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purpose of pension is to reward an employee for the past satisfactory service rendered by him, there appears to be no rationale for denying the benefit to the respondent. The situation could be different if he was under a cloud. Supposing there was a charge sheet pending against him and the respondent had resigned from service, the Bank could have legitimately agitated that he has resigned to run away to avoid the imposition of a penalty. Such was not the situation. He had resigned at a time when the pension scheme did not exist. The scheme was introduced only in the year 1995 when the statutory regulations were notified. In this situation, there appears to be no ground to interfere with the concurrent findings recorded by both the Courts below.

(9) Mr. Surya Kant submits that the respondent had not challenged the vires of the regulations. That being so, he was not entitled to the benefit. The plea is untenable. The date on which the plaintiff-respondent had approached the Court, no statutory regulations had come into existence. Admittedly, the regulations had been notified on 29th September, 1995. The suit had been filed by the plaintiff-respondent in the year 1994. In fact, learned counsel states that the suit was filed in November, 1994. On that date the regulations did not exist. The occasion for the plaintiff-respondent to challenge the vires was not there.

No other point has been raised.

(10) In the facts and circumstances of the case, there is no equity in favour of the Bank so as to call for any interference with the orders of the Courts below.

(11) Resultantly, the appeal is dismissed in limine. However, there shall be no order as to costs.

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S.C.K.

*Before Jawahar Lal Gupta, J.*  
SARABJIT SINGH,—*Petitioner*

*versus*

MANTAR SINGH,—*Respondent*

*E.P. No. 10 of 1997*

21st July, 1998

*Representation of Peoples Act, 1951—Ss. 33 & 36—Election Symbols (Reservation and Allotment) Order, 1968—Cl. 13—Candidate filing nomination as a candidate of recognised political party—Nomination paper signed by one elector—Candidate not producing*

*authorisation of the party—Nomination paper of authorised candidate accepted—Rejection of nomination whether valid.*

*Held* that, a perusal of Ss. 33 & 36 of the Representation of Peoples Act, 1951 and Clause 13 of the Election Symbols (Reservation and Allotment) Order 1968 mandatorily requires that :

- (i) When a candidate is set up by a recognised political party, the nomination paper should be signed by an elector of the constituency as a proposer ;
- (ii) The candidate has to make a declaration that he has been set up by a political party in his nomination paper ;
- (iii) A notice to that effect which is signed by the President, the Secretary or any other office bearer of the party has to be delivered to the Returning Officer and the Chief Electoral Officer of the State, not later than 3 P.M. on the last date for the submission of the nomination papers ;
- (iv) In case, the notice is signed by an office bearer who has been authorised by the party to send such notice, his name and specimen signatures have to be so forwarded ;
- (v) In case, the candidate has not been set up by a recognised political party, the nomination paper has to be subscribed by 10 proposers who are electors of the constituency.

In view of the admitted position, that the petitioner had set up himself as a substitute candidate, it cannot be said that the petitioner had been set up as a candidate by a recognised political party. Still further, no notice signed by the President of the party indicating that the petitioner had been set up by the Shiromani Akali Dal had been sent to the Returning Officer and the Chief Electoral Officer of the State by the President in accordance with the provisions of law. The occasion for the substitute candidate's nomination paper being accepted would have arisen only if the name of the approved candidates had been rejected. Since the nomination paper of the approved candidate had not been rejected on scrutiny, there was no occasion for the substitute candidate to contest. Therefore, petitioner's nomination paper was rightly rejected.

(Paras 27, 31 & 39)

*Constitution of India, 1950—Art. 173—Representation of Peoples Act, 1951—S. 36 (6)—Submission of nomination papers by candidate for election—Taking on oath—Submission of another set of nomination papers—Failure to take oath second time—Whether second nomination papers invalid—Held, no.*

*Held that, the Constitution makes it mandatory for the candidate to subscribe to the oath. It has to be in the prescribed form. It must conform to the form as given in Schedule III. However, once the candidate has subscribed to the oath in the prescribed form, it cannot be said that the requirement of Article 173 (a) has not been complied with. Admittedly, the respondent had taken the oath in the prescribed form. This document was with the Returning Officer. Having taken the oath, the respondent had submitted the second nomination paper. It is the admitted position that the respondent had complied with the provisions of Article 173 (a) before the date of scrutiny. Thus, no infirmity can be found with the action of the Returning Officer in accepting the respondent's nomination paper.*

(Paras 55 & 56)

H.S. Mattewal, Sr. Advocate with Sukhbir Singh, Advocate for the Petitioner

J.R. Mittal, Sr. Advocate with Paramjit Singh Brar, B. D. Sharma, Rajesh Gumber, and Rajesh Girdhar, Advocates, for the Respondent.

### JUDGMENT

*Jawahar Lal Gupta, J. (Oral)*

(1) The petitioner, a candidate for the 103-Kotkapura Assembly Constituency, has a two-fold complaint. Firstly, he alleges that his nomination paper was illegally rejected. Secondly, the petitioner submits that the nomination paper of Mantar Singh, the returned candidate was wrongly accepted. Thus, the petitioner maintains that the entire election is vitiated. Is it so? A few facts may be noticed.

(2) The Election Commission of India notified elections to the State Assembly in the year 1997. 20th January, 1997 was the last date for filing of nomination papers. These were to be scrutinised on 21st January, 1997. The candidates could withdraw their nominations on 23rd January, 1997. The poll was scheduled for 6th February, 1997 and the votes had to be counted on 8th February, 1997.

(3) 23rd, January, 1997 was declared a National holiday. Thus, there was a slight variation in the election programme. 24th January, 1997 was fixed as the date for withdrawal of nominations. The poll was fixed for 7th February, 1997. The votes were to be counted on 9th February, 1997.

(4) The petitioner alleges that he was set up as a candidate by the Shiromani Akali Dal. He filed his nomination paper on 20th January, 1997 at 12.10 P.M. before the Returning Officer at the office of the

Additional Deputy Commissioner (Development), Mini Secretariat, Faridkot. He had "also attached the form of authorisation issued by Shiromani Akali Dal (Badal) as substitute of Shri Mohinder Singh Brar". The petitioner alleges that at the time of scrutiny on 21st January, 1997, he "submitted another form of authorisation issued by the President of Shiromani Akali Dal (Badal) to the Returning Officer" in which he "was authorised to contest the election on the ticket of Shiromani Akali Dal (Badal)." He was told "by the Returning Officer that as his nomination paper were accompanied by the authorisation form.... as a substitute, so he cannot accept any other form of authorisation to be set up by the political party...." The petitioner's nomination paper was rejected by the Returning Officer "only on the ground that the nomination papers of the main contesting candidate Shri Mohinder Singh Brar were accepted." Thus, the "form of the petitioner being a substitute" was rejected. The petitioner alleges that his nomination paper was illegally rejected by the Returning Officer.

(5) The petitioner further alleges that "the nomination papers of respondent had been illegally accepted as the respondent—Mantar Singh.... was ineligible to contest the election as he had not subscribed the oath as required under Article 173 of the Constitution of India read with Section 33 of the Representation of Peoples Act. The respondent Shri Mantar Singh had not taken oath after filing his nomination papers as an independent candidate." It is alleged that he had filed his nomination papers "at 2.30 p.m. on 18th January, 1997 before the Returning Officer at the office of Additional Deputy Commissioner (Development), Mini Secretariat, Faridkot and while he had taken oath at 2.30 P.M. on 18th January, 1997, so he was not eligible to contest the election and he was even not qualified to be chosen as the member from 103—Kotkapura Assembly Constituency for Punjab Vidhan Sabha." The petitioner adds that the "signatures of the proposers of the respondent are not genuine and are forged...the name of the respondent was not proposed by 10 electors of the constituency." The petitioner has also alleged that the respondent had committed corrupt practices under Section 123 (6) of the Act by incurring expenditure in contravention of the provisions of Section 77 of the Act. Details regarding the persons whose signatures were wrongly recorded on the nomination papers and the use of vehicles have been given in the petition. The petitioner has also filed an affidavit in support of the averments in the petition.

(6) A written statement has been filed by Mr. Mantar Singh, the respondent. It has been submitted by way of preliminary objections that the petitioner "has filed the present petition only as a proxy of his father Shri Mohinder Singh Brar who contested the election and was

defeated by the respondent with a big margin of more than 15000 votes". It has been pointed out that the respondent had contested the election as an independent candidate. He had defeated the petitioner's father who had been set up by the Akali Dal and Shri Joginder Singh s/o Giani Zail Singh, the former President of India who represented the Congress party. It has been specifically alleged that the petitioner had "fully canvassed and helped his father in this election." He had also purchased the stamp paper on which Shri Mohinder Singh Brar had given the affidavit while filing the statement of accounts. The respondent maintains that the election petition is "being filed by the petitioner as proxy of his father, Shri Mohinder Singh Brar, who lost the election by big margin." It has also been alleged that the petitioner has not come to the court with clean hands. He has concealed material facts and made wrong averments. The respondent maintains that the petitioner has not complied with the provisions of Section 81(3) read with Section 83 of the Act.

(7) Besides the preliminary objections, the respondent has also controverted the petitioner's allegations on merits. It has been admitted that the nomination papers were scrutinised on 21st January, 1997. The petitioner was present at that time. It has been specifically averred that he "did not present any form of authorisation issued by the President of the Shiromani Akali Dal to the Returning Officer to the effect that he was authorised to contest on the ticket of Shiromani Akali Dal (Badal)." A certified copy of the form of authorisation which had been produced by the petitioner with his nomination papers has been produced as Annexure R-2 with the written statement. The petitioner's claim that his father Mr. Mohinder Singh Brar was to withdraw from the contest has also been controverted. It has been pointed out that he was the approved candidate of the party and had actually contested the election. It is only after losing by a margin of more than 15000 votes that this plea is being raised. With regard to the allegation that the respondent's nomination paper had been illegally accepted, it has been pointed out that he had filed his nomination paper "as a candidate of Shiromani Akali Dal at 2.30 P.M. before the Returning Officer and at that time he had also subscribed the oath as required under Article 173 of the Constitution of India read with Section 33 of the Representation of People Act, 1951....At 2.35 P.M., the respondent had submitted another set of nomination papers duly subscribed by ten electors as his proposers as an independent candidate. So, there was no requirement of taking the oath for the second time..." On this basis, the respondent maintains that his nomination paper was rightly accepted. The other allegations regarding the genuineness of the signature of the proposers and the expenses have also been controverted.

On this basis, the respondent prays that the election petition be dismissed with costs.

(8) The petitioner has filed a replication to reiterate his stand.

(9) On the pleading of the parties, the following issues were framed:—

1. Whether the petitioner has not come to the Court with clean hands ? OPR
2. Whether the petitioner has not complied with the provisions of Section 81(3) of the Representation of Peoples Act, 1951 ? OPR
3. Whether the petition is liable to be dismissed in view of the averments in preliminary objection No. 1 ? OPR
4. Whether the petitioner's nomination paper was wrongly rejected by the Returning Officer ? OPP
5. Whether respondent—Mantar Singh has not made and subscribed the oath as required under Article 173 of the Constitution of India read with Section 33 of the Representation of Peoples Act, 1951 ? OPP
6. Whether the name of respondent—Mantar Singh had not been proposed in accordance with law ? OPP
7. Whether the respondent is guilty of corrupt practice as alleged in the election petition ? OPP
8. Relief, if any.

(10) On the request of the counsel, Issues Nos. 1, 2 and 3 were treated as preliminary issues. Arguments in respect of these issues were addressed by the counsel on 5th September, 1997. All the three issues were decided against the respondent,—*vide* order passed on the same day *viz.* 5th September, 1997. Thereafter, the parties had led evidence on the other issues.

(11) On behalf of the petitioner, the oral testimony consists of six witnesses *viz.* Nicchattar Singh, PW-1, the petitioner—Sarbjit Singh, PW-2, Ram Pal Gurpreet, PW-3, Bhagat Singh Chahal, PW-4, Harjinder Singh, PW-5, and Kirpal Singh Badungar, PW-6. On the other hand, the respondent alone appeared to controvert the claim made on behalf of the petitioner as RW-1.

(12) Nichhattar Singh was working as Tehsildar (Elections). He had produced the nomination papers filed by the petitioner as well as the respondent. He had also produced an attested copy of the Expense Account filed by the respondent.

(13) The petitioner—Sarbjit Singh had supported the averments made by him in the petition. In cross-examination, he stated that the tickets had to be allotted by Mr. Parkash Singh Badal only. However, he “had not applied for a ticket to Mr. Badal”. He further admitted that he had held “no position in the Shiromani Akali Dal or the Shiromani Committee”. He also admitted that his father “Mr. Mohinder Singh Brar is a former MLA and a member of the Executive Committee of the Shiromani Akali Dal. He occupies a prominent position” in the party. He further stated that his father had given to him “the form at Page 7 of Ex. PW2/2. This form was a photo copy only.” He had “filled it up and filed it alongwith—nomination paper”. According to him, his second form had been received by him on 20th January, 1997 at about 4 P.M. He had “tried to give it to the Returning Officer on 21st January, 1997.” This had been given to him by Mr. Harjit Singh r/o Village Bholuwala. He had accompanied his father on 18th January, 1997 when he had gone to file his nomination papers. He admitted that he did not make any complaint “to any one after the Returning Officer had refused to accept the form Ex. PW2/1...on 21st January, 1997.” His explanation was that “the election petition was the only remedy.” He also admitted that observers had been appointed during the election. They had visited the constituency. However, he “had not made any complaint to any of the observers regarding the jeeps that had been deployed by the respondent.” It was suggested to him that he had obtained the signatures of Mr. Parkash Singh Badal on Ex. PW2/1 only with the object of filing the election petition. He had denied the suggestion.

(14) Mr. Ram Pal Gurpreet was produced as PW-3. He stated that he “had not proposed the name of any candidate in the elections which were held in February, 1997 to the State Assembly Constituencies”. In particular, he said that he had not even proposed the name of the respondent for the Kotkapura Constituency. He had further stated that he had not gone to the office of the Additional Deputy Commissioner. He had denied his signatures on the nomination paper of the respondent. He was cross-examined at length. He had denied various suggestions put to him. He had even denied his signatures on different documents. Ultimately, he was confronted with a video tape which was shown in court. When confronted with the tape, he had to admit that “the statement made by me prior to seeing the video tape was not correct.” He was also compelled to admit that his statement that he had not gone to the office of the Additional Deputy Commissioner “was wrong”. He further admitted that the nomination paper of the petitioner bore his signatures and that he had “wrongly denied his signatures thereon in the earlier portion of the statement.”

(15) The witness had apologised to the court for telling a lie and had placed himself at its mercy.

(16) PWs-4 and 5 had made an attempt to indicate the expenses incurred by the respondent during the election. It is not necessary to notice their statement in detail as this issue has not been pressed by the counsel for the petitioner.

(17) PW-6 Mr. Kirpal Singh Bandugar, Secretary of the Shiromani Akali Dal stated that the party had initially allotted ticket to Mr. Mohinder Singh Brar. A letter of authority had been issued in his favour. Page 7 of Ex. PW2/2 (which is the nomination paper of the petitioner) "had been issued in favour of Shri Mohinder Singh Brar." According to him, many people had protested that the ticket had been given to a wrong person. After due consideration of the matter, Mr. Badal had decided to allot the ticket to the petitioner. He stated that a letter Ex. PW2/1 had been handed over by him to Mr. Harjit Singh, Sarpanch on 20th January, 1997. This document was signed by Mr. Parkash Singh Badal. He was cross-examined at length. During cross-examination, he admitted that at the time of handing over the letter of authorisation in favour of the petitioner to Mr. Harjit Singh, he was not asked to inform Mr. Mohinder Singh Brar to withdraw his candidature. He further admitted that the petitioner had never "complained that the Returning Officer had refused to accept him as a candidate of the Shiromani Akali Dal." He also could not deny that the office of the Dal had not lodged any protest regarding the allotment of the party symbol. In reply to a court question, he stated that no receipt or despatch register was being maintained. The letters issued from the office of the Akali Dal were not entered in any record. Even with regard to the allotment of tickets, no entry was made in any record. The proformas were being issued after having been duly filled up. This was being done by Mr. Hardip Singh who was working in the Civil Secretariat.

(18) This is the entire oral evidence on behalf of the petitioner.

(19) The respondent had appeared as RW-1. Reference to his testimony shall be made at the relevant stage.

(20) Learned counsel for the parties have been heard.

(21) Mr. Mattewal, counsel for the petitioner has only pressed Issue Nos. 4 and 5. He has categorically stated that Issue Nos. 6 and 7 are not being pressed. It is contended that the petitioner's nomination paper was wrongly rejected on the ground that "the nomination papers of the main contesting candidate Mr. Mohinder Singh Brar had been accepted." Learned counsel contended that this was not a ground on which the



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nomination paper could have been rejected. Learned counsel further maintained that the nomination paper of the respondent had been illegally accepted. The claim made on behalf of the petitioner was controverted by Mr. J.R. Mittal who appeared on behalf of the respondent.

(22) Thus, the two questions that survive for consideration are as contained in Issue Nos. 4 and 5.

**ISSUE NO. 4 :**

(23) The petitioner's nomination paper is on record as Ex. PW 2/ 2. The Returning Officer had rejected this nomination paper with the following order :—

“Nomination of main candidate S. Mohinder Singh Brar has been accepted. So this form being substitute is rejected .”

Date : 21.1.1997.

(Sd). . .,  
Returning Officer.”

(24) Mr. Mattewal, counsel for the petitioner vehemently contended that a nomination paper can be rejected only on the grounds specified in Section 36. The Returning Officer had not rejected the petitioner's nomination paper on any of the grounds as contemplated under the law. Thus, the petitioner had been wrongly excluded from the contest.

(25) Section 33 provides for the presentation of the nomination paper. It also lays down the requirements for a valid nomination. It *inter alia* provides that the “candidate shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the Returning Officer at the place specified in this behalf...a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer.” There is a proviso to this provision which reads as under :—

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

(26) Still further, in exercise of the powers conferred by Article 324 of the Constitution, the Election Commission of India has promulgated the “Election Symbols (Reservation and Allotment) Order 1968” (hereinafter referred to as the Order). Clause 13 of this Order provides as under :—

“When a candidate shall be deemed to be set up by a political party—

For the purpose of this Order, a candidate shall be deemed to be set up by a political party if, and only if,—

- (a) the candidate has made a declaration to that effect in his nomination paper ;
- (b) a notice in writing to that effect has, not later than 3 P.M. on the last date for making nominations, been delivered to the returning officer of the constituency and the Chief Electoral Officer of the State ;
- (c) the said notice is signed by the President, the Secretary or any other office bearer of the party and the President, the Secretary or such other office bearer is authorised by the party to send such notice ; and
- (d) the name and specimen signature of such authorised person are communicated to the Returning Officer of the constituency and to the Chief Electoral Officer of the State not later than 3.00 P.M. on the last date for making nominations.”

(27) On a perusal of the above provisions, it appears that the law mandatorily requires that :—

- (i) When a candidate is set up by a recognised political party, the nomination paper should be signed by an elector of the constituency as a proposer ;
- (ii) The candidate has to make a declaration that he has been set up by a political party in his nomination paper ;
- (iii) A notice to that effect which is signed by the President, the Secretary or any other office bearer of the party has to be delivered to the Returning Officer and the Chief Electoral Officer of the State, not later than 3 P.M. on the last date for the submission of the nomination papers ;
- (iv) In case, the notice is signed by an office bearer who has been authorised by the party to send such notice, his name and specimen signatures have to be so forwarded;
- (v) In case, the candidate has not been set up by a recognised political party, the nomination paper has to be subscribed by 10 proposers who are electors of the constituency.

(28) Besides the above, the provision appears to have a two-fold purpose. Firstly, it lays down the requirements of a valid nomination

paper. Secondly, by providing that a candidate who has not been set up by a recognised political party shall not be deemed to be duly nominated unless the nomination paper is subscribed to by 10 proposers, who are electors of the constituency, the Legislature appears to have intended that the election being a serious and expensive affair, a candidate who is not serious should not be allowed to contest. On a perusal of these provisions, it can be safely held that if a candidate is not set up by a recognised political party and the requirements of Clause 13 are not fulfilled, the nomination paper is liable to be rejected unless it has been subscribed to by 10 proposers who are electors in the Constituency.

(29) What is the position in the present case? Was the petitioner set up as a candidate by a recognised political party? Did the President etc. of the party send a notice as contemplated under Clause 13 to the Returning Officer and the Chief Electoral Officer of the State?

(30) A perusal of the nomination paper submitted by the petitioner shows that in Part III of the Nomination paper, he had claimed that he had been set up by the Shiromani Akali Dal for election. The nomination paper was signed by Charanjit Singh as proposer. At page 7 is the document which according to the petitioner fulfils the requirements of Clause 13 of the Order. It deserves to be reproduced in entirety. It is as follows :—

“To

1. The Chief Electoral Officer,  
Punjab.
2. The Returning Officer for the  
103—Kotkapura Constituency

Sub : General Elections to Punjab Vidhan Sabha from Punjab State, setting up of candidates.

Sir,

In pursuance of paragraph 13(b) of the Election symbols (Reservation and Allotment) Order, 1968, I hereby give notice that the following person(s) have been set up by *Shiromani Akali Dal* party as its candidates at the ensuing General Election from the Constituency noted against each :—

- |  |                                    |
|--|------------------------------------|
| 1. Name of Constituency                | 103—Kotkapura                      |
| 2. Name of the Approved candidate      | S. Mohinder Singh                  |
| 3. Father's name of approved candidate | Kartar Singh (written in Gurmukhi) |

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- |  |   |
|--|---|
| 4. Postal address of approved Candidate  | Near Durga Mandir, Kotkapura (written in Gurmukhi)                  |
| 5. Name of the substitute candidate (who will step-in in the event of the approved candidate's nomination being rejected on scrutiny or his withdrawing from the contest). | Sarbjit Singh (written in Gurmukhi by the petitioner)               |
| 6. Father's/Husband's Name of substitute candidate   | Mohinder Singh (written in Gurmukhi by the petitioner)              |
| 7. Postal address of substitute candidate  | Near Durga Mandi, Kotkapura (written in Gurmukhi by the petitioner) |

Yours faithfully,

Place : Chandigarh

(Sd.) . . .  
(PARKASH SINGH BADAL)  
PRESIDENT

January, 1997.

Stamp

Parkash Singh Badal, President,  
Shiromani Akali Dal."

(31) A perusal of this document clearly shows that Mr. Mohinder Singh had been approved as candidate by the Shiromani Akali Dal. The petitioner represented that he was intended to be substituted as a candidate in the event of the nomination paper of Mr. Mohinder Singh being rejected or his withdrawing from the contest. It further deserves notice that this document was not actually signed by Mr. Parkash Singh Badal. In fact, the petitioner himself who appeared as PW-2 had stated that his father had given him the form "at Page 7 of Ex. PW2/2. This form was a photo copy only." He further stated that — "I had filled it up and filed it alongwith my nomination paper." Thus, the document was not actually signed by Mr. Badal, the President of the party. He had not even mentioned the petitioner as a substitute candidate. In fact, the petitioner had set up himself as a substitute candidate. In view of this admitted position, it cannot be said that the petitioner had been set up as a candidate by a recognised political party. Still further, no notice signed by the President of the party indicating that the petitioner had been set up by the Shiromani Akali Dal had been sent to the Returning Officer and the Chief Electoral Officer of the State by the President in accordance with the provisions of law.

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(32) Mr. Mattewal submits that the notice duly signed by the President had been presented to the Returning Officer on 21st January, 1997 at the time of scrutiny of the nomination papers. This, the counsel submits, was a proof of the fact that the petitioner had been duly set up by the Shiromani Akali Dal as a candidate.

(33) This document has been produced on record by the petitioner during the course of his statement as Ex. PW2/1. In fact, the petitioner has submitted that he had handed over this document to "the Returning Officer on 21st January, 1997. However, he had refused to accept it." He further stated that this form had been received by him at about 4 P.M. on 20th January, 1997. He had "tried to give it to the Returning Officer on 21st January, 1997." The form had been given to him by Mr. Harjit Singh r/o village Bholuwala.

(34) On a perusal of the evidence, it appears difficult to accept that the petitioner had presented this document to the Returning Officer on 21st January, 1997. Firstly, there is nothing on record to corroborate the petitioner's assertion that he had in fact presented this document to the Returning Officer. Nothing has been brought on record to show that even a copy had been forwarded to the Chief Electoral Officer so as to be received by him within a reasonable time after 20th January, 1997 when this document purports to have been actually executed. Still further, the petitioner has not produced Mr. Hardip Singh who had allegedly filled up the form and mentioned his name as the approved candidate. According to PW-6, Mr. Kirpal Singh the proformas had been filled up by Mr. Hardip Singh who was working as a P.A. with Mr. Parkash Singh Badal. It is the admitted position that the petitioner's name had not been entered as an approved candidate by Mr. Parkash Singh Badal. This work was being done by Mr. Hardip Singh. He was not produced. Secondly, Mr. Kirpal Singh has also claimed that the document Ex. PW2/1 had been handed over by him on 20th January, 1997 to Mr. Hardip Singh. The petitioner has stated that this document had been given to him by Mr. Harjit Singh r/o village Bholuwala. Curiously, even Mr. Harjit Singh has not been produced. Still further, even though the petitioner claims to have presented the document to the Returning Officer, he was not produced. This is so inspite of the fact that the Returning Officer, according to the petitioner himself, was present in court on the date on which his statement was being actually recorded. To top it all, the petitioner did not even try to produce Mr. Parkash Singh Badal who could have really deposed as to whether or not the petitioner has been set up as a candidate by the party on 20th January, 1998 when the document purports to have been issued. The failure to produce these witnesses leaves a big gap between the

claim made by the petitioner and the facts as borne out from the evidence on record. Taking the totality of circumstances into consideration, it appears difficult to uphold the petitioner's claim that he had produced the document Ex. PW2/1 before the Returning Officer even on 21st January, 1997.

(35) Still further, it is clear that there was no notice from the President of the party that the petitioner was being set up as a candidate which may have been delivered to the Returning Officer by 3 P.M. on the last date for submission of the nomination papers. His nomination paper was admittedly signed by only Charanjit Singh. It was not signed by 10 electors from the Constituency. As a result, the nomination paper was not valid.

(36) In spite of this position, Mr. Mattewal contended that the reason given by the Returning Officer for rejecting the petitioner's candidature was not covered by the provisions of Sections 33 and 34 and, thus, the order was violative of the provisions of Section 36.

(37) Even this contention cannot be accepted. According to the provisions of Section 33 (1) read with the proviso, it is required that a nomination paper is subscribed by 10 proposers when the candidate has not been set up by a recognised political party. In view of the finding that the petitioner had not been set up as a candidate by the Shiromani Akali Dal, his nomination paper had to be subscribed by 10 proposers. Actually, the petitioner's name had been proposed only by one elector. Thus, there was no compliance with the provisions of Section 33. This was a good ground for rejection of the nomination paper under Section 36.

(38) Faced with this situation, Mr. Mattewal contended that the ground given by the Returning Officer for rejecting the petitioner's nomination paper was not tenable. The petitioner's candidature could not have been cancelled on the ground that the candidature of Mr. Mohinder Singh Brar had been accepted.

(39) Even this contention cannot be sustained. On the petitioner's own showing, he had submitted his nomination paper on the assumption that he had been set up as a substitute candidate for Mr. Mohinder Singh Brar. On the day of scrutiny, the nomination paper filled by Mr. Mohinder Singh Brar had been accepted. That having happened, the Returning Officer could have legitimately taken the view that there was no occasion for a substitute candidate's nomination paper to be accepted. In the notice at Page 7 of the nomination paper, the name of the approved candidate was mentioned as Mr. Mohinder Singh. The petitioner had filled up his name only as a substitute candidate. The

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occasion for the substitute candidate's nomination paper being accepted would have arisen only if the name of the approved candidate had been rejected. It had been mentioned in the notice that the substitute candidate "will step-in in the event of the approved candidate's nomination being rejected on scrutiny or his withdrawing from the contest". Since the nomination paper of the approved candidate had not been rejected on scrutiny, there was no occasion for the substitute candidate to contest.

(40) Mr. Mattewal submitted that the second exigency in which the substitute candidate could have contested the election was in the event of Mr. Mohinder Singh withdrawing from the contest.

(41) There is nothing on record to indicate that Mr. Mohinder Singh ever intended to withdraw. The petitioner's claim in that behalf is not supported by any evidence on the record so much so that even Mr. Mohinder Singh Brar who is admittedly the petitioner's father was not produced as a witness in court to show that he intended to withdraw his candidature from the contest.

(42) It has been admitted by the petitioner that he had worked for his father's election. He had participated in the election. Even the return regarding the expenses incurred by the petitioner's father was filed on the stamp paper purchased by the petitioner himself. It has not been suggested that the petitioner raised any protest when his nomination paper was rejected or that he complained to any one when the Returning Officer had allegedly refused to accept the document at Ex. PW2/1. In this situation, the suggestion made on behalf of the respondent that the petitioner was only acting as a dummy for his father and that he was preparing evidence to create a plea for filing an election petition, cannot be said to be unfounded.

(43) A faint attempt was made to suggest that even if the petitioner had failed to produce Mr. Parkash Singh Badal, the Returning Officer, Mr. Hardip Singh, P.A. to Mr. Parkash Singh Badal and Mr. Harjit Singh, the respondent could have produced those witnesses to prove the factual position. Since the respondent has not produced those witnesses, an inference should be drawn against him.

(44) The contention is wholly misconceived. The onus of proving the factual position was on the petitioner. He had to prove that his nomination paper had been wrongly rejected. The respondent was under no obligation to fill up the lacuna left by the petitioner. Consequently, there is no occasion to draw an inference against the respondent.

(45) It was also submitted that the respondent has admitted the signatures of Mr. Parkash Singh Badal on Ex. PW2/1.

(46) Even if it is so assumed, the respondent has nowhere admitted that the date viz. 20th January, 1997 as indicated on the document is correct. The respondent has hotly contested the allegation that the petitioner had been set up as a candidate by the Akali Dal. The document at Ex. PW2/1 records various things in the handwriting of a person other than Mr. Badal. According to the statement of Ex. PW6, these columns had been filled up by Mr. Hardip Singh. Surely, it was not for the respondent to produce Mr. Hardip Singh. Still further, no body has stated that the document was signed by Mr. Badal after the columns had been filled up. Thus, the columns of the document are not proved to have been filled up on 20th January, 1997. This lacuna in the evidence had to be filled up by the petitioner and not by the respondent.

(47) Mr. Mattewal referred to the decision of their Lordships of the Supreme Court in *K.S. Abdul Azeez v. Ramanathan Chettiar and others* (1) to contend that a nomination paper can only be rejected when there is a substantial defect and not otherwise.

(48) There is no quarrel with the proposition. In the present case, the nomination paper filed by the petitioner did not conform to the provisions of Section 33. He had not been set up as a candidate by the Shiromani Akali Dal. Thus, his name had to be proposed by 10 electors. It had been actually proposed by only one elector. Thus, there was virtually proposal in the eye of law. The defect in the nomination paper was substantial. It could, thus, be rejected. Still further, the petitioner was never nominated even as a substitute candidate by the Shiromani Akali Dal. This was an interpolation made by the petitioner in a photo copy. He had not been set up by a recognised political party. He was only creating evidence to file the petition. The irresistible conclusion is that the petitioner's nomination paper had been legally rejected.

(49) Issue No. 4 is, thus, decided against the petitioner.

ISSUE NO. 5 :

(50) It was contended that the respondent had not subscribed to the oath after submission of his nomination paper as an independent candidate. Thus, he suffered from the disqualification as contemplated under the provisions of Article 173 of the Constitution. In this situation, his nomination paper could not have been accepted. Is it so ?

(51) Article 173 *inter alia* provides that "a person shall not be qualified to be chosen to fill a seat in a Legislature of a State unless he is a citizen of India and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third

(1) A.I.R. 1967 S.C. 85



Schedule.” According to the petitioner, the respondent had subscribed to the oath after the submission of the nomination paper and not before it. Thus, he suffered from the disqualification as contemplated under Article 173 (a). Is it so ?

(52) Section 33(6) of the Representation of Peoples Act admittedly permits a candidate to file four nomination papers. It is also not disputed that these nomination papers can relate to two constituencies. However, the Constitution does not require that the candidate must take oath at the time of filing each nomination paper in each of the two constituencies. The necessary implication is that if he submits a nomination paper and takes an oath, it enures for the other constituency and the nomination papers as well. In the very nature of things, the purpose of the oath is to ensure that the candidate on his election “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”. Once the candidate has taken this oath before a person duly authorised by the Election Commission, the law does not insist upon a repetition.

(53) What is the position in the present case ? According to the petitioner, the respondent “had filed two nomination papers. One of these nomination papers was presented at 2.30 P.M. The other nomination paper had been filed at 2.35 P.M. The first nomination paper filed by the respondent was as a candidate of the Shiromani Akali Dal party. The latter nomination paper was as an independent candidate. The respondent had taken the oath at 2.30 P.M. He had, however, not taken any oath after filing the second nomination paper.” This is the petitioner’s statement on oath before the court. It is on this admitted position that the validity of the contention raised by Mr. Mattewal has to be examined.

(54) The first nomination paper of the respondent is Ex. R. 1. It was rejected. The second nomination paper filed by the respondent is on record as Ex. R.3. The oath subscribed to by the petitioner which admittedly bears his signatures is Ex. R. 2. A perusal of these documents clearly shows that the respondent had subscribed to the oath as contemplated under Article 173 (a) at 2.30 P.M. on 18th January, 1997. The Returning Officer has further recorded the fact in Part IV of the nomination paper that it had been presented at 2.35 P.M. on 18th January, 1997. It is not the petitioner’s case that any objection regarding the validity of the oath or the nomination paper was ever raised at the time of the scrutiny of the document. However, Mr. Mattewal submits that the respondent could have subscribed to the oath only after he had been duly nominated and not before he had actually filed the nomination paper. Reference in this behalf was made to the prescribed

format of the oath as contained in Third Schedule. Learned counsel submitted that it is only on "having been nominated" that a candidate subscribes to the oath. Not otherwise. Is it so?

(55) The Constitution makes it mandatory for the candidate to subscribe to the oath. It has to be in the prescribed form. It must conform to the form as given in Schedule III. However, once the candidate has subscribed to the oath in the prescribed form, it cannot be said that the requirement of Article 173 (a) has not been complied with. Admittedly, the respondent had taken the oath in the prescribed form. This document was with the Returning Officer. Having taken the oath, the respondent had submitted the second nomination paper. According to the rule laid down by the Apex Court in *J.H. Patel v. Subhan Khan (2)*, an oath taken in the prescribed form in one constituency amounts to sufficient compliance even in respect of another constituency. In the present case, the respondent had taken the oath before the Returning Officer who was accepting his nomination paper. It is clear that the action was in conformity with the provisions of Article 173 of the Constitution.

(56) Mr. Mattewal contended that the candidate has to take oath alongwith the submission of the nomination paper. He placed reliance on the decision of their Lordships of the Supreme Court in *Pashupati Nath Singh v. Harihar Prasad Singh (3)*. In this case, it was noticed by their Lordships in paragraph 11 that "no oath or affirmation was attached to the nomination paper or was filed before the date fixed for the scrutiny." It was in view of this factual position that the contention raised on behalf of Pashupati Nath that the oath could have been taken before the objection was considered by the Returning Officer, was rejected. It was held that the oath has to be taken before the date fixed for scrutiny. In the present case, the respondent had admittedly taken and subscribed to the oath before the date of scrutiny. Indeed, the validity of the nomination paper has to be judged on the date of the scrutiny. If on that date, the nomination paper conforms to the requirements of law, the Returning Officer is entitled to accept it. The date of scrutiny as interpreted in *Patel's case (supra)* means the whole day. Therefore, the provisions of law must be complied with before the beginning of the date of the scrutiny. It is the admitted position that in the present case, the respondent had complied with the provisions of Article 173 (a) before the date of scrutiny. Thus, no infirmity can be found with the action of the Returning Officer in accepting the respondent's nomination paper.

(57) Mr. Mattewal contended that in paragraph 9 of the petition,

(2) 1996 (5) S.C.C. 312

(3) A.I.R. 1968 S.C. 1064

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it had been specifically pleaded that the respondent was ineligible to contest as "he had not subscribed oath as required under Article 173 of the Constitution read with Section 33 of the Representation of Peoples Act. The Respondent—Shri Mantar Singh had not taken oath after filing his nomination papers as an independent candidate."

(58) Besides the fact that the respondent has denied the contents of para 9 in the opening sentence, the factual position has been clearly stated by the petitioner on oath during his examination-in-chief before the court. This part of the statement has already been reproduced above. In this statement, it has been categorically admitted by the petitioner that the respondent had submitted his nomination paper and taken oath at 2.30 P.M. Thereafter, he had submitted the second nomination paper as an independent candidate. Thus, there was no infirmity in the action of the Returning Officer in accepting the respondent's nomination paper.

ISSUE NOS. 6 & 7

(59) In the petition, it was alleged that the respondent had not been proposed in accordance with law and that he was guilty of corrupt practices. This plea was sought to be supported during the course of evidence by the petitioner as well as his witnesses. PW-3 Ram Pal who had actually proposed the name of the respondent alongwith various other electors stated that "the signatures which purport to be those of Ram Pal at Sr. No. 2" of the nomination paper were not his. He was cross-examined. For most of the time, he had stuck to his guns. Then a video cassette was played in court. On seeing it, he took a somersault. He admitted that the respondent's nomination paper was signed by him and that he had wrongly denied his signatures. He also admitted that other parts of his statement were not correct. He had apologised for telling a lie and placed himself at the mercy of the court. One cannot compliment the petitioner for having made the allegation in the petition that the signatures on the respondent's nomination paper have been forged. PW-3 Ram Pal is reprimanded for telling deliberate lies.

(60) Faced with this situation, learned counsel for the petitioner has categorically stated that he does not press Issue Nos. 6 and 7. These are consequently, decided against the petitioner.

(61) No other point has been raised.

(62) In view of the above findings, there is no merit in the election petition. The allegations as made in the petition have not been proved. Findings on the crucial issues are against the petitioner. Resultantly, the petition is dismissed. In the circumstances and as stated by counsel, the parties are left to bear their own costs.

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S.C.K.