

MITHILESH KUMAR SINHA ETC.

A

v.

RETURNING OFFICER FOR PRESIDENTIAL ELECTION AND  
ORS. ETC.

SEPTEMBER 17, 1992

B

[J.S. VERMA, K. JAYACHANDRA REDDY, S.C. AGRAWAL,  
YOGESHWAR DAYAL AND DR. A.S. ANAND, JJ.]

*Presidential and Vice-Presidential Elections Act, 1952 : Sections 5B(1)  
and (5)—Requirements under—"Deliver" and "subscribe"—Construction of.*

C

*Presidential and Vice-Presidential Elections Act, 1952 : Sections 14A,  
13(a)—Locus Standi to file election petition—Requirements—'Candidate'—  
Construction—Non-compliance of mandatory requirements for a valid  
nomination—Election petition by such person—Maintainability of.*

D

*Presidential and Vice-Presidential Elections Act, 1952 : Section 17 read  
with Order XXXIX Rules 2, 5, 7 and 34 read with Order XXIII, Rule 6 of the  
Supreme Court Rules, 1966—'Trial'—Construction—Election petition not dis-  
closing triable issues or cause of action—Maintainability of.*

*Presidential and Vice-Presidential Elections Act, 1952 : Sections 5E(5),  
14, 18(1)(c), 18(2) read with Form 2 under Rule 4 of the Presidential and  
Vice-Presidential Elections Rules, 1974 and read with Section 171C,  
IPC—Election petition on grounds of wrongful acceptance of the nomination  
papers of other three candidates and of undue influence—No material facts  
to constitute undue influence ground available in petition—Effect of.*

E

*Presidential and Vice-Presidential Elections Act, 1952 : Section  
14—Frivolous petitions filed in cavalier fashion—Need to prevent entertaining  
such petitions—Supreme Court's observations for screening such petitions.*

F

*Words and Phrases—"Deliver", "Subscribe" "Candidate", "Trial"—  
Meaning of.*

G

*Election—President of India—Returned candidate's election challenged  
on the ground of wrongful acceptance of nomination papers of the can-  
didates—Effect of Locus standi to file election petition—Petition not disclos-  
ing cause of action—Maintainability of—Supreme Court's observations for*

H

**A** *screening frivolous petitions.*

*Supreme Court Rules, 1966 : Order XXXIX, Rules 2, 5, 7 and 34 read with Order XXIII, Rule 6—Election petition not disclosing cause of action—Maintainability of.*

**B** *Election Petition No.1 of 1992.*

**C** Petitioner's nomination paper for contesting the election to the office of President of India was rejected by the Returning Officer on the ground that it was not subscribed by at least ten electors as proposers and at least ten electors as seconders as required by section 5B(1)(a) of the Presidential and Vice- Presidential Elections Act, 1952 and that according to section 5(b)(5), signatures of some of the electors were inoperative, being common in one of the nomination paper of another candidate, which nomination paper was first delivered to the Returning Officers.

**D** Petitioner in the election petition under section 14 of the Act challenging the election of the returned candidate before this Court contended that the rejection of his nomination paper was wrongful, which is a ground under section 18(1)(c) for a declaration that the election of the returned candidate was void; that he was a 'candidate within the meaning of section 13(a), as his nomination paper was subscribed by the required number of proposers and seconders; that his proposers and seconders, who were common in one of the nomination paper of another candidate, had subscribed the petitioner's nomination paper earlier in point of time and therefore, delivery of the another candidate's nomination paper to the Returning Officer earlier than delivery of the petitioner's nomination paper did not have the effect of making the common signatures on the

**E**

**F**

**G** The returned candidate and the Attorney General of India, raising the preliminary objection, contended that the petition be rejected as the petitioner was not a 'candidate' as defined in section 13(a) of the Act and that he was not competent to present the election petition as required under section 14A; that there were no averments in the petition to raise any triable issue relating to the grounds under section 18(1)(c) of wrongful rejection of his nomination paper or under section 18(1)(a) of undue influence, and that the petition be rejected under Order XXXIX, Rules 2, 5, 7 and 34 read with Order XXIII, Rules 6 of the Supreme Court Rules,

**H**

1966, as it did not disclose a cause of action and was barred by the provisions of the Act. A

*Election Petition No.2 of 1992*

Petitioner, a duly nominated candidate, in his petition under section 14 of the Presidential and Vice-Presidential Election Act, 1952 before this Court submitted that the election of the returned candidate be declared void, on the ground contained in section 18(1)(c) of wrongful acceptance of nomination papers of the returned candidate and two other candidates, even though they contained incomplete description of the candidates, their proposers and seconders; and on the ground contained in section 18(2) of undue influence. B C

In their preliminary objection raised by the returned candidate and the Attorney General of India submitted that as the petition did not disclose any cause of action or raise any triable issue, the petition was liable to rejection under Order XXXIX, Rules 2, 5 and 34 read with Order XXIII, Rules 6 of the Supreme Court Rules, 1966. D

Dismissing the election petitions, this Court,

**HELD:** (*Per J.S. Verma, J. on his behalf and on behalf of K. Jayachandra Reddy, S.C. Agrawal, Yogeshwar Dayal and Dr. A.S. Anand, JJ.*) E

1.01 Sub-section (1) of Section 5B requires that 'each candidate shall, either in person or by any of his proposers or seconders' between the specified hours 'deliver to the Returning Officer' at the specified place 'a nomination paper completed in the prescribed form and subscribed' by the candidate as assenting to his nomination and in the case of Presidential Election also by at least ten electors as proposers and at least ten electors as seconders. [683-D] F

1.02. The delivery of the nomination paper is to the Returning Officer and the nomination paper has to be subscribed by the candidate, his proposers and seconders. There is no scope for any ambiguity in the meaning of the word 'deliver' in this context in sub-section (1). [683-E] G

1.03. Sub-section (5) forbids an elector to subscribe, whether as proposer or as seconder, more than one nomination paper at the same election and also prescribes the consequence of its non-compliance by H

A providing that in the case of non-compliance of this mandate in the first part of sub-section (5), 'his signature shall be inoperative on any paper other than one first *delivered*.' It is the meaning of the word 'deliever' in the this context in sub-section (5) which is to be construed. [683 G-H]

B 1.04. The plain meaning of sub-section (5) is that no elector can subscribe, whether as proposer or as seconder, more than one nomination paper at the same election; and if he does so or, in other words, if any elector subscribes more than one nomination paper at the same election, whether as proposer or seconder, then his signature shall be inoperative on any nomination paper other than the one which has been first delivered to the Returning Officer as required by sub-section (1). This means that an elector can subscribe as proposer or seconder only one nomination paper at the same election and where he subscribes more than one nomination paper at the same election then except for the nomination paper which is first delivered to the Returning Officer, his signature on any nomination paper delivered subsequently to the Returning Officer shall be inoperative or ineffective. [684 B-C]

E 1.05. The elector having the right to sponsor only one candidate and, therefore, to subscribe as proposer or seconder only one nomination paper, that right is exhausted the moment a nomination paper subscribed by him has been delivered to the Returning Officer and the question of his signature on any nomination paper delivered subsequently to the Returning Officer being operative does not arise. No inquiry into that question is contemplated by the Returning Officer where more than one nomination paper subscribed by the same elector is delivered to the Returning Officer, since the statute provides that the right of an elector to propose or second a candidate being exercisable only once, it is exhausted the moment the first nomination paper subscribed by him is delivered to the Returning Officer. [684 D-E]

G 1.06. The two words, 'deliver' and 'subscribe' have different connotation and are also used for different purposes not only sub-section (5) but also in sub-section (1) of Section 5B in the same context. The meaning of these words in the two sub-sections of Section 5B must be be the same. [684-F]

H 2.01 The requirement of Section 14A that an election petition calling in question a Presidential election has to be presented by any candidate at such election or by twenty or more electors joined together as petitioners

is for the obvious reason that the requirement for a valid nomination at a Presidential election according to Section 5B(1)(a) is the nomination of a candidate by at least ten electors as proposers and an equal number as seconders i.e. in all by at least twenty electors. [685 D-E]

2.02. A person entitled to claim himself as a duly nominated candidate at the election must have at least twenty electors subscribing his valid nomination paper as proposers and seconders. The law could never have intended that a person without satisfying the requirement of Section 5B(1)(a) can claim to have been duly nominated as a candidate at an election even if he did not have twenty electors behind him as proposers and seconders to validly sponsor him as a candidate. If an election petition according to Section 14A cannot be presented by less than twenty electors joined together as petitioners, it cannot obviously be presented by the alternative mode of a candidate as the petitioner who was not validly nominated by at least twenty electors. This requirement of Section 14A(1) is a clear indication that a person cannot claim to have been duly nominated as a candidate at the Presidential election unless he had satisfied the mandatory requirements of Section 5B(1)(a) and Section 5C. [685 F-G]

2.03. To be entitled to present an election petition calling in question an election, the petitioner should have been a 'candidate' at such election within the meaning of Section 13(a) for which he should have been 'duly nominated as a candidate' and this he cannot claim unless the mandatory requirements of Section 5B(1) (a) and Section 5C were complied by him. Where on undisputed facts there was non-compliance of any of these mandatory requirements for a valid nomination, the petitioner was not a 'candidate' within the meaning of Section 13(a) and, therefore, not competent according to Section 14A to present the petition. [685-H, 686 A-B]

2.04. In order to have the requisite *locus standi* as a 'candidate' within the meaning of Section 13(a) for being entitled to present such an election petition in accordance with Section 14A of the Act, the petitioner must be duly nominated as a candidate in accordance with Section 5B(1) (a) and Section 5C. Unless it is so, the petitioner cannot even claim to have been duly nominated as a candidate at the election as required by Section 13(a). [686-C]

2.05. The petitioner in Election Petition No. 1 of 1992 has no *locus standi* to challenge the election of the returned candidate as he is not competent to present the election petition in accordance with Section 14A

A of the Act read with Order 39 Rule 7 of Supreme Court Rules. [686-E]

*Charan Lal Sahu v. Neelam Sanjeeva Reddy*, [1978] 3 S.C.R. 1; *Charan Lal Sahu & Ors. v. Giani Zail Singh & Anr.*, [1984] 2 S.C.R. 6; *Mithilesh Kumar v. Sri R. Venkataraman & Ors.*, [1988] 1 S.C.R. 525 and *Charan Lal Sahu v. Shri Fakruddin Ali Ahmed & Ors.*, A.I.R. 1975 S.C. 1288, relied on.

B  
C 3.01. The trial commences with the presentation of the election petition and an order of dismissal of the petition made at this stage on the ground that it is not maintainable being barred by any law or does not disclose any cause of action is a dismissal at the conclusion of the trial since no further step in the trial of such a petition is contemplated. This is how the word 'trial' in Section 17 of the Act must be understood, if Section 17 is to govern the dismissal of all petitions including dismissal at the threshold. This view also harmonises Order XXIII Rule 6 of Supreme Court Rules which applies by virtue of Order XXXIX Rule 34. [689 C-D]

D 3.02. The Court is not bound to continue this trial even though no triable issue arises and the petitioner does not have the requisite *locus standi* merely because of Section 17 of the Act.

E 3.03. Even though the petitioner, is Election Petition No.2 of 1992 has the *locus standi* to present the petition as required by Section 14A of the Act read with Order XXXIX Rule 7 of Supreme Court Rules, yet material facts and the grounds on which the relief of declaration of the election of the returned candidate *void* is sought have not been pleaded to disclose any cause of action or raise any triable issue. This petition also is liable to be dismissed sustaining the preliminary objection. [693-F]

F 3.04. The election petition does not disclose any cause of action and is, therefore, liable to be dismissed by virtue of Rules 2 and 5 of Order XXXIX of the Supreme Court Rules and the mandatory provisions of the Presidential and Vice-Presidential Elections Act, 1952. [693-G]

G 4.01 In the election petition No.2 of 1992 several other things have been said but they do not amount to averment of material facts to constitute or raise any other ground contained in Section 18 of the Act. A passing reference to what may be termed as 'undue influence' does appear in the petition but the averments do not satisfy the requirement of pleadings  
H even according to the ordinary standard much less the more stringent

requirements of sub-section (2) of Section 18 of the Act. [690-E]

A

4.02 A perusal of the nomination papers of all the candidates with reference to Form 2 read with Rule 4 of the Presidential and Vice-Presidential Elections Rules, 1974 shows that there is no defect, deficiency or ambiguity in the nomination papers of any of the four candidates including this petitioner whose nomination papers were accepted by the Returning Officer. [690-H]

B

4.03. Thus no defect in any of these nomination papers to make out even a *prima facie* ground under Section 18(1)(c) of wrongful acceptance of any of these nomination papers is either pleaded or shown to raise a triable issue on this point. [691-C]

C

4.04. Sub-section (5) of Section 5E provides that the "Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character". No defect of any kind much less a defect of substantial character in any nomination paper which was accepted has been pleaded or shown by the petitioner to require any further examination of this question or framing an issue for the purpose. The election petition does not, therefore, disclose any cause of action for trial of the ground contained in Section 18(1)(c) of the Act. [691 D-E]

D

4.05. In view of Section 18(2), the offence of undue influence in Section 18(1)(a), has the same meaning as in Chapter IX-A of the Indian Penal Code. Section 171-C of the Indian Penal Code defines undue influence at elections. [692-E]

E

4.06. A bare perusal of Section 171-C I.P.C. shows that the ingredients of undue influence at elections are many and they have to be read into the meaning of the offence of undue influence in Section 18(1)(a) of the Act. Before a ground under Section 18(1)(a) of the Act can be said to be pleaded raising a triable issue in the election petition it must be shown that material facts to constitute the ingredients of the offence of undue influence have at least been pleaded in the election petition. The petitioner has not made any attempt to pay lip-service to these requirements and has chosen to merely repeat the words "undue influence in the election" in the petition without any attempt to plead material facts raising that ground. [693 C-D]

F

G

*Shri Baburao Patel & Ors. v. Dr. Zakir Hussain & Ors.*, [1968] 2 S.C.R. 133; *Shiv Kirpal Singh v. Shri V.V. Giri*, [1971] 2 S.C.R. 197; *Charan Lal*

H

- A *Sahu v. Shri Fakruddin Ali Ahmed & Ors.*, A.I.R. 1975 S.C. 1288 and *Charan Lal Sahu & Ors. v. Giani Zail Singh & Anr.*, [1984] 2 S.C.R. 6, referred to.

5.01. It is now time to make suitable provisions to prevent entertaining such frivolous petition filed in a cavalier fashion requiring the hearing by a Bench of five Judges of this Court. The only purpose served by such frivolous petitions is the giving of some undue publicity to the petitioner which appears to be the sole purpose of filing such a petition. Obviously, use of the Court as a forum for this purpose must not be permitted. [697-G]

- C 5.02. The election petitions under the Representation of the People Act challenging elections to the Parliament and State Legislatures are required to be heard by a Single Judge of the High Court. In view of the greater importance of the Presidential and Vice-Presidential elections the forum for trial of such election petitions is the Supreme Court and in accordance with the rules framed by the Court these petitions are heard by a Bench of five Judges. Experience has shown that the solemnity and significance attaching to such petitions has been reduced to a force by the cavalier fashion in which resort is had to this remedy. The mere fact that the entire gamut of both these petitions is fully covered by several earlier decisions of this Court, to some of which these very petitioners were parties, shows that the existing provisions are inadequate to prevent such abuse of the process of law. [697-H, 698 A-B]

- F 5.03. It is now necessary to make suitable amendments in the provisions for screening of such frivolous petitions and provision is required to be made for trial only of serious petitions raising triable issues by a Bench of five Judges of this Court. [698-C]

5.04. It is the Court's duty to make these observations to invite attention of all concerned to this felt need requiring suitable action in this direction.

- G 5.05. Some stringent measure like mandatory requirement of security deposit of a reasonable amount for costs for entertaining the election petition is needed to provide some check. [698-E]

- H *Mithilesh Kumar v. Sri R.Venkataraman & Ors.*, [1988] 1 S.C.R. 525 and *Charan Lal Sahu & Ors. v. Giani Zail Singh & Anr.*, [1984] 2 S.C.R. 6, referred to.

MITHILESH SINHA v. RETURNING OFFICER [VERMA, J.] 659

ORIGINAL JURISDICTION : Election Petition Nos. 1 and 2 of 1992. A

(Under Article 71 of the Constitution of India).

Petitioners appeared in person.

G. Ramaswamy, Attorney General, Kapil Sibal, Dr. A.M. Singhvi, Sushil Kumar Jain, A.P. Dhamija, Sudhanshu Atreya, Ranjit Kumar, Anil Shrivastava and Ms. A. Subhashini for the Respondents. B

The Judgment of the Court was delivered by

VERMA, J.: Both these election petitions filed under Section 14 of the Presidential and Vice-Presidential Elections Act, 1952 (hereinafter referred to as 'the Act') challenge the election of Dr. Shanker Dayal Sharma, as the ninth President of India, On scrutiny of nomination papers made on June 25, 1992 by the Returning Officer, the nomination papers of only four persons, namely, Dr. Shanker Dayal Sharma, Prof. G.G. Swell, Shri Ram Jethmalani and Kaka Joginder Singh *alias* Dharati Paked, were found valid and accordingly accepted. Polling was held on July 13, 1992 and result of the election was declared on July 16, 1992 at which Dr. Shanker Dayal Sharma was declared elected; and he was sworn in as the ninth President of India on July 25, 1992. Mithilesh Kumar Sinha, petitioner in Election Petition No. 1 of 1992, had filed his nomination paper at the election, but the same was rejected by the Returning Officer on the date of scrutiny due to non-compliance of the mandatory requirements for a valid nomination. D E

In both these election petitions, certain preliminary objections raised on behalf of the returned candidate, Dr. Shanker Dayal Sharma as well as the Attorney General of India require to be decided at the threshold. The substance of the preliminary objection in Election Petition No. 1 of 1992 is that it is liable to be rejected as not maintainable primarily on the ground of not being presented by a competent person, namely, 'any candidate at such election' as required by Section 14A read with Section 13(a) of the Act and Order XXXIX Rule 7 of Supreme Court Rules, 1966; and alternatively that it does not disclose any cause of action for a declaration that the election of the returned candidate is *void*. The preliminary objection to the maintainability of Election Petition No. 2 of 1992 is that even though F G H

A it has been presented by a candidate at such election, yet it does not raise any triable issue inasmuch as it does not disclose any cause of action for a declaration that the election of the returned candidate is *void* on any of the permissible grounds contained in Section 18 of the Act.

B We shall now refer to the material facts relating to each of these election petitions.

*Election Petition No. 1 of 1992:*

C Petitioner Mithilesh Kumar Sinha alleges that he had obtained the signatures of twenty M.L.-As. for contesting the election to the office of President of India between March 30, 1992 and May 28, 1992 and had filed his nomination paper on June 24, 1992. However, on scrutiny of the nomination papers made by the Returning Officer on June 25, 1992, the nomination paper of Mithilesh Kumar Sinha was rejected on the ground that it was not subscribed by at least ten electors as proposers and at least  
D ten electors as seconders as required by Section 5B(1)(a); and also that signatures of some of them were inoperative according to Section 5B(5) being common in one of the nomination paper of another candidate Shri Ram Jethmalani which nomination paper was first delivered to the Returning Officer. The rejection of the nomination paper of Mithilesh Kumar  
E Sinha was made accordingly by the Returning Officer under Section 5E(3)(c) of the Act. The petitioner contends that the rejection of his nomination paper was wrongful which is a ground under Section 18(1)(c) for a declaration that the election of the returned candidate is *void*.

F The averments in the petition are prolix and vague and some of the contents of the petition are irrelevant and frivolous. However, at the hearing of the petition, we ascertained from the petitioner his exact stand. He indicated that he was a 'candidate' within the meaning of Section 13(a) of the Act since his nomination paper was subscribed by the required number of proposers and seconders and, therefore, his nomination paper  
G was wrongly rejected. He claims that Section 5B(5) treats as valid the nomination paper on which the proposer/seconders subscribes his signature earlier and not the one which is delivered earlier to the Returning Officer. According to the petitioner, his proposers and seconders who were common in one of the nomination paper of Shri Ram Jethmalani had sub-  
H scribed the petitioner's nomination paper earlier in point of time and,

therefore, delivery of Shri Ram Jethmalani's nomination paper to the Returning Officer earlier than delivery of petitioner's nomination paper on June 24, 1992, did not have the effect of making the common signatures on the petitioner's nomination paper inoperative. This in substance is the petitioner's case in this election petition. A

We may also quote some portions from the petition on which the petitioner relied to contend that the requisite pleadings for raising a triable issue in addition to indicating the petitioner's competence to maintain the election petition have been pleaded by him. A verbatim reproduction from the petition is as under: B

*"2. Right of the Petitioner:* C

I am a "Candidate" as defined in Section 13(a) of P. & V. Election Act 1952 because:

(a) I have declared my candidature and released Manifesto for Presidential Election in 1992 in three Press Conferences on 29.5.92, 9.6.92 and 17.6.92. D

(b) I have filed my nomination paper on 24.6.1992 before the Returning Officer (Respondent No.1) with allied and required papers and security of Rs. Two thousand and five hundred only (2500). E

*3. Brief facts leading to the Petition:*

(a) For election in 1992 I obtained required number of signature over my nomination paper and declared my candidature in Press Conferences at Patna and Delhi. F

XXX

XXX

XXX

(d) I also handed over a forwarding letter to him enclosing Nomination Paper, Affidavit in its support, objection to be used during scrutiny and other allied papers. G

(e) Credits earned by me between 24-6-87 and 19-6-92 and above facts became eyesore of my opponents who influenced the Returning Officer (Rept. No.1) who H

A rejected my "Nomination" on the basis of section 5E(3)(c) dependent over Section 5B(5) of the Act which are not application to me.

xxx

xxx

xxx

B 4. *Cause of Action:*

(a) *Against Respondent No. 1*

C (i) Being influenced by Respondent No. 3, 4, and 5. He rejected my nominations on the basis of section 5E(3)(c) dependent over Section 5B(5) of P & V Election Act which are not applicable to me.

xxx

xxx

xxx

(c) *Against Respondent No. 3*

D (i) He mis-used his position as Chairman of Rajya Sabha to influence the Secretary General of Rajya Sabha who is Returning Officer for Presidential Election of 1992 to reject my nomination by "hook or crook".

E (ii) He also influenced the Returning Officer to throw my letter dt. 19.6.92 into a "Waste paper basket".

(iii) He did not submit "Affidavit" in support of genuinness of signatures of proposers and seconders.

F

xxx

xxx

xxx

"7. *Arguments for correct meaning of Section 5B(5) of the Act.*

G (a) The spirit of this section is quite clear.

(b) It is a mandatory check over elections.

(c) As punishment for violation of this mandate Second Signature of the elector will be inoperative.

H (d) The word "delivered" should be read as "Subscribed".

MITHILESH SINHA v. RETURNING OFFICER [VERMA, J.]

663

(e) The corresponding word for "delivered" in Hindi translation is "प्रदत्त" which means "subscribed". There is no word like "परिदत्त".

A

(f) The word "delivered" is related to "signature" and is not related to "paper".

B

xxx

xxx

xxx

8. *Issues to be decided:*

(a) Whether the Returning Officer has mis-understood Section 5B(5) of P & V Election Act.

C

(b) Whether nomination of Mithilesh Kumar is valid under Section 5E(3)(c) of the Act.

(c) Whether Section 5B(5) of the Act is applicable to Mithilesh Kumar."

D

"12. *Grounds from Section 18 of the Act:*

(a) The Returned candidate (Respondent No. 3) have unduly influenced the Returning Officer for wrong decisions/orders.

E

(b) The result of the election has been materially affected by non-compliance of Section 5E(3)(D) of P & V. Election Act.

(c) The nomination of Shri G.G. Swell, Shri Ram Jethmalani, and Sri Kaka Jogender 'Dhartipakar' were wrongly accepted.

F

(d) Nomination of Mithilesh Kumar (The Petitioner) was strongly rejected.

G

(e) Nomination of the Returned candidate Dr. Sankar Dayal Sharma has been wrongly accepted."

"14. *Prayer for relief:*

Therefore, your lordship are prayed for the following

H

A reliefs:

(a) Please declare the election of the Returned candidate as void.

B (d) Please declare Mithilesh Kumar as duly elected."

The petitioner has also relied on an entry in the list of dates filed by him in which he has stated as under:

C "30.3.1992 to 28.5.1992 I obtained signature of twenty M.L.As. for  
Presidential Election in 1992."

The preliminary objection raised is that the petitioner not being a 'candidate' as defined in Section 13(a) of the Act is, therefore, not competent to present the election petition as required by Section 14A of the Act. The alternative objection is that even assuming the petitioner satisfies the definition of 'candidate' and is, therefore, competent to present the election petition, there are no averments in the petition to raise any triable issue relating to the grounds under Section 18(1)(c) of wrongful rejection of his nomination paper or under Section 18(1)(a) of undue influence. The remaining parts of the petition are irrelevant since the other of the other grounds are merely mentioned without pleading any material facts to provide the requisite basis for those grounds. At the hearing also the petitioner urged the ground only under Section 18(1)(c) of wrongful rejection of his nomination paper.

F Shri Kapil Sibal, learned senior counsel for the returned candidate Dr. Shanker Dayal Sharma as well as the Attorney General of India contended that the petition must be rejected under Order XXXIX Rules 2, 5, 7 and 34 read with Order XXIII Rule 6 of the Supreme Court Rules, 1966 since it does not disclose a cause of action and is barred by the provisions of the Act.

G *Election Petition No.2 of 1992*

H Petitioner Kaka Joginder Singh alias Dharati Pakad was one of the duly nominated candidates at the election. This petition too is similarly clumsily drafted. At the hearing, the material portions relevant were ascertained from the petitioner and they are quoted verbatim as under:

"2. Scrutiny of the nomination papers took place on 25th June 1992. The Returning Officer Presidential Election 1992 rejected nomination papers of other candidates and accepted the 4 nomination papers of Dr. Shanker Dayal Sharma, Prof. G.G. Swell and Shri Ramjethmalani respondents Annexure III, illegally and unconstitutionally in spite of various objections raised by the petitioners and other candidates in spite of Annexure II without giving reasons."

A

B

"5. That the petitioner claims the relief under clauses (a) and (b) of Section 16 on the grounds mentioned in section 18(1)(2) and 19 of the Presidential and Vice Presidential Elections Act 31 of 1952 (hereinafter called the 'Act')."

C

"6. The facts on which the petitioner rely in support of the grounds are stated in the next para:

(a) Scrutiny of nomination papers took place on July 25th June, 1992. The Returning Officer did not write any detailed order during scrutiny and he simply declared that the nominations of some candidates were rejected or accepted. The petitioner raised written objections against the nominations of all the three respondents Annexure-III on the following grounds:

D

E

(1) That all the nomination papers are presented by one single proposer and not by 10 proposers of respondent 1 & 2. Further it has been proposed and seconded by the Prime Minister and Central Ministers, Chief Ministers, Members of Parliament.

F

(2) That all the respondents are above 65 years of age as such under U/A 70 (Discharge of Function of President Act 1969, they are not eligible for the office of the President as the age of the Chief Justice of India has been fixed as 65 years and if he is acting as President of India and he crosses the age of 65 years then he is bound to vacate the office of President.

G

(3) That under the provisions of Salary and Allowances

H

- A Act of Members of Parliament 1954, the Respondent No.1 is in the office of profit under Article 58 (3) of the Constitution of India and the proposers are public servants according to various laws therefore they cannot propose or second the nomination papers of the returned candidate.
- B
- (4) That all the Respondents have not filed the complete copy of Electoral Roll as required under the Provisions of Laws AIR 1966 S.C. page 1626 *Ranjit Singh v. Pritam Singh*.
- C
- (5) That Dr. Shanker Dayal Sharma being public servant as Vice President, therefore he is in the office of profit U/A 58 (2) of the Constitution of India.
- D
- (6) That all respondents have not taken any oath under Article 58(c) & 84 (a) read with Article 79 of the Constitution. Hence the Returning Officer Shri Sundershan Agrawal whose term of service has been extended by Dr. Shanker Dayal Sharma for one year from 1.7.92 is illegal and it amounts to undue influence in the Election, therefore the Election of the Returned Candidate is liable to be declared void. Article 71(3) of the Constitution Authorises the Parliament to regulate by law the matters concerning the elections to the office of the President of India. It was thus only the Parliament which could make any law for regulating the elections but not qualifications can be imposed contrary to Article 58. Under Section 21(3) of the Act the power to make rules is with the Parliament and not vested with the Election Commission and Central Government. Thus the Presidential and Vice-Presidential Election Rules 1974 has not been passed by both the houses of Parliament and no assent has been given by the President. It has been published by Ministry of Law, Justice and Company Affairs (Legislative Department) Notification No. S.O.305(E) dated the 21st May 1974 (See Gazette of India, Extra ordi-
- E
- F
- G
- H

nary Part II section 3(ii). Thus it is contrary to section 21(3) of the Act along with Article 58, 71(3) of the Constitution, hence it is void and unconstitutional. Under Article 84 and 102 the qualifications and disqualification have been mentioned but under Article 58 only qualifications of Presidential Candidates have been mentioned, thus it is clear that there is no disqualification under Article 58 of the Constitution. As it has been mentioned in Article 102 of the Constitution for members of Parliament."

A

B

**"PRAYER**

C

The petitioner demands justice, therefore, in the circumstances of the case, the petitioner Most Respectfully prays.

D

1. That the Constitutional Eleventh Amendment Act, 1961, Anti Defection Act, and Party whip be declared ultra vires U/A 14, 38 of the Constitution of India.

E

2. That the Sections 5(B)(6) and 5(C) 21(3) of the Presidential and Vice Presidential Election Act 1952 (Amended) with Election Rules 1974 be declared illegal, void and unconstitutional under Articles 14 and 58 of the Constitution of India.

F

3. That the post of the Prime Minister and other Council of Ministers, Chief Ministers and other Ministers are Public servants as decided by 7 Judges of this Hon'ble Court in *R.S. Naik v. A.R. Antuley*, be declared that they are in the office of profit, hence they have played undue influence in the Election of the returned candidate, hence the Election of the Returned Candidate be declared as void.

G

4. That the Election of the Returned Candidate, respondent be declared void and stated in the Petition U/s 18 of the Act.

H

- A 5. That President's discharge of function Act, 1969, be declared *ultra vires* to Articles 145, 71, 60, 52 and 53 of the Constitution of India.
- B 6. That the above system of Election of the President is bad and unconstitutional, therefore, it should be held directly in future by all the Electorals and the Union of India be directed to amend Articles 54, 55 and 66 of the Constitution of India as the value of the votes are decided on the basis of the population and the value of votes of M.Ps differs with value of the M.L.As of all States, hence it is discriminatory and violative to Articles 14 and 38 of the Constitution of India.
- C 7. That Sections 4(1)(2), 5, 6, 7 and 11 of the Salaries and Allowances of Ministers Act 1952 (Act No. 58 of 1952) along with Sections 3, 4, 5, 6, 7, 8 and 9 of the Salaries and Allowances of Members of Parliament Act 1954 be declared void and unconstitutional.
- D 8. That the Election of the Returned Candidate, Dr. Shanker Dayal Sharma as President Elect be declared void in view of the above prayers and the petitioner may be declared as elected President of India.
- E 9. That the nomination papers of Dr. Shanker .Dayal Sharma, Prof. G.G. Swell and Ram Jethmalani have been wrongly accepted by the Returning Officer, hence all the nomination papers of above candidates be declared illegal and void and the petitioner Kaka Joginder Singh alias Dharti Pakad S/o Sardar Hazoor Singh of Bareilly be declared as the Elected Candidate of the post of President."
- F
- G The averments in para 2 of the petition relate to wrongful acceptance of the nomination papers of the other three candidates and have to be read with Annexure II which is a letter dated 25.6.1992 of the petitioner to the Returning Officer containing his objections to the nomination of the other candidates and another letter dated 2.7.1992 from the petitioner to the
- H Chief Election Commissioner complaining that the Returning Officer did

MITHILESH SINHA v. RETURNING OFFICER [VERMA, J.] 669

not pass any order on the petitioner's objections dated 25.6.1992 while accepting the nomination papers of the other candidates under political pressure. The objections raised by the petitioner in his letter dated 25.6.1992 to the nomination papers of the other three candidates were that : (1) they did not mention correct names of the parliamentary constituencies; (2) the proposers and seconders had also not given the correct names and numbers of the their respective constituencies from which they had been elected; (3) there was defect in the entries made in Col. No.4 in the Form of their nomination papers; and (4) 'there is no column prescribed in the Form mentioning the number of an electorate; however, the numbers of the electorate have been mentioned in Form No.2' which is against the law. These were the defects in the nomination papers of Dr. Shanker Dayal Sharma, Prof. G.G. Swell and Shri Ram Jethmalani, which were mentioned in the objections raised by the petitioner.

We need not refer to the remaining portions of the petition which do not plead any facts to raise any ground Section 18 or 19 of the Act.

The preliminary objection raised by Shri Kapil Sibal for the returned candidate Dr. Shanker Dayal Sharma and also by the learned Attorney General of India is that this petition also is liable to rejection under Order XXXIX Rules 2, 5 and 34 read with Order XXIII Rule 6 of the Supreme Court Rules, 1966 since it does not disclose any case of action or raise any triable issue. The competence of petitioner in this petition as a 'candidate' to file the election petition is not disputed.

We would now refer to some material provisions before considering the preliminary objections raised to the maintainability of these petitions.

Article 54 of the Constitution of India provides that the elected members of both Houses of Parliament and the elected members of the Legislative Assemblies of the States shall constitute the electoral college for election of the President of India. Article 56 prescribes the term of office of the President as five years from the date on which he enters upon his office. Qualifications for election as President are prescribed in Article 58 as under:

"58. Qualifications for election as President. - (1) No person shall be eligible for election as President unless he-

- A (a) is a citizen of India.
- (b) has completed the age of thirty-five years, and
- (c) is qualified for election as a member of the House of the People.

B

(2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

C

D

*Explanation* - For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State."

Article 71 provides for matters relating to or connected with the election of the President or Vice-President and is as under :

E

"71. Matters relating to, or connected with, the election of a President or Vice-President. - (1) All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.

F

(2) If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration.

G

H

(3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with election of a President or Vice-President.

MITHILESH SINHA v. RETURNING OFFICER [VERMA, J.] 671

(4) The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him." A

The Presidential and Vice-Presidential Elections Act, 1952 (Act No. 31 of 1952) has been enacted by the Parliament under Article 71(3). The provisions of the Act material for our present purpose are the following:- B

"5A. Any person may be nominated as a candidate for election to the office of President or Vice-President if he is qualified to be elected to that office under the Constitution. C

5B. (1) On or before the date appointed under clause (a) of sub-section (1) of section 4, each candidate shall, either in person or by any of his proposers or seconders, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon, deliver to the Returning Officer at the place specified in this behalf in the public notice issued under section 5 a nomination, paper completed in the prescribed form and subscribed by the candidate as assenting to the nomination, and D

(a) in the case of Presidential election, also by at least ten electors as proposers and at least ten electors as seconders; E

(b) in the case of Vice-Presidential election, also by at least five electors as proposers and at least five electors as seconders: F

Provided that no nomination paper shall be presented to the Returning Officer on a day which is a public holiday. G

(2) Each nomination paper shall be accompanied by a certified copy of the entry relating to the candidate in the electoral roll for the parliamentary constituency in which the candidate is registered as an elector. H

(3) The Returning Officer shall not accept any nomina- H

A tion paper which is presented on any day before eleven o'clock in the forenoon and after three o'clock in the afternoon.

B (4) Any nomination paper which is not received before three o'clock in the afternoon on the last date appointed under clause (a) of sub-section (1) of section 4 or to which the certified copy referred to in sub-section (2) of this section is not attached shall be rejected and a brief note relating to such rejection shall be recorded on the nomination paper itself.

C (5) No elector shall subscribe, whether as proposer or as seconder, more than one nomination paper at the same election and, if he does, his signature shall be inoperative on any paper other than the one first delivered.

**D** (6) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper for the same election ;

E      Provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the Returning Officer.

5C. (1) A candidate shall not be deemed to be duly nominated for election unless he deposits or causes to be deposited a sum of two thousand five hundred rupees :

**F**            Provided that where a candidate has been nominated by more than one nomination paper for the same election, more than one deposit shall be required of him under this sub-section.

G                      XXX                      XXX                      XXX

5D. On the presentation of a nomination paper, the Returning Officer shall -

H (a) sign thereon a certificate stating the date and time of presentation of the nomination paper and enter there-

on its serial number;

A

(b) inform the person or persons presenting the nomination paper of the date, time and place fixed for the scrutiny of nominations; and

(c) cause to be affixed in some conspicuous place in his office a copy of the nomination paper as certified and numbered under clause (a).

B

5F. (1) On the date fixed for the scrutiny of nominations under sub-section (1) of section 4, the candidates, one proposer or one seconder of each candidate and one other person duly authorised in writing by each candidate, but no other person, shall be entitled to be present at the time of scrutiny of nominations and the Returning Officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have not been rejected under sub-section (4) of section 5B.

C

D

(2) For the removal of doubts, it is hereby declared that it shall not be necessary to scrutinise on the date fixed for the scrutiny of nominations the nomination papers already rejected under sub-section (4) of section 5B.

E

(3) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination paper 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 :

F

(a) that, on the date fixed for the scrutiny of nominations, the candidate is not eligible for election as President or Vice-President, as the case may be, under the Constitution; or

G

(b) that any of the proposers or seconders is not qualified to subscribe a nomination paper under sub-section (1) of section 5B; or

H

- A (c) that the nomination paper is not subscribed by the required number of proposers or seconders; or
- (d) that the signature of the candidate or any of the proposers or seconders is not genuine or has been obtained by fraud; or
- B that there has been a failure to comply with any of the provisions of section 5B or section 5C.
- C (4) Nothing contained in clauses (b) to (e) of sub-section (3) 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.
- D (5) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.
- E (6) The Returning Officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of sub-section (1) of Section 4 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:
- F Provided that in case an objection is raised by the Returning Officer or is made by any other person the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the Returning Officer shall record his decision on the date to which the proceedings have been adjourned
- G
- H (7) The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same and if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

tion.

A

(8) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to any of the disqualifications mentioned in section 16 of the Representation of the People Act, 1950."

B

"13. In this Part unless the context otherwise requires -

C

(a) "candidate" means a person who has been or claims to have been duly nominated as a candidate at an election;

(b) "costs" means all costs, charges and expenses of or incidental to, a trial of an election petition;

D

(c) "returned candidate" means a candidate whose name has been published under section 12 as duly elected.

E

14. (1) No election shall be called in question except by presenting an election petition to the authority specified in sub-section (2).

(2) The authority having jurisdiction to try an election petition shall be the Supreme Court.

F

(3) Every election petition shall be presented to such authority in accordance with the provisions of this Part and of the rules made by the Supreme Court under article 145.

G

14A. (1) An election petition calling in question an election may be presented on one or more of the grounds specified in sub-section (1) of section 18 and section 19 to the Supreme Court by any candidate at such election, or -

H

- A (i) in the case of Presidential election, by twenty or more electors joined together as petitioners;
- (ii) in the case of Vice-Presidential election, by ten or more electors joined together as petitioners.
- B (2) Any such petition may be presented at any time after the date of publication of the declaration containing the name of the returned candidate at the election under section 12 but not later than thirty days from the date of such publication.
- C 15. Subject to the provisions of this Part, rules made [whether before or after the commencement of the Presidential and Vice-Presidential Elections (Amendment) Act, 1977] by the Supreme Court under article 145 may regulate the form of election petitions, the manner in which they are to be presented, the persons who are to be made parties thereto, the procedure to be adopted in connection therewith and the circumstances in which petitions are to abate, or may be withdrawn, and in which new petitioners may be substituted, and may require security to be given for costs.
- D
- E 16. A petitioner may claim either of the following declarations:-
- (a) that the election of the returned candidate is void;
- F (b) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected."
- "18. (1) If the Supreme court is of opinion, -
- G (a) that the offence of bribery or undue influence at the election has been committed by the returned candidate or by any person with the consent of the returned candidate; or
- H (b) that the result of the election has been materially

affected -

A

(i) by the improper reception or refusal of a vote; or

(ii) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act; or

B

(iii) by reason of the fact that the nomination of any candidate (other than the successful candidate), who has not withdrawn his candidature, has been wrongly accepted; or

C

(c) that the nomination of any candidate has been wrongly rejected or the nomination of the successful candidate has been wrongly accepted;

the Supreme court shall declare the election of the returned candidate to be void.]

D

(2) For the purposes of this section, the offences of bribery and undue influence at an election have the same meaning as in Chapter IX-A of the Indian Penal Code.

E

19. If any person who has lodged an election petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the Supreme Court is of opinion that in fact the petitioner or such other candidate received a majority of the valid votes, the Supreme Court shall, after declaring the election of the returned candidate to be void, declare the petitioner or such other candidate, as the case may be, to have been duly elected :

F

G

Provided that the petitioner or such other candidate shall not be declared to be duly elected if it is proved that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election."

H

**A** The Supreme Court Rules, 1966 in Part VII contains Order XXXIX which are the rules framed relating to election petitions under 'Part III of the Presidential and Vice-Presidential Elections Act, 1952'. The relevant rules for our purpose in Order XXXIX are Rules 2, 5, 7, 8, 11, 20 and 34 which are as under:-

**B** "2. An application calling in question an election shall only be by a petition made and presented in accordance with the provisions of this Order."

**C** "5. The petition shall state the right of the petitioner under the Act to petition the Court and briefly set forth the facts and grounds relied on by him to sustain the reliefs claimed by him."

**D** "7. A petition calling in question an election may be presented on one or more of the grounds specified in sub-section (1) of section 18 and section 19 of the Act, by any candidate at such election, or

(i) in the case of Presidential election, by twenty or more electors joined together as petitioners;

**E** (ii) ... ..

**F** 8. Where the petitioner claims a declaration under clause (a) of section 16 of the Act, he shall implead the returned candidate as the respondent, and where he claims a declaration under clause (b) of the said section, he shall implead as respondents all candidates, other than himself, duly nominated at the election."

**G** "11. The petitioner shall also lodge, along with the petition, at least twelve copies of the petition and of all document which accompany it."

**H** "20. Every petition calling in question an election shall be posted before and be heard and disposed of by a Bench of the Court consisting of not less than five Judges."

"34. Subject to the provisions of this Order or any special order or directions of the Court, the procedure on an election petition shall follow, as nearly as may be, the procedure in proceedings before the Court in the exercise of its original jurisdiction."

A

Part III of the Supreme Court Rules, 1966 relates to the procedure in proceedings before the Court in the exercise of its original jurisdiction where in Order XXIII relates to complaints which would be applicable to such election petitions by virtue of Order XXXIX Rule 34. The relevant rules in Order XXIII are Rules 6 and 7 which read as under:

B

"6. The complaint shall be rejected:-

C

(a) where it does not disclose a cause of action.

(b) where the suit appears from the statement in the complaint to be barred by any law.

D

7. Where a complaint is rejected the Court shall record an order to that effect with the reasons for the order."

Order XXXIX Rule 5 requires that the election petition shall state 'the right of the petitioner under the Act' to petition the Court and briefly set forth 'the facts and grounds relied on by him to sustain the reliefs claimed by him'. The requirement of Order XXXIX Rule 7 further is that the petition must be presented on one or more of the grounds specified in sub-section (1) of Section 18 and Section 19 of the Act by any candidate at such election or by twenty or more electors joined together as petitioners in the case of Presidential Election. This is in accordance with the requirements of Sections 14A of the Act. Order XXXIX Rule 34 then says that 'subject to the provisions of this Order or any special order or direction of the Court', the procedure followed in the trial of the election petition by the Court shall as nearly as may be the procedure in proceedings before the Court in the exercise of its original jurisdiction. This attracts the provisions contained in Rules 6 and 7 of Order XXIII relating to rejection of a complaint where it does not disclose a cause of action or from the statement in the pleading it appears to be barred by any law.

E

F

G

The preliminary objection raised in these petitions is that neither of them disclose any cause of action to raise a triable issue and they are

H

- A barred by the provisions contained in the Act. In Election Petition No. 1 of 1992, the further objection is that it is not filed by a competent person.

We shall now consider the preliminary objections raised in these petitions.

B *Election Petition No. 1 of 1992*

- C The preliminary objection in Election Petition No. 1 of 1992 is that Mithilesh Kumar Sinha is not a 'candidate' within the meaning of Section 13 (a) of the Act and he being the sole petitioner in his election petition, that election petition is not presented in accordance with Section 14A of the Act and Rule 7, Order XXXIX of Supreme Court Rules. Alternatively, it was submitted by Shri Kapil Sibal as well as the learned Attorney General that even assuming petitioner Mithilesh Kumar Sinha was a 'candidate' at the election and there be no non-compliance of Section 14A of the Act and Rule 7, Order XXXIX of Supreme Court Rules, the election
- D petition does not contain the material facts necessary to constitute the ground of wrongful rejection of his nomination paper, the ground in Section 18 (1)(c) on which the election petition is based or any other ground in Section 18 of the Act. On this basis, it is contended that the petition is liable to rejection at the threshold since it does not raise any triable issue even assuming the petition is validly presented.
- E

- F Mithilesh Kumar Sinha, the petitioner-in-person, however, contended that he was a 'candidate' with in the meaning of Section 13(a) of the Act since his nomination paper contained the signature of ten electors as proposers and ten electors as seconders as required by Section 5B (1) (a) of the Act and, therefore, his nomination being valid, the material facts for pleading the ground of wrongful rejection of his nomination paper under Section 18 (1) (c) are stated in the petition read along with list of dates filed by him with the petition. The petitioner clearly conceded during his arguments that on 24.6.1992. Shri Ram Jethmalani had filed his nomination paper prior to the filing of nomination paper by petitioner
- G Mithilesh Kumar Sinha later that day bearing signatures of some common electors. However, the petitioner contended that the requirement of Section 5B (5) is that the signature of the elector who subscribes his signature, whether as proposer or as seconder, in more than one nomination paper is operative in the nomination paper which he subscribes earlier in point
- H of time even if that nomination paper is delivered later to the Returning

Officer. The argument of the petitioner is that the word 'delivered' in Section 5B(5) must be construed to mean 'subscribed'. In substance, his argument is that those electors whose signatures were common in his nomination paper as well as in the nomination paper of Shri Ram Jetmalani delivered earlier to the Returning Officer, had in fact subscribed their signatures on the petitioner's nomination paper earlier and, therefore, their signatures made subsequently on the nomination paper of Shri Ram Jethmalani were inoperative. On this basis, according to the petitioner, Section 5B(5) was not applicable to permit rejection of the petitioner's nomination paper and, therefore, the ground of wrongful rejection of his nomination paper under Section 18 (1)(c) arises to invalidate the election. The petitioner also alleged that one of the signatures on his nomination paper had been erased to make it appear that there was deficiency in the required number of electors as proposers in terms of Section 5B (1) (a) of the Act.

We may mention that many of the facts stated by us treating them as averments in support of the petition are not contained in the petition. However, for the benefit of the petitioner, we have read even the list of dates filed by him as a part of the petition. We also permitted the petitioner to file certain documents during the course of his arguments on which he relied and have taken them into account. The petitioner finally submitted that Section 17 of the Act requires a full trial of the election petition irrespective of the deficiency in the pleadings and the Court has no power to dismiss the election petition at this stage without going through the entire trial.

Having given our anxious consideration to the matter, we are left in no doubt that this election petition must be dismissed at the threshold since any further pendency of the same would be a sheer waste of time of this Court, needless public expense and prolongation of abuse of the process of this Court.

As earlier indicated, the election petition being deficient in material particulars without going into the effect of the deficiency for the purpose of deciding the question of maintainability of the petition, we permitted the petitioner to file several documents at the stage of hearing which include copies of the nomination papers of the candidates and record of the scrutiny proceedings made by the Returning Officer. The nomination paper of petitioner Mithilesh Kumar Sinha bears serial number 60 which was delivered

A to the Returning Officer at 12.50 p.m. on 24.6.1992 by Mithilesh Kumar himself. The decision of the Returning Officer recorded on petitioner's nomination paper on scrutiny made on 25.6.1992 is as under:-

B This nomination paper of Shri Mithilesh Kumar at Sr. No.60 has ten proposers out of which one proposer at Sr. No.6 namely, Shri Jawahar Prasad Singh has not appended his signature. It, therefore, falls short of required number of proposers. Besides, Shri Surendra Sharma who is a proposer of Shri Mithilesh Kumar has already subscribed to the nomination paper at Sr. No.45 of Shri Ram Jethmalani as seconder. His signature is, therefore, inoperative on the present nomination paper. Similarly, Shri Prem Nath Jaiswal, Shri Saryug Mandal, Shri Raj Kumar Mahasetha, Shri Binod Kumar Roy and Shri Madhu Singh who are seconders of Shri Mithilesh Kumar has already subscribed to the nomination paper at Sr. No.45 of Shri Ram Jethmalani as seconders and as such their signatures also become inoperative on the nomination paper of Shri Mithilesh Kumar. I, therefore, reject the nomination paper under section 5E(3) (c) of the said Act."

E The reasons for rejection of petitioner's nomination paper given by the Returning Officer show that there was deficiency in the required number of proposers as one of the named proposers Jawahar Prasad Singh had not appended his signature. In addition, Surendra Sharma, a proposer of Mithilesh Kumar had already subscribed to the nomination paper of Ram Jetmalani as seconder which had been filed earlier and, therefore, his signature was inoperative in accordance with Section 5B(5). Similarly, Prem Nath Jaiswal, Saryug Mandal, Raj Kumar Mahasetha, Binod Kumar Roy and Madhu Singh who were seconders of Mithilesh Kumar Sinha had already subscribed to the nomination paper of Ram Jethmalani as seconders which has been filed earlier and as such their signatures also became inoperative on the nomination paper of Mithilesh Kumar. The reason for rejection of petitioner's nomination paper, therefore, was that the same did not comply with the mandatory requirements of Section 5B(1)(a) which made it obligatory for the Returning Officer to reject the nomination paper of Mithilesh Kumar at the time of scrutiny under Section 5E(3)(c).

It is to get over this difficulty that the petitioner Mithilesh Kumar Sinha contends that the word 'delivered' in Section 5B(5) should be construed as 'subscribed'. The argument of the petitioner relating to the construction of Section 5B(5) may now be considered. For the sake of convenience Section 5B(5) may again be quoted here:

"No elector shall subscribe, whether as proposer or as seconder, more than one nomination paper at the same election and, if he does, his signature shall be inoperative on any paper other than the one first delivered."

Sub-section (1) of Section 5B requires that 'each candidate shall, either in person or by any of his proposers or seconders' between the specified hours '*deliver* to the Returning Officer' at the specified place 'a nomination paper completed in the prescribed form and *subscribed*' by the candidate as assenting to his nomination and in the case of Presidential Election also by at least ten electors as proposers and at least ten electors as seconders. The distinction between the words 'deliver' and 'subscribe' in this context is clearly indicated in sub-section (1). The delivery of the nomination paper is to the Returning Officer and the nomination paper has to be subscribed by the candidate, his proposers and seconders. There is no scope for any ambiguity in the meaning of the word 'deliver' in this context in sub-section (1). Sub-section (2) prescribes the requirement of a certified copy of the entry relating to the candidate in the electoral roll to accompany each nomination paper. Sub-section (3) then says that the Returning Officer shall not accept any nomination paper which is not presented to him within the hours specified in sub-section (1). Sub-section (4) requires rejection of any nomination paper not received before the specified hour on the last date appointed for the purpose or to which the certified copy referred to in sub-section (2) is not attached. Then comes sub-section (5) with which we are concerned in the present case. It is in this context that sub-section (5) forbids an elector to subscribe, whether as proposer or as seconder, more than one nomination paper at the same election and also prescribes the consequence of its non-compliance by providing that in the case of non-compliance of this mandate in the first part of sub-section (5), 'his signature shall be inoperative on any paper other than the one first *delivered*.' It is the meaning of the word 'deliver' in this context in sub-section (5) which is to be construed.

A As indicated the difference in the meaning of the words 'deliver' and 'subscribe' is clearly brought out in sub-section (1) and the same words used in sub-section (5) in the same context must have the same meaning. The plain meaning of sub-section (5) is that no elector can subscribe, whether as proposer or as seconder, more than one nomination paper at the same election; and if he does so or, in other words, if any elector subscribes more than one nomination paper at the same election, whether as proposer or seconder, then his signature shall be inoperative on any nomination paper other than the one which has been first delivered to the Returning Officer as required by sub-section (1). This means that an elector can subscribe as proposer or seconder only one nomination paper at the same election and where he subscribes more than one nomination paper at the same election then except for the nomination paper which is first delivered to the Returning Officer, his signature on any nomination paper delivered subsequently to the Returning Officer shall be inoperative or ineffective. It is clear that the elector having the right to sponsor only one candidate and, therefore, to subscribe as proposer or seconder only one nomination paper, that right is exhausted the moment a nomination paper subscribed by him has been delivered to the Returning Officer and the question of his signature on any nomination paper delivered subsequently to the Returning Officer being operative does not arise. No inquiry into that question is contemplated by the Returning Officer where more than one nomination paper subscribed by the same elector is delivered to the Returning Officer, since the statute provides that the right of an elector to propose or second a candidate being exercisable only once, it is exhausted the moment the first nomination paper subscribed by him is delivered to the Returning Officer. There is thus no scope for construing the word 'deliver' as 'subscribe' in sub-section (5) as suggested by the petitioner since the two words have different connotation and are also used for different purposes not only in sub-section (5) but also in sub-section (1) of Section 5B in the same context. The meaning of these words in the two sub-sections of Section 5B must be the same. The construction made by the petitioner of sub-section (5) of Section 5B must, therefore, be rejected.

G

In view of the clear statement made by the petitioner at the hearing, which is also borne out from the documents filed by him, the nomination paper of Shri Ram Jethmalani subscribed by some common electors was first delivered to the Returning Officer as required by Section 5B(1)(a) and, therefore, the signatures of the common electors on the subsequently delivered

H

nomination paper of petitioner were inoperative by virtue of Section 5B(5). A  
 The obvious result, therefore, is that the subsequently delivered nomination  
 paper of the petitioner, Mithilesh Kumar Sinha, was not subscribed by at least  
 ten electors as proposers and at least ten electors as seconders as required by  
 Section 5B(1)(a) which made it incumbent on the Returning Officer to reject  
 the petitioner's nomination paper on the ground contained in Section B  
 5E(3)(c). This is the reason given by the Returning Officer for rejecting the  
 petitioner's nomination paper as required by Section 5E(7). This conclusion  
 is inevitable even assuming, as claimed by the petitioner that his nomination  
 paper was subscribed by ten electors as proposers and ten electors as  
 seconders, including the inoperative common signatures, and ignoring the C  
 fact appearing from the nomination paper that there was numerical deficiency  
 of one signature since Jawahar Prasad Singh named as a proposer had not  
 appended his signature on the nomination paper.

The requirement of Section 14A that an election petition calling in  
 question a Presidential election has to be presented by any candidate at such D  
 election or by twenty or more electors joined together as petitioners is for the  
 obvious reason that the requirement for a valid nomination at a Presidential  
 election according to Section 5B(1)(a) is the nomination of a candidate by at  
 least ten electors as proposers and an equal number as seconders i.e. in all by  
 at least twenty electors. A person entitled to claim himself as a duly nominated  
 candidate at the election must have at least twenty electors subscribing his E  
 valid nomination paper as proposers and seconders. The law could never have  
 intended that a person without satisfying the requirement of Section 5B(1)(a)  
 can claim to have been duly nominated as a candidate at an election even if he  
 did not have twenty electors behind him as proposers and seconders to validly  
 sponsor him as a candidate. If an election petition according to Section 14A F  
 cannot be presented by less than twenty electors joined together as  
 petitioners, it cannot obviously be presented by the alternative mode of a  
 candidate as the petitioner who was not validly nominated by at least twenty  
 electors. This requirement of Section 14A (1) is a clear indication that a per-  
 son cannot claim to have been duly nominated as a candidate at the Presiden-  
 tial election unless he had satisfied the mandatory requirements of Section G  
 5B(1)(a) and Section 5C.

To be entitled to present an election petition calling in question an  
 election, the petitioner should have been a 'candidate' at such election  
 within the meaning of Section 13(a) for which he should have been 'duly H

- A nominated as a candidate' and this he cannot claim unless the mandatory requirements of Section 5B(1)(a) and Section 5C were complied by him. Where on undisputed facts there was non-compliance of any of these mandatory requirements for a valid nomination, the petitioner was not a 'candidate' within the meaning of Section 13(a) and, therefore, not competent according to Section 14A to present the petition.
- B

- C It is also settled by the decisions of this Court that in order to have the requisite *locus standi* as a 'candidate' within the meaning of Section 13(a) for being entitled to present such an election petition in accordance with Section 14A of the Act the petitioner must be duly nominated as a candidate in accordance with Section 5B(1)(a) and Section 5C. Unless it is so the petitioner cannot even claim to have been duly nominated as a candidate at the election as required by Section 13(a). The above conclusion in respect to the nomination paper of the petitioner, Mithilesh Kumar Sinha, from the facts set out by him in the petition, stated by him
- D at the hearing and evident from the documents filed by him makes it clear that the petitioner, Mithilesh Kumar Sinha, has no *locus standi* to challenge the election of the returned candidate, Dr. Shanker Dayal Sharma as he is not competent to present the election petition in accordance with Section 14A of the Act read with Order XXXIX Rule 7 of Supreme Court
- E Rules. Even otherwise the ground under Section 18(1)(c) of the Act of wrongful rejection of his nomination paper urged in the election petition does not give rise to a triable issue on the above facts and the irresistible conclusion therefrom. The material facts to make out a *prima facie* case of existence of that ground are lacking in the pleadings and squarely negatived by petitioner's own statement.
- F

- G In *Charan Lal Sahu v. Neelam Sanjeeva Reddy*, [1978] 3 SCR 1, the election petition suffering from a similar defect was dismissed at the threshold on a preliminary objection raised on behalf of the returned candidate to the maintainability of the election petition. Therein a seven-Judge Bench held as under :

- H "The result of a careful consideration by us of the provisions mentioned above is that we think that, the procedure or manner for questioning the Presidential election having been laid down, the petitioners must come

MITHILESH SINHA v. RETURNING OFFICER [VERMA, J.] 687

within the four corners of that procedure in order to have a *locus standi* to challenge the Presidential election and to be able to maintain this petition. If he neither is nor can claim to be a candidate on assertions made by him in his petition itself, he would be lacking the right to question the election of Shri Neelam Sanjeeva Reddy as President of India. The effect of the provision of Section 14(1), 14(2) and 14(3) and 14A(1) of the Act read with Order XXXIX, rules 2 and 5 of the Rules of this Court is that the petition before us is barred because the petitioner has not got the required *locus standi* to maintain it."

(at pp. 7-8)

A similar question arose in *Charan Lal Sahu & Others v. Giani Zail Singh & Another*, [1984] 2 SCR 6. There also preliminary objection was taken to the maintainability of the election petition on the ground that the petitioner was not a candidate within the meaning of Section 13(a) of the Act and, therefore, not entitled to file an election petition under Section 14A of the Act. The petitioner there, it was held, could not claim to be duly nominated as a candidate since he did not comply with the mandatory requirements of Section 5B(1)(a). The preliminary objection was sustained and the election petition dismissed by the Court on the ground that the petitioner did not have the *locus standi* to maintain it.

The next case in line is *Mithilesh Kumar v. Sri R. Venkataraman & Ors.*, [1988] 1 SCR 525, which relates to the same petitioner, Mithilesh Kumar. There also the question arose on a preliminary objection raised by the returned candidate whether the election petition was liable to be rejected under Rule 6 of Order XXIII of the Supreme Court Rules on the ground that it did not disclose any cause of action. The Court rejected the election petition as required under Rule 6 of Order XXIII of the Supreme Court Rules as it did not disclose any cause of action for trial of the ground of undue influence sought to be raised in the election petition. In so dismissing the election petition the Court observed as under:-

"..... The petition is as bald as it could be. At the hearing after getting the entire petition read out the Court asked the petitioner to point out whether there was any allegation that the 1st respondent had himself committed

A any undue influence or any other person with the consent of the 1st respondent had committed such an act or any allegation which required to be tried and the petitioner was not able to point out any part of the petition in which such an allegation had been made. ....

B In the circumstances, the Court has no choice except to reject the petition as required under rule 6 of the Order XXIII of the Rules as it does not disclose any cause of action."

C (at pp. 536-537)

A similar preliminary objection to the *locum standi* of petitioner due to non-compliance of the requirement of Section 5C of the Act was upheld and the election petition dismissed at the threshold in *Charan Lal Sahu v. Shri Fakruddin Ali Ahmed and others*, AIR 1975 SC 1288, stating thus :-

D "..... It was contended that under Article 58 of the Constitution there is no impediment in the way of a person being nominated as a candidate for election to the office of President if he can satisfy that he is qualified to be elected as a Member of Parliament. But we fail to see how this Article is of any help to the petitioner. There is, in our view, nothing in the impugned Sections which is inconsistent with Article 58. Article 71(3) which vests power in Parliament to regulate by law any matter relating to or connected with the election of a President or Vice-President is subject to the other provisions of the Constitution which include Article 58 but merely because a candidate is qualified under Art. 58 it does not mean that he is exempt from compliance with the requirements of law which may be made by Parliament under Article 71(3) for regulating the mode and manner in which nominations should be filed. If the petitioner does not comply with the requirements of such a law passed in exercise of the power under Article 71(3) he cannot properly claim to be duly nominated and he would not be a "candidate" for election.

H In this view we do not think that the petitioner has *locus*

*standi* to maintain the petition and the same is accordingly dismissed."

A

(at pp. 1289-90)

The earlier decisions of this Court have clearly negated the petitioner's further contention that the Court is bound to continue this trial even though no triable issue arises and he does not have the requisite *locus standi* merely because of Section 17 of the Act. The cited cases including one filed by the very same petitioner show rejection of similarly defective petitions at the threshold. The trial commences with the presentation of the election petition and an order of dismissal of the petition made at this stage on the ground that it is not maintainable being barred by any law or not disclosing any cause of action is a dismissal at the conclusion of the trial since no further step in the trial of such a petition is contemplated. This is how the word 'trial' in Section 17 of the Act must be understood, if Section 17 is to govern the dismissal of all petitions including dismissal at the threshold. This view also harmonises Order XXIII Rule 6 of the Supreme Court Rules which applies by virtue of Order XXXIX Rule 34 as repeatedly held by this Court.

B

C

D

The Election Petition No. 1 of 1992 is, therefore, liable to be dismissed as not maintainable, for the reasons given. The other vague and general grounds urged by this petitioner are considered later along with similar points taken by the petitioner in Election Petition No.2 of 1992.

E

*Election Petition No. 2 of 1992 :*

The petitioner, Kaka Joginder Singh, who has filed this election petition was a duly nominated candidate and, therefore, the petition has been presented as required by Section 14A of 'the Act' read with Order XXXIX Rule 7 of Supreme Court Rules. We would first advert to the reliefs claimed in the election petition. There are in all nine reliefs claimed of which the tenth is the general relief which does not require any specific consideration. Reliefs at serial numbers 1, 2, 3, 5, 6 and 7 in the prayer clause are obviously misconceived and beyond the scope of the election petition. The only reliefs requiring consideration are at serial numbers 4, 8 and 9 wherein it is prayed that the election of the returned candidate Dr. Shanker Dayal Sharma be declared void, the acceptance of nomination papers of Dr. Shanker Dayal Sharma, Prof. G.G. Swell and Shri Ram Jethmalani be declared to be wrongful; and the petitioner Kaka Joginder

F

G

H

- A Singh alias Dharati Pakad be declared the duly elected President of India. These reliefs are claimed essentially on the ground in Section 18(1)(c) of wrongful acceptance of the nomination papers of the other three candidates, namely, Dr. Shanker Dayal Sharma, Prof. G.G. Swell and Shri Ram Jethmalani. The further relief of declaring petitioner, Kaka Joginder Singh duly elected attracts Section 19 of the Act which prescribes that for such a further declaration the Court must form the opinion that "in fact the petitioner..... received a majority of the valid votes". There is no such averment made in the election petition nor was any such assertion made even at the hearing by the petitioner. There is thus no foundation for this further declaration sought by the petitioner in the relief claimed by him at serial number 9 in the prayer clause. The election petition is, therefore, to be confined essentially to the ground contained in Section 18(1)(c) of wrongful acceptance of the nomination papers of the other three candidates.

- D No doubt in the election petition several other things have been said but they do not amount to averment of material facts to constitute or raise any other ground contained in Section 18 of the Act. A passing reference to what may be termed as 'undue influence' does appear in the petition but the averments do not satisfy the requirement of pleadings even according to the ordinary standard much less the more stringent requirements of sub-section (2) of Section 18 of the Act. At the hearing also the petitioner addressed us mainly on the ground of wrongful acceptance of nomination papers of the other three candidates relying particularly on the objections raised by him before the Returning Officer as mentioned earlier. We would, therefore, now consider maintainability of the petition on the ground contained in Section 18(1)(c) of the Act. A reference to some other grounds mentioned vaguely and generally is made later.

- G The petitioner's case appearing from his pleadings as well as arguments is that the nomination papers of the other three candidates were wrongly accepted even though they contained incomplete description of the candidates, their proposers and seconders. This contention is based on the contents of the nomination papers. A perusal of the nomination papers of all the candidates with reference to Form 2 read with Rule 4 of the Presidential and Vice-Presidential Elections Rules, 1974 shows that there is no defect, deficiency or ambiguity in the nomination papers of any of the four candidates including this petitioner whose nomination papers were accepted by the Returning Officer. This petitioner's nomination paper is

similar in contents. The petitioner's grievance was confined mainly to columns 2 and 4 of Form 2. Column 2 requires the full name of the proposers/seconders and column 4 requires mention of the State/Union Territory in/from which they were elected. A bare perusal of the nomination papers of the four candidates which had been accepted by the Returning Officer shows that these requirements were duly complied with and there was no ambiguity in respect of the name or any other prescribed particular of the proposers and seconders in these nomination papers. The petitioner contended that the description of the candidates, the proposers and seconders requires some more particulars to be given. However, no further particular mentioned by the petitioner is the requirement of the rules or the prescribed form of the nomination paper. Thus no defect in any of these nomination papers to make out even a *prima facie* ground under Section 18(1)(c) of wrongful acceptance of any of these nomination papers is either pleaded or shown to raise a triable issue on this point. We may here also refer to Sub-section (5) of Section 5E which provides that the "Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character". No defect of any kind much less a defect of substantial character in any nomination paper which was accepted has been pleaded or shown by the petitioner to require any further examination of this question or framing an issue for the purpose. The election petition does not, therefore, disclose any cause of action for trial of the ground contained in Section 18(1)(c) of the Act.

The only other ground to which a casual reference appears to have been made in the petition and was referred in passing at the hearing is that contained in Section 18(1)(a) which has to be read along with Section 18(2). The casual reference is to the ground of undue influence. It would be appropriate at this stage to refer to the contents of paras 2, 5 and 6 of the petition on which reliance was placed by the petitioner and which are treated by him as material averments for raising the grounds under Section 18 of the Act. We have already considered the ground relating to Section 18(1)(c) to which para 2 of the petition relates. Para 6(a) contains several sub-paras. Sub-para (1) says that the nomination papers were presented by one single proposer and not by ten proposers and further that the proposers and seconders included the Prime Minister, Central Ministers, Chief Ministers and Members of Parliament. No attempt was made by the petitioner to show that this constitutes a ground under Section 18(1) of the Act or that it amounts to the violation or non-compliance of any law. Moreover, Section 5B providing for presentation of nomination paper and

- A requirements of a valid nomination does not prescribe any such requirement. Sub-para (2) says that the other three candidates are above 65 years of age. This too is irrelevant and no attempt was made to rely on it. Sub-paras (3) and (4) are similarly irrelevant and the petitioner made no attempt at the hearing to rely on them as a ground under Section 18 of the Act. There is no requirement of law to file the complete electoral roll except a certified copy of the entry relating to the candidate in the electoral roll according to Section 5B(2) of the Act. Sub-para (5) is minconceived in view of the Explanation to Article 58 of the Constitution. Sub-para (6) is the only remaining sub-para wherein an attempt to plead the ground contained in Section 18(1)(a) is made. There is no additional requirement of oath by the candidates as settled by the earlier decisions of this Court and, therefore, this part of sub-para (6) needs no further consideration. The remaining para contains the averment that the Returning Officer, Shri Sudershan Agrawal was given an extension of one year by the returned candidate Dr. Shanker Dayal Sharma as Vice-President of India which "is illegal and amounts to undue influence". The averment in sub-para (6) relating to the constitutional validity of some provisions is concluded by earlier decisions of this Court apart from being beyond the scope of the election petition. There is no averment as to how the extension of one year given to Shri Sudershan Agrawal is illegal and no particulars of the bald assertion of undue influence have even been mentioned. In view of Section 18(2), the offence of undue influence in Section 18(1)(a) has the same meaning as in Chapter IX-A of the Indian Penal Code. Section 171-C of the Indian Penal Code defines undue influence at elections as under:
- "171-C. Undue influence at elections. - (1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.
- (2) Without prejudice to the generality of the provisions of sub-section (1), whoever -
- (a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or
- (b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an ob-

ject of Divine displeasure or of spiritual censure, A

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section." B

A bare perusal of Section 171-C I.P.C. shows that the ingredients of undue influence at elections are many and they have to be read into the meaning of the offence of undue influence in Section 18(1)(a) of the Act. Before a ground under Section 18(1)(a) of the Act can be said to be pleaded raising a triable issue in the election petition it must be shown that material facts to constitute the ingredients of the offence of undue influence have at least been pleaded in the election petition. The petitioner has not made any attempt to pay even lip-service to these requirements and has chosen to merely repeat the words "undue influence in the election" in the petition without any attempt to plead material facts raising that ground. Obviously for this reason the petitioner did not even attempt, at the hearing, to advert to this ground with any degree of seriousness. C D

It is, therefore, obvious that even though the petitioner, Kaka Joginder Singh in Election Petition No.2 of 1992 has the *locus standi* to present the petition as required by Section 14A of the Act read with Order XXXIX Rule 7 of Supreme Court Rules, yet material facts and the grounds on which the relief of declaration of the election of the returned candidate *void* is sought have not been pleaded to disclose any cause of action or raise any triable issue. The net result, therefore, is the same as in Election Petition No. 1 of 1992 and this petition also is liable to be dismissed sustaining the preliminary objection. It must be held that the election petition does not disclose any cause of action and is, therefore, liable to be dismissed by virtue of the Rules 2 and 5 of Order XXXIX and Rule 6 of Order XXIII read with Rule 34 of Order XXXIX of the Supreme Court Rules and the mandatory provisions of the Presidential and Vice-Presidential Elections Act, 1952. E F G

What we have already said is sufficient to dispose of both the election petitions taking into consideration all that can qualify in the two petitions H

- A as relevant or requiring consideration. The exercise of filtering out the relevant from the irrelevant in the both these petitions has been tedious. In Election Petition No.1 of 1992 this task has been more difficult on account of the recalcitrance and ambience of petitioner Mithilesh Kumar Sinha who persisted in continuing his arguments by submitting some more written submissions even after the case was closed for judgment on conclusion of the hearing. There was nothing of substance or use therein, in addition to what he had said earlier. The language used by Mithilesh Kumar Sinha at some places in his written submissions is also intemperate. It is doubtful that he did so unwittingly and the impression we get is that all his actions have been deliberate. We strongly deprecate this attitude and conduct of petitioner Mithilesh Kumar Sinha who has clearly misused the indulgence granted by the Court to him as a petitioner-in-person. Ordinarily we would have refrained from saying so in the judgment, but we do so since we find that such an indication by us to him during the hearing has not had the desired effect.

- D In this context, we may recall the observations of Venkataramiah, J. speaking for the Constitution Bench in *Mithilesh Kumar* (supra) at p.537 of SCR about the same petitioner which bear repetition at this stage:

- E "Before concluding we should observe that the petitioner did not appear to be quite serious about his case. At one stage he contended having himself filed the petition before the Court that this Court had no competence to hear the case and at another stage he wanted 51 Judges to hear his petition when the maximum permissible strength of this Court is about one-half of that number and the existing strength of this Court is less than one-third of that number. Rule 20 of Order XXXIX of the Rules requires that every petition calling in question an election to the offices of the President and the Vice-President shall be posted before and be heard and disposed of by a Bench of this Court consisting of not less than five Judges. While we expect every conscientious citizen eligible to file an election petition to question an election on the grounds prescribed by the Act, we do not wish that any petitioner should make use of this Court as a forum to file a petition without giving adequate thought
- F
- G
- H

MITHILESH SINHA v. RETURNING OFFICER [VERMA, J.] 695

to its contents and also to the provisions of law governing the case merely to seek some cheap publicity. We regret to say that seeing one's name in newspapers everyday has lately become the worst intoxicant and the number of people who have become victims of it is increasing day by day. We, however, refrain from referring to some other irrelevant and unwarranted statements made by him before this Court orally and in writing. Perhaps the petitioner who desired to become the President of India did not understand the effect of what he was saying. We shall leave it at that."

A

B

C

It is obvious that the above observations of Venkataramiah, J. have not had the desired effect on petitioner Mithilesh Kumar Sinha. One of the tenuous submissions of Mithilesh Kumar Sinha before us was that no sitting Judge of the Supreme Court is competent to hear his petition since they are all likely to be influenced by the President of India and, therefore, his petition should be heard by a Bench comprising of all the sitting Judges as well as all the retired Judges of the Supreme Court. This would indicate the extent to which this Court's time has been wasted by such frivolous pleas. Suitable steps to prevent such attempts in future must be taken in larger public interest.

D

E

We may make a passing reference to some of the earlier decisions of this Court in which some similar points mentioned casually and vaguely by these petitioners without laying any foundation have been rejected. Both these petitioners are far too deficient by even the most liberal standard of pleadings when the standard in election petitions is more strict.

F

A Bench of seven Judges in *Charan Lal Sahu v. Neelam Sanjeeva Reddy*, [1978] 3 SCR 1, apart from dealing with the *locus standi* to file election petition under the Presidential and Vice-Presidential Elections Act, 1952, also considered and negated the challenge to constitutional validity of certain provisions while stating the scope of Articles 58 and 71 of the Constitution of India.

G

In *Shri Baburao Patel & Ors. v. Dr. Zakir Husain & Ors.*, [1968] 2 SCR 133, it was held that a candidate standing for election to the office of the President was not required to take any oath for becoming eligible for election as President; and the nature of pleadings required for constituting

H

- A the ground of undue influence under Section 18 of the Act based on canvassing by the Prime Minister and Ministers was also indicated. In *Shiv Kirpal Singh v. Shri V.V. Giri*, [1971] 2 SCR 197, apart from indicating once again the requirements for constituting the ground of undue influence under Section 18 of the Act, it was also held that so challenge to the election can be made on grounds other than those mentioned in Section 18 of the Act. In *Charan Lal Sahu v. Shri Fakruddin Ali Ahmed and Others*, AIR 1975 SC 1288, the constitutional validity of Sections 5B and 5C of the Act was upheld. In *Charan Lal Sahu & Others v. Giani Zail Singh & Another*, [1984] 2 SCR 6, the necessity of precise, specific and unambiguous pleadings in such an election petition was emphasised; the requirements for raising the ground of undue influence under Section 18 of the Act were reiterated; the irrelevance of the plea of suitability of a candidate in the petition was indicated; the absence of any requirement by the candidate of the oath prescribed by Article 84(a) was stated while indicating the requirements in an election petition for raising a triable issue. It was also emphasised that the right arising out of elections including that the right to contest or challenge an election are not common law rights but are creatures of the statutes which create, confer or limit those rights and, therefore, for deciding the question whether an election can be set aside on any alleged ground, the courts have to function within the framework of that law and not travel beyond it. Chandrachud, C.J. speaking for the Constitution Bench in a similar situation also observed as under:

- F "It is regrettable that election petitions challenging the election to the high Office of the President of India should be filed in a fashion as cavalier as the one which characterises these two petitions. The petitions have an extempore appearance and not even a second look, leave alone a second thought appears to have been given to the manner of drafting these petitions or to the contentions raised therein. In order to discourage the filing of such petitions, we would have been justified in passing a heavy order of costs against the two petitioners. But that is likely to create a needless misconception that this Court, which has been constituted by the Act as the exclusive forum for deciding election petitions whereby a Presidential or Vice-Presidential election is challenged, is loathe to entertain such petitions. It is of the essence of the functioning of a
- G
- H

democracy that election to public offices must be open to the scrutiny of an independent tribunal. A heavy order of costs in these two petitions, howsoever justified on their own facts, should not result in nipping in the bud a well-founded claim on a future occasion. Therefore, we refrain from passing any order of costs and, instead, express our disapproval of the light-hearted and indifferent manner in which these two petitions are drafted and filed."

A

B

(at p.17)

What appears to have dissuaded the Court then in making a heavy order of costs in a similar situation appears to have lost its force since then in view of the even more cavalier fashion in which these petitions continue to be filed a decade later.

C

In *Mithilesh Kumar v. Sri R. Venkataraman & Ors.*, [1988] 1 SCR 525, it was reiterated that Section 18 of the Act is exhaustive of the grounds on which such an election can be declared *void*. We have already quoted the observations of Venkataramiah, J. at p. 537 deprecating the cavalier fashion in which the very same petitioner had then also filed the election petition.

D

We have referred to these decisions for the only reason that in both these petitions, a roving challenge to the election has been made by casually mentioning several provisions and even more casually stating that some of them are unconstitutional without indicating any basis for the challenge. It is unnecessary to dilate further.

E

Before parting with the matters we are constrained to observe that it is now time to make suitable provisions to prevent entertaining such frivolous petitions filed in a cavalier fashion requiring the hearing by a Bench of five Judges of this Court. The only purpose served by such frivolous petitions is the giving of some undue publicity to the petitioner which appears to be the sole purpose of filing such a petition. Obviously, use of the Court as a forum for this purpose must not be permitted. The election petitions under the Representation of the People Act challenging elections to the Parliament and State Legislatures are required to be heard by a Single Judge of the High Court. In view of the greater importance of the Presidential and Vice- Presidential elections the forum for trial of such election petitions is the Supreme Court and in accordance with the rules

F

G

H

A framed by the Court these petitions are heard by a Bench of five Judges. Experience has shown that the solemnity and significance attaching to such petitions has been reduced to a farce by the cavalier fashion in which resort is had to this remedy. The mere fact that the entire gamut of both these petitions is fully covered by several earlier decisions of this Court to some of which these very petitioners were parties shows that the existing provisions are inadequate to prevent such abuse of the process of law. It is now necessary to make suitable amendments in the provisions for screening of such frivolous petitions and provisions is required to be made for trial only of serious petitions raising triable issues by a Bench of five Judges of this Court. We consider it our duty to make these observations to invite attention of all concerned to this felt need requiring suitable action in this direction.

On giving our anxious consideration to the reason given by Chandrachud, CJ. in *Charan Lal Sahu & Others. v. Giani Zail Singh & Another*, [1984] 2 SCR 6 for not making an order of costs while dismissing those petitions in a similar situation filed a decade earlier, we think the further decline during the last decade indicates that mere observations of this kind do not have the desired effect. We are constrained to take the view that some stringent measure like mandatory requirement of security deposit of a reasonable amount for costs for entertaining the election petition is needed to provide some check.

While we record our strong disapproval of the casual manner in which the petitioners have filed these frivolous petitions resulting in wastage of considerable time of the Court which could be more gainfully utilised of the hearing of pending serious matters over which these election petitions requiring early hearing got precedence, in the present case we make no order as to costs.

Accordingly, we dismiss both these petitions without any order as to costs, for the reasons given.

V.P.R.

Petitions dismissed.