 100 (1) (d) (i) of the Representation of People Act, 1951 ? OPR1
- (2) Whether the averments made in para Nos. 5, 6, 7, 8, 9, 10, 11, 12, 15, 16 and 17 of the election petition are liable to be struck off as being unnecessary, frivolous and not disclosing cause of action ? OPR1
- (3) Whether the verification of Election Petition is in accordance with law and if not, what is its effect? OPR1

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- (4) Whether the election petition contains any ground as specified in sub-section (1) of section 100 of the Representation of People Act on which the election can be called in question and if not, what is its effect ? OPR1

On merits :

- (1) Whether the election of respondent No. 1 to Haryana legislative Assembly from 40-Kailana Assembly Constituency has been materially affected due to wrongful acceptance of nomination papers and is liable to be set aside ? OPP
- (2) Whether the nomination papers of Shri Daya Nand son of Shri Pyare Lal were improperly accepted by the returning officer, if so, to what effect ? OPP
- (3) Whether the nomination papers of Shri Mahabir Singh Sharma S/o Shri Kamal Singh were improperly accepted by the returning officer, if so, to what effect ? OPP
- (4) Whether the petitioner is entitled to be declared elected to the Haryana Legislative Assembly from 40-Kailana Legislative Assembly Constituency ? OPP
- (5) Relief.

(8) As preliminary issues are issues of law, I propose to dispose of preliminary issues first. I have heard the learned counsel for the parties on preliminary issues and have gone through the record.

(9) It was submitted by the learned counsel for the petitioner that the petitioner polled 34,913 votes while respondent No. 1 (returned candidate) polled 35,653 votes. Respondent No. 1 was declared elected by a margin of 740 votes. Respondent No. 1 emerged victorious because of the improper acceptance of the nomination papers of Daya Nand respondent No. 2 and Mahabir Singh Sharma respondent No. 5. There was no proper administration of oath to Daya Nand and Mahabir Singh Sharma. Article 173 of the Constitution of India lays down that a person shall not be qualified to be chosen to fill a seat in the legislature of a state unless he- (a) is a citizen of India, and makes

and subscribes before some person authorised in that behalf by the Election Commission on oath or affirmation according to the form set out for the purpose in the Third Schedule : (b) is, in the case of a seat in the Legislative Assembly, not less than twenty five years of age, and in the case of a seat in the Legislative Council, not less than thirty years of age; and (c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

(10) It was submitted that until they had made and subscribed before a person authorised in that behalf by the Election Commission on oath or affirmation according to the form set out for the purpose in the Third Schedule of the Constitution of India, they could not be said to have been qualified to be chosen to fill up seat in the Haryana Legislative Assembly. In the third Schedule of the Constitution of India, the following is the form of oath or affirmation to be made by a candidate for election to the legislature of a State :—

“I, A.B., having been nominated as a candidate to fill a seat in the Legislative Assembly (or Legislative Council), do swear in the name of God/Solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will uphold the sovereignty and integrity of India.”

(11) It was submitted that he was required either to swear in the name of God or he was required to solemnly affirm that he will bear true faith and allegiance to the Constitution of India as by law established and that he will uphold the sovereignty and integrity of India. It was submitted that Daya Nand did not make and subscribe proper oath, he could either make and subscribe oath in the name of God or affirmation. He could not make and subscribe oath and affirmation together. It was submitted that while taking oath before the returning officer at 2.50 P.M. on 2nd February, 2000, he took the following oath :— “I, Daya Nand, having been nominated as a candidate to fill a seat in the Legislative Assembly (or Legislative Council). do swear in the name of God/Solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will uphold the sovereignty and integrity of India,” which is not proper oath. It was submitted that he should have either sworn in the name of god or solemnly affirmed. In the oath form

Annexure P-2 either the words "do swear in the name of God" should have been erased or the words "solemnly affirm" should have been erased. It should have been either oath or solemn affirmation. It could not be both oath and solemn affirmation. It was submitted that while administering oath to Daya Nand, the returning officer should have made clear that either he took oath or he stated on solemn affirmation. It was submitted that as Daya Nand was not administered proper oath or solemn affirmation, he could not be a candidate at election to the Haryana Legislative Assembly. If he had been thrown out of the arena of contest, the votes polled by him would have been polled by the petitioner as Daya Nand is a Jat and is resident of village Purkhas Rathi. Village Purkhas Rathi was a stronghold of the Indian National Lok Dal. In the earlier election also, majority of the votes from village Purkhas Rathi had been polled in favour of the candidate belonging to the Indian National Lok Dal (erstwhile Samta Party). Majority of the votes polled in favour of Daya Nand in other parts of the constituency would have been polled in favour of the petitioner. It was submitted that Daya Nand filed his nomination papers as a candidate of Bahujan Samaj Party. If his nomination papers had been rejected on account of improper oath having been taken by him, all the votes polled by Daya Nand would have been polled by the petitioner as he was a candidate on the Indian National Lok Dal ticket for election to the the Haryana Legislative Assembly. It was submitted that form of oath or affirmation filled by Daya Nand was bad for another reason also namely that while filling up this form, he had not indicated whether he was a candidate to fill seat in the legislative assembly or legislative council. He should have erased the words " or legislative council." He should have retained the words "legislative assembly".

(12) It was submitted that no oath at all was administered to Mahabir Singh Sharma, respondent No. 5 by the returning officer, as such, he was not qualified to be elected to the Haryana Legislative Assembly. It was submitted that oath said to have been administered to Mahabir Singh Sharma was not signed by the returning officer. If any oath had been administered to him, the returning officer would have signed the form of oath or affirmation. It was submitted that the form of oath or affirmation alleged to have been filled up by Mahabir Singh Sharma does not indicate whether he swore in the name of God or whether he solemnly affirmed. There is no erasure either of the words either "do swear in the name of God" or "solemnly

affirm". He could not both swear in the name of God and solemnly affirm. It was submitted that the form of oath or affirmation alleged to have been filled up by Mahabir Singh Sharma may have been filled up by him but it was not read out to him by the returning officer. If it had been read out to him by the returning officer, the returning officer would have made sure that either he swore in the name of God or solemnly affirmed. Further, he would have put his own signatures on the form of oath or affirmation. It was submitted that Mahabir Singh Sharma could not be a candidate for election to the Haryana Legislative Assembly as he had not taken any oath at all. Without taking proper oath, he could not be said to be qualified to be chosen to fill a seat in the Haryana Legislative Assembly. It was submitted that Mahabir Singh Sharma was a worker of Indian National Lok Dal. He was desirous of being given ticket for contesting election to the Haryana Legislative Assembly as Indian National Lok Dal candidate. When Indian National Lok Dal did not oblige him, he revolted and filled his nomination paper as an "independent candidate". As independent candidate, he got 1,035 votes. It was submitted that as an independent candidate, votes he got would have been polled in favour of the petitioner as he was a candidate put up by the Indian National Lok Dal. It was submitted that votes polled by Mahabir Singh Sharma constituted a grave loss to him (Ved Singh). Entire votes polled by Mahabir Singh Sharma would have been polled by him in his kitty.

(13) Now the question that arises is "whether proper oath had been or had not been administered to Daya Nand and Mahabir Singh Sharma". So far as Daya Nand is concerned, he filled up the form of oath or affirmation at 2.45 P.M. He after submission of his nomination paper before the returning officer at 2.45 P.M. on 2nd February, 2000 made and subscribed oath before the returning officer at 2.50 P.M. and took the proper oath as required under Article 173 of the Constitution of India. It was submitted that the returning officer had also made arrangement for the making of video filming of the election process including the submission of nomination papers by the candidates for 40-Kailana Assembly Constituency of the Haryana Vidhan Sabha and also taking oath by the candidates after submitting their nomination papers to keep transparency in the election process, to avoid in future any dispute regarding the submitting of nomination papers by the candidates and taking oath. This

arrangement was made by the returning officer on all the day i.e. 1st February, 2000 to 3rd February, 2000 between the time which was meant for filing the nomination papers by the candidates. When the oath was administered by the returning officer to Daya Nand, S/Shri Babu Ram Tyagi, son of Shri Charan Singh, resident of village Shapur Tyagi, Tehsil Ganaur, Inder Singh son of Shri Bhai Ram, resident of village Tewri, Tehsil Ganaur, Jagdev Singh son of Shri Girdhala resident of village Agwanpur, Tehsil Ganaur, Inder Singh Khokhar son of Shri Mangat Ram resident of village Tajpur and some others were also present. It was submitted that Mahabir Singh Sharma submitted his nomination paper at 2.25 P.M. on 3rd February, 2000 before the returning officer of 40-Kailana Assembly Constituency of the Haryana Vidhan Sabha. He took oath at 2.32 P.M. on 3rd February, 2000 in the name of God. He filed his nomination paper at 2.25 P.M. on 3rd February, 2000 and, thereafter, he was administered oath by the returning officer at 2.32 P.M. which he took in the name of God. When Mahabir Singh Sharma took oath before the returning officer S/Shri Balister Kumar Tyagi son of Shri Baljit Singh Tyagi, resident of House No. 39, Sector 15, Sonapat, Chattar Singh son of Hoshiar Singh resident of village Bulandpur Kheri, Tehsil Ganaur, Chand Ram son of Shri Bajju Ram, Ex-Sarpanch village Shekhpura, Hawa Singh son of Shri Surat Singh resident of village Shekhpura, Gurender son of Shri Karan Singh resident of village Khubru, Tehsil Ganaur and some others were also present. It was submitted that it was for the returning officer to have made sure that he put his signatures in token of the administration of oath to the candidate. If the returning officer failed in his duty in putting his signatures on the form of oath or affirmation, relating to Mahabir Singh Sharma, Mahabir Singh Sharma was not to blame. It was submitted that it was the duty of the returning officer, at the time of scrutiny of the nomination papers to tell the candidate whether he was swearing in the name of God or he was solemnly affirming. It was for him to have erased either the words "swear in the name of God" or the words "solemnly affirm". It was submitted that negligence on the part of the returning officer should not recoil on the validity of the candidature of Daya Nand and Mahabir Singh Sharma.

(14) It was submitted by the learned counsel for the petitioner that with the improper acceptance of the nomination papers of Daya Nand and Mahabir Singh Sharma, his election prospects were adversely

affected as village Purkhas Rathee is citadel of Indian National Lok Dal and if Daya Nand had been thrown out of the arena of contest, votes polled by Daya Nand would have been polled in his favour as he is a Jat and an official candidate put up by Indian National Lok Dal. Similarly, Mahabir Singh Sharma was a worker of the Indian National Lok Dal. If he had been thrown out of the arena of contest, the votes polled by him would have been polled by the petitioner.

(15) Learned counsel for respondent No. 1 submitted that in the first instance, there is no occasion for the court to hold that the nomination papers of Daya Nand and Mahabir Singh Sharma had been improperly accepted and they should have been rejected and thrown out of the election fray. Daya Nand had taken proper oath before the returning officer. Form of oath or affirmation under Article 173 of the Constitution of India was read out to him and he put his signatures in token of the fact that he took oath. It was for the returning officer at the time of scrutiny to ask Daya Nand whether he was swearing in the name of God or he was solemnly affirming and thereafter it was for him to effect erasure in the form of oath or affirmation in words "do swear in the name of God" or "solemnly affirm". Even otherwise, I do not think the form of oath or affirmation will become invalid if this erasure was not effected and he had sworn in the name of God/Solemnly affirmed. As regards, Mahabir Singh Sharma also, I am of the opinion that it was for the returning officer to put his signatures on the form of oath or affirmation at the time of scrutiny. Any infraction on the part of the returning officer in the performance of his duty cannot be allowed to recoil on the candidate. It was submitted by the learned counsel for respondent No. 1 that assuming that there was no proper administration of oath to Daya Nand and Mahabir Singh Sharma and that their nomination papers were improperly accepted by the returning officer, no such objection was raised by any proposers/election agents of the candidates. If there had been any such objection, the returning officer would have decided that objection. It was submitted that the election petition is vague inasmuch as it was not pleaded clearly why the nomination papers of Daya Nand and Mahabir Singh Sharma should have been rejected and further whether any such objection was raised before the returning officer when he proceeded to accept these nomination papers. It was submitted that this election petition suffers from the vice of

vagueness. Section 36 of the Representation of the People Act lays down as follows :—

- 36. Scrutiny of nomination.**—(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 inquiry, 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:— Article 84, 102, 173 and 191 ;
- (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) Nothing contained in clause (b) or clause (c) of subsection (2) shall be deemed to authorise the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

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

(5) to (8) xxxx xxxxx xxxx xxxxx

(16) It was submitted that if any objection had been raised against the validity of nomination, the returning officer would have either accepted it or rejected it through an order in writing.

(17) It was submitted that in the election petition for declaring election to be void, only the grounds which have been set out in Section 100 of the Representation of the People Act, 1951 can be pleaded. Section 100 lays down as follows :—

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) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat unless the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or
- (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of returned candidate or his election agent; or
- (c) that any nomination has been improperly rejected; or
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—
 - (i) by the improper acceptance of any nomination, or
 - (ii) by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent, or (iii) by the improper reception, refusal or rejection of any vote or the receipt of any vote which is void, or (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or

orders made under this Act, the High Court shall declare the election of the returned candidate to be void.

- (2) If in the opinion of the High Court, a returned candidate has been guilty by an agent other than his election agent, of any corrupt practice but the High Court is satisfied—
- (a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;
 - (b) Clause (b) omitted by Act 58 of 1958.
 - (c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and
 - (d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then the High Court may decide that the election of the returned candidate is not void.

(18) It was submitted that it has been pleaded that the result of the election is so far as it concerned the returned candidate was materially affected by the improper acceptance of any nomination but this plea is vague. It was submitted that an election petition has to contain the following, as per Section 83 of the Act :—

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 alleged including as full a statement as possible of the name of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

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- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 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.

(19) It was submitted that the allegation that if Daya Nand and Mahabir Singh Sharma respondents 2 and 5 had been thrown out of the arena of contest, the votes polled by them would have been polled by him (petitioner), is vague as it is not pleaded who were those voters who had polled in favour of Daya Nand and Mahabir Singh Sharma, and further whether they had polled en-block in favour of the petitioner or some of them would have polled in favour of the petitioner.

(20) It was submitted that in view of clause (a) of Section 83 of the Act, the petitioner was required to set out all the material facts on which he was relying upon constituting the cause of action for questioning the election of the returned candidate. It was submitted that the petitioner made a general statement in the election petition that if Daya Nand respondent No. 2 had been thrown out of the arena of contest, the votes polled by him would have been polled by him (the petitioner). He has nowhere stated in which village Daya Nand got so many votes and who are those voters who had polled in his favour and they would have polled votes in his favour. Village Purkhas Rathee is not the only village of 40—Kailana Assembly Constituency. There are many other villages comprising this constituency where there is domination of Jat voters. It was submitted that if Daya Nand belongs to Jat caste, the petitioner also belongs to Jat caste. Earlier this constituency was represented a number of times by Ch. Rajender Singh Malik who was father of Jitender Singh Malik respondent No. 1 (returned candidate). He (Jitender Singh Malik (returned candidate) had great influence in this area including village Purkhas Rathi.

Ch. Lehri Singh who was the real brother of the grand father of Jitender Singh Malik (the returned candidate) had also represented this constituency a number of times and as such had great influence in village Purkhas Rathi. It was submitted that Jitender Singh Malik returned candidate had great influence in village Purkhas Rathi due to his past political background. It was submitted that it was only figment of imagination of the petitioner that if Daya Nand respondent No. 2 had been thrown out of the arena of contest, he would have bagged all the votes polled by him. It was submitted that it is true that in such elections people are bound by party affiliations. People wedded to the ideology of Indian National Lok Dal would vote for a candidate put up by this party. Similarly, people wedded to the ideology of Congress would vote for a candidate put up by the Congress. It was submitted that there are people who may not be wedded to any political ideology. Such people vote in favour of a candidate whom they feel is meritorious or on their whims and fancy. With certain votes the personality factor of a candidate also weighs. It was submitted that Jitender Singh belongs to a political family right since the times of Ch. Lehri Singh and this area owes a lot to this family.

(21) It was submitted that it was again a vague and general allegation viz the petitioner's claim that if Mahabir Singh Sharma respondent No. 5 had been thrown out of the arena of contest, he would have polled all the votes polled by Mahabir Singh Sharma. Mahabir Singh Sharma put up a banner of revolt and filed his nomination papers as an independent candidate after he had failed to be put up as an official candidate by the Indian National Lok Dal; he being a worker of Indian National Lok Dal. It was submitted that the petitioner was claiming that all the votes polled by Mahabir Singh Sharma would have been polled by him without any tangible basis. His belief that as Mahabir Singh Sharma is a worker of the Indian National Lok Dal and if he had been thrown out of the arena of contest, every voter who had polled vote in his favour, would have polled vote in favour of the petitioner is only assumption. It was submitted that it was a vague allegation. With some voters, who did not have any political ideology, personality factor or caste factor would also have weighed. On weighing personality factor or caste factor, some of them might have polled votes in favour of the petitioner and some of them might have polled votes in favour of Mahabir Singh Sharma or some other candidate. It was submitted that it was quite

vague that the votes polled by Mahabir Singh Sharma and Daya Nand would have been polled by the petitioner. It could also be that votes polled by them would have been shared by every other candidate including the returned candidate. It was submitted by the learned counsel for the returned candidate that the election petition has to conduce to the provisions of Civil Procedure Code so far as pleadings are concerned. Order 6 rule 2 CPC lays down :—

Order VI 2. Pleading to state material facts and not evidence—(1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

(22) In *Azhar Hussain versus Rajiv Gandhi*, (1) it was held as follows :—

“All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(a) of the Act. A plain petition, therefore, can be and must be dismissed if it suffers from any such vice. An election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the CPC.”

(23) In *Ram Sarup versus Peer Chand and others* (2), it was held as follows :—

“Section 83 is to be read alongwith Section 100 of the Act. May be material facts to prove the grounds are required to

(1) AIR 1986 SC 1253

(2) AIR 1993 Pb. Hy. 180

be given in a concise manner, however, all material facts necessary to prove the grounds must be stated and if one of such material facts is missing, the petition cannot be put to trial.”

(24) In *Madan Lal Agarwal versus Shri Rajiv Gandhi (3)*, the Supreme Court considered the impact of Order VI Rule 16 CPC on Sections 81, 83, 86 and 87 of the Act and held as follows :—

“The first question which falls for our determination is whether the High Court had jurisdiction to strike out pleadings under Order VI Rule 16 CPC at the preliminary stage even though no written statement had been filed by the respondent. Section 80 provides that no election is to be called in question except by an election petition presented in accordance with the provisions of Part VI of the Act before the High Court. Section 81 provides that an election petition may be presented on one or more of the grounds specified in Section 100 by an elector or by a candidate questioning the election of a returned candidate. Section 83 provides that an election petition shall contain a concise statement of material facts on which the petitioner relies.”

(25) It was held in AIR 1987 S.C. 1577 (*supra*) that since the provisions of the Code apply to the trial of election petition Order VI Rule 16 and 17 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act. On a combined reading of Ss. 81, 83, 86 and 87 of the Act, it is apparent that those paras of a petition which do not disclose any cause of action are liable to be struck off under Order VI Rule 16 as the Court is empowered at any stage of the proceedings to strike out or delete pleadings which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. It is the duty of the court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the court on examination of the plaint or the election petition finds that it does not disclose any cause of action, it would be justified in

striking out the pleadings. Order VI Rule 16 itself empowers the court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the proceedings, the court need not wait for the filing of the written statement instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the court finds that no triable issues remain to be considered, it has power to reject the election petition under Order VII Rule 11 CPC.

(26) In *Samant N. Balakrishana etc. versus George Fernandez and others* (4), the Hon'ble Supreme observed on Section 81, 83 and 86 of the Act, as follows :—

“Section 83 is mandatory and requires the election petition to contain; first a concise statement of material facts and then requires the fullest possible particulars. What is the difference between “material facts” and particulars ? The word “material” shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. Function of particulars is to give necessary information to present full picture of the cause of action.”

(27) In *Hari Shanker Jain versus Sonia Gandhi* (5), it was held that section 83(1) (a) of the Act mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. The material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in CPC. The expression “cause of action” has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the

(4) AIR 1969 SC 1201

(5) 2001 (8) SCC 233

cause of action with such further information in detail as to make the opposite party understand the case, he will have to meet. Merely quoting the words of the Section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time limit prescribed for filing the election petition.

(28) In *Udhav Singh versus Madhav Rao Scindia (6)*, it was observed by the Hon'ble Supreme Court that :—

"All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are "material facts". In the context of a charge of corrupt practice, "material facts" would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are material facts which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(1)(a).

"Particulars", on the other hand, are the details of the case set up by the party. Material particulars within the contemplation of Cl. (b) of Section 83(1) would therefore mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of Clause (a). Particulars serve the purpose of finishing touches to the basic contours of a picture already drawn to make it full, more detailed and more informative."

(29) It was submitted by the learned counsel for respondent No. 1 (returned candidate) that the election petition was vague inasmuch as there is no concise statement as to in which village the petitioner would have polled whose vote if Daya Nand and Mahabir Singh Sharma had been thrown out of the arena of contest. It was submitted that the allegation that if they had been thrown out of the arena of contest, he would have polled all the votes which they had polled, is of general nature and is vague and is based on surmises and conjectures.

(30) In *Vashist Narain Sharma versus Dev Chandra and others (7)*, it was held that the language of Section 100(1)(c) of the Act is too clear for any speculation about possibilities. The section clearly lays down that improper acceptance is not to be regarded as fatal to the election unless the Tribunal is of opinion that the result has been materially affected. Where the finding of the Tribunal that the result of the election has been materially affected is speculative and conjectural, the Supreme Court will interfere with the finding in special appeal.

(31) In AIR 1954 SC 513, 8 candidates filed nominations to the U.P. State Legislative Assembly from Ghazipur (South East) Constituency No. 345, three withdrew their candidature and the contest was confined to the remaining five namely Vashist Narain Sharma, Vireshwar Nath Rai, Mahadev Dudhnath and Gulab Chand who secured 12,868, 10,996, 3,950, 1,933 and 1,763 votes respectively. Vashist Narain Sharma was declared elected to the U.P. State Legislative Assembly. His election was challenged. One of the grounds of challenge was that the nomination of respondent No. 4 was improperly accepted by the election officer and that the result of the election was thereby materially affected. The Tribunal found that the respondent No. 4, whose name was entered on the electoral rolls of Ghamar Constituency Ghazipur (South East) personated (meaning passed himself off) as Dudh Nath Kahal and used the entries of his electoral roll of Baruni Constituency Ghazipur (South West), that the returning officer had improperly accepted his nomination and that the result of the election was thereby materially affected. Allegations of major and minor corrupt practices and non-compliance with certain statutory rules were made but the Tribunal found in favour of the

returned candidate on those points. It is impossible to accept the *ipse dixit* of witnesses coming from one side or the other to say that all or some of the votes would have gone to one or the other on some supposed or imaginary ground. The number of wasted votes was 111. It is impossible to accept *ipse dixit* of the witnesses. If the margin of votes between the successful candidate and the next highest candidate was less than the votes secured by the candidate whose nomination was improperly accepted, we are unable to accept the soundness of this view that those votes would have gone to the next highest candidate. The casting of votes at an election depends upon a variety of factors and it is not possible for any one to predicate how many or which proportion of the votes will go to one or the other of the candidates. While it must be recognized that the petitioner in such a case is confronted with a difficult situation, it is not possible to relieve him of the duty imposed upon him by section 100(1)(c) and hold without evidence that the duty has been discharged. Should the petitioner fail to adduce satisfactory evidence to enable the Court to find in his favour on this point, the inevitable result would be that the Tribunal would not interfere in his favour and would allow the election to stand. Mere fact that the wasted votes are greater than the margin of votes between the returned candidate and the candidate securing the next highest number of votes must lead to the necessary inference that the result of the election has been materially affected. It will not do merely to say that all or a majority of the wasted votes might have gone to the next highest candidate.

(32) It was held in *Paokai Haokip versus Rishang and others (8)*, that the casting of votes at an election depends upon a variety of factors and it is not possible for anyone to predicate how many or which proportion of votes will go to one or the other of the candidates. The general pattern of polling not only in this constituency but in the whole of India is that all the voters do not always go to the polls.

(33) In *Azhar Hussain versus Rajiv Gandhi (supra)*, the Hon'ble Supreme Court held that the material facts are facts if established, would give the petitioner the relief asked for. The test

required to be answered is whether the court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the petition.

(34) So far as the election petition in hand is concerned, even if respondent No. 1 (returned candidate) had chosen not to appear and contest it, the court could not have allowed this election petition and declared the petitioner to have been elected in place of the returned candidate and set aside the election of the returned candidate. Such a vague election petition lacking in material facts, could not have been decreed.

(35) Learned counsel for respondent No. 5 submitted that there is a difference between the material facts and particulars. The function of particulars is to present as full a picture of a cause of action with such information in details as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. The distinction is one of degree. The material facts are those which the party relies upon and which if it does not prove, he fails. It was submitted that the petitioner was not required to supply material particulars because they are required to be supplied when he alleges corrupt practices. It was submitted that the election petition discloses cause of action inasmuch as it has been pleaded that if Daya Nand and Mahabir Singh Sharma respondents had been thrown out of the arena of contest, he would have polled, if not all, almost majority of the votes polled by them. It was submitted that the material facts mean (a) facts necessary to formulate a complete cause of action, (b) all the preliminary facts which must be proved by the party to establish a cause of action, (c) the basic facts which constitute ingredients of particular corrupt practice, (d) all the facts which are essential to clothe the petitioner with complete cause of action, (e) the facts which if established would give the petitioner the relief asked for, (f) the facts on the basis of which the Court could give a direct verdict in favour of the election petitioner in case the returned candidate did not appear to oppose the petition, (g) facts which if not proved, the petition must

fail. In support of this submission, he drew my attention to *Mohammad Yusuf and another versus Bhairon Singh Shekhawat (9)*. It was submitted that an election petition cannot be dismissed for want of further material and better particulars in relation to the material facts which have been pleaded. In *Dilip Choudhary versus Surendra Goyal and others (10)*, it was held that where the petitioner has alleged that the returning officer has shown favour to the returned candidate and rejected valid votes polled in favour of the petitioner and included invalid votes in bundles of returned candidate, rejection of petition on ground of want of material particulars as non-mention of number of ballot papers, is not sustainable.

(36) It was submitted by the learned counsel for the returned candidate that material facts and particulars which together constitute the facts to be proved or the *facta probanda* on the one hand and the evidence by which those facts are to be proved *facta probantia* on the other must be kept clearly distinguished. The failure of the pleadings to disclose a reasonable cause of action is distinguished from the absence of full particulars. In support of this submission, he drew my attention to *Mohan Rawale versus Damodar Tatyaba alias Dadasaheb and others (11)*, it was submitted that if some cause of action is disclosed, pleadings cannot be struck out merely because the cause is weak and not likely to succeed. In Bullen and Leake and Jacob's "Precedents of Pleadings" 1975 Edition at Page 112, it is stated that the function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises and incidentally to save costs. The object of particulars is to open up the case of the opposite party and to compel him to reveal as much as possible what is going to be proved at the trial, whereas, as Cattan L.J. has said, "the old system of pleading at common law was to conceal as much as possible what was going to be proved at the trial". It is an elementary rule in pleading that when a state of facts is relied it is enough to allege it simply, without setting out the subordinate facts which are the means of proving it, or the evidence sustaining the allegations.

(9) AIR 1995 Rajasthan 239

(10) AIR 1999 Rajasthan 344

(11) 1994 (2) SCC 392

(37) It was submitted that in the election petition, the election petitioner has pleaded not only the improper acceptance of the nomination papers of Daya Nand and Mahabir Singh Sharma, but also he has pleaded that the votes polled by them would have been polled in his favour if their nominations had been rejected. He has set out the reasons why he is stating so. In AIR 2001 SC 905, it was held that mere allegation of wrong acceptance of nomination is not sufficient. It should be further established that such wrong acceptance has materially affected the result of election of the returned candidate. No evidence to show the trend of voting or distribution of votes between contesting candidates belonging to different political parties during previous elections, no witness speaking about distribution of wasted votes, it cannot be held that votes secured by one of contesting independent candidate was disproportionately more or that had this nomination paper been rejected votes polled in his favour would have been received by appellant. More so, when there were two other candidates in field, result of election of returned candidate cannot be said to have been materially affected.

(38) Non-erasure of the words "Legislative Council" in the form of oath was of no consequence when in Haryana there was no legislative council.

(39) For the reason given above, I am of the opinion that the election petition is bereft of the material facts constituting cause of action to the petitioner for challenging the election of returned candidate. Failure to mention all the material facts in support of his claim that if Daya Nand and Mahabir Singh Sharma respondents No. 2 and 5 had been thrown out of the arena of contest, he would have polled all the votes polled by them in their favour, would impinge upon the continuance of this election petition. Failure to mention polling stations where he would have an edge over them particularly, when there are more candidates than one, will make the election petition suffer from the vice of being vague. What is the good of trying such an election petition which lacks in material facts except that it would result in the wastage of the public money and unnecessary expense to the returned candidate. Petitioner should have stated out in the election petition the votes polled by each candidate at a particular polling station and then that vote he would have polled so many votes which had been polled by Daya Nand and Mahabir Singh Sharma at that

polling station and so many votes would have been polled by the other candidate or they would not have polled any vote at all. Petitioner should have dealt with his position *qua* each polling station so that the returned candidate could refute his position. This election petition discloses no triable issue. This petition is liable to be rejected and is accordingly rejected under Order VII Rule 11 read with Order VI Rule 16 CPC on the ground of its being vague and not giving material facts and particulars constituting complete cause of action and virtually disclosing no cause of action. Respondent No. 1 (returned candidate) shall have Rs. 3,300 as costs from the petitioner.

R.N.R.

Before Jawahar Lal Gupta & Ashutosh Mohunta, JJ.
 MATHURA DASS SETIA AND OTHERS,—*Petitioners*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 15058 of 2001

29th April, 2002

Constitution of India, 1950—Arts. 14, 226, 243-W and Part IX-A—Punjab Municipal Act, 1911—Ss. 61 & 70—Punjab Municipal Corporation Act, 1976—S. 90—Amended Acts No. 1 & 2 of 2002—Promulgation of the Acts to abolish octroi on the entry of goods within the territory of the State—Financial loss to the Local Government Bodies—State Government already facing an acute financial crunch—Government failing to provide alternative sources of revenue—Provisions of the Constitution require the State to legislate so as to make the municipalities independent—Action of the Government in abolishing octroi making municipalities dependent upon Government and defeating their declared objective is arbitrary, unreasonable and violative of the provisions of the Constitution—Petitions allowed while declaring the impugned Acts as unconstitutional.

Held, that :—

- (1) Plenty to poverty is the sad story of the State of Punjab. Today, it is under a heavy debt in the region of Rs. 62000.00 Crores. It is facing an acute financial crunch.