A 6

CHARAN LAL SAHU & OTHERS

v.

B GIANI ZAIL SINGH & ANOTHER

December 13, 1983

[V.V. CHANDRACHUD, C.J P.N. BHAGWATI, AMARENDRA NATH SEN, D.P. MADON AND M.P. THAKKAR, JJ.]

C *Constitution of India 1950, Articles 71(1) and 84(a) Sec. 18(1) of Presidential and Vice-Presidential Elections Act 1952—Whether ultra vires Article 71(1).*

Presidential election—Candidate contesting such election—Whether to take oath prescribed by Article 84(a).

D *Presidential and Vice-Presidential Elections Act, 1952 Section 13(a) read with section 14A (1)—'Candidate' at Presidential election—Who is—One 'duly nominated' or who claims to have been duly 'nominated'—Who has locus standi to challenge election.*

Section 18(1) and 19—Election petition—Whether could be filed on ground that elected candidate not a 'suitable person' for holding the office.

E *Section 18(2)—Undue influence and bribery at an election—Canvassing for a candidate—Whether amounts to undue influence.*

Pleading & Practice : Election Petitions—Pleadings—Precise specific and unambiguous—Necessity for.

F *Indian Penal Code—Section 171C—Undue influence at elections—Canvassing—Whether amounts to undue influence.*

Words & Phrases—Meaning of.

"Connivance" whether means "consent".

G For the election to the office of the President of India, the Returning officer accepted the nomination papers of two candidates only viz. Giani Zail Singh and Shri H.R. Khanna. The election was held on July 12,1982, and Giani Zail Singh was declared as the successful candidate.

H The petitioners in Election Petition Nos. 2 and 3 of 1982 who had filed their nomination papers, contested the election on various grounds and alleged that Respondent 1. Giani Zail Singh exercised undue influence over the voters through his confidants.

A preliminary objection to the maintainability of these petitions was raised on behalf of Respondent no. 1 and the Attorney General. It was contended that neither of the two petitioners was a 'candidate' within the meaning of section 13(a) of the Presidential and Vice-Presidential Elections Act, 1952 and since under section 14A, an election petition can be filed only by a person who was a candidate at the election, the petitioners had no standing to file the petitions.

This Court framed the following preliminary issue : "Does the petitioner have no *locus standi* to maintain the petition on the ground that he was not a 'candidate' within the meaning of section 13(a) read with section 14A of Presidential and Vice-Presidential Elections Act 1952 ?

Election Petition No. 4 of 1982 was filed by 27 Members of Parliament challenging the election of Respondent No. 1, Giani Zail Singh as the President of India. contending that the petitioners jointly sponsored the candidature of Shri H.R. Khanna, a former Judge and that Giani Zail Singh was not a "suitable person" for holding the high office of the President of India, and that : (1) Shri M.H. Beg former Chief Justice and Chairman of the Minorities Commission, was engaged by Respondent 1 and by the Prime Minister "for influencing the votes of the Minority Communities"; (2) that a Cabinet Minister of the Union Government, a 'supporter and close associate' of Respondent 1, exercised undue influence over the voters by misusing the Government machinery and that a statement was issued by him through the Press Information Bureau asking the voters to vote for Respondent 1, (3) that the Prime Minister participated in the election campaign of Respondent 1 and misused the Government machinery for that purpose, (4) that the Prime Minister made a communal appeal to the Akali Dal that its members should vote for Respondent 1, and (5) that Government helicopters and cars were misused for the purpose of the election of Respondent 1, and that these various acts were committed by supporters of Respondent 1 with his connivance.

It was contended on behalf of Respondent 1 that even assuming that the aforesaid allegation were true they did not disclose any cause of action for setting aside the election of respondent 1.

This Court framed the following issues : (1) "can the election of a candidate to the office of the President of India be challanged on the ground that he is not a sutitable person for holding that office", (2) "whether the averments in the Election Petition, assuming them to be true and correct, disclose any cause of action for setting aside the election of the returned candidate (Respondent 1) on the grounds stated in section 18 (1) (a) of the Act".

Dismissing the election Petitions,

HELD :

Election Petitions Nos.2 & 3 of 1982.

1. The petitioners have no locus standi to file the election petitions sincethey were neither duly nominated nor can they claim to have been duly ominat'd as candidates at the Presidential election. [16 H]

A 2. Three pre-conditions govern an election petition by which a Presidential election is challanged. In the first place such a petition has to be filed in the Supreme Court. Secondly, the petition must disclose a challange to the election on one or more grounds specified in sub-section (1) of section 18 or section 19. Thirdly an election petition can be presented only by a person who was a candidate at the presidential election or by twenty or more electors joined together as petitioners. [14 E-F]

B 3. The definition of the word 'candidate' in section 13 (a) of the Act consists of two parts. 'Candidate' means a person who has either been duly nominated as a candidate at a Presidential election or a person who claims to have been duly nominated. Section 5B (1) (a) of the Act provides that on or before the date appointed for making nominations, each candidate shall deliver to the Returning Officer a nomination paper completed in the prescribed C form, subscribed by the candidate as assenting to the nomination, and "in the case of Presidential election, also by at least ten electors as proposers and at least ten electors as seconders". [14 G-H; 15 A]

In the instant case, neither of the two petitioners was duly nominated. The nomination papers filed by them were not subscribed by ten electors as proposers and ten electors as seconders. It was precisely for this reason D that their nomination papers were rejected by the Returning Officer. Since the nomination papers of the two petitioners were not subscribed as required by section 5B (1) (a) of the Act, it follows that they were not duly nominated as "candidates" at the election. [15 A-B]

4. The occasion for a person to make a claim that he was duly nominated can arise only if the nomination paper complies with the statutory requirements E which govern the filing of nomination papers and not otherwise. The claim that he was 'duly' nominated necessarily implies and involves the claim that his nomination paper conformed to the requirements of the statute. A contestant whose nomination paper is not subscribed by at least ten electors as proposers and ten electors as seconders, as required by s. 58 (1) (a) of the Act, cannot therefore claim to have been duly nominated, any more than a contestant who had not subscribed his assent to his own nomination can. The F claim of a contestant that he was duly nominated must arise out of his compliance with provision of the Act, and not out of the violation of the Act. Otherwise, a person who had not filed any nomination paper at all but who had only informed the Returning Officer orally that he desired to contest the election could also contend that he "claims to have been duly nominated as a candidate". [15 F-H; 16 A]

G In the instant case, the nomination papers of the petitioners were rightly rejected on the ground of non-compliance with the mandatory requirement of s. 58 (1) (a) of the Act. Their claim that they have been duly nominated is not within the framework of the Act but is dehors the Act. It cannot therefore be entertained. [16 C]

H *Charan Lal Sahu* v. *Shri Fakruddin Ali Ahmed*, (A.I.R.) 1975 S.C. 1288; *Charan Lal Sahuv. Neelam Sanjeeva Reddy*, [1978] 3 SCR 1, referred to.

5. It is of the essence of the functioning of a democracy that elections to public offices must be open to the scrutiny of an independent Tribunal. [17 D] A

In the instant cases, it is regrettable that election petitions challenging the election to the high office of the President of India should be filed in a cavalier fashion. The petitions have an extempore appearance and not even a second look, appears to have been given to the manner of drafting these petitions or to the contents raised therein. The court refrained from passing any order of costs and, instead expressed disapproval of the light hearted and indifferent manner in which these petitions were filed. [17 B-C] B

Election Petition No. 4 of 1982.

1. The rights arising out of elections, including the right to contest or challenge an election, are not common law rights. They are creatures of the statutes which create, confer or limit those rights. Therefore, for deciding the question whether an election can be set aside on any alleged ground, the courts have to consult the provisions of law governing the particular election. They have to function within the framework of that law and cannot travel beyond it. Only those persons on whom the right of franchise is conferred by the statute can vote at the election. [19 E-G] C

In the instant case, that right is conferred on every 'elector' as defined in section 2(d) of the Act. Only those person who are qualified to be elected to the particular office can contest the election. That right is regulated by section 5A of the Act. The election can be called into question in the manner prescribed by the statute and not in any other manner. Section 14(1) of the Act provides that no election shall be called in question except by presenting an election petition to the authority specified in sub-section (2) which is the Supreme Court. The grounds for setting aside the election to the office of the President or the Vice-President and the ground on which a candidate other than the returned candidate may be declared to have been elected are laid down in sections 18 and 19 of the Act. The election can neither be questioned nor set aside on any other ground. Therefore, the challenge to the election of the returned candidate on the ground of his want of suitability to occupy the office of the President cannot be entertained and must be rejected. [20 D-E] D E

K. Venkateswara Rao v. Bekkam Narsimha Reddy [1969] 1 SCR 679 at 684 *and Charan Lal Sahu v. Nandkishore Bhatt*, [1974] 1 SCR 294 at 296 referred to. F

2. Suitability of a candidate is for the electorate to judge and not for the court to decide. The court cannot substitute its own assessment of the suitability of a candidate for the verdict returned by the electorate. The verdict of the electorate is a verdict on the suitability of the candidate. 'Suitability' is a fluid concept of uncertain import. The ballot-box is, or has to be assumed to be, its sole judge. [20 G-21 A] G

3. It is not open to a petitioner in an Election Petition to plead in terms of synonyms. In Election Petitions pleadings have to be precise, specific and unambiguous so as to put the respondent on notice. The rule of pleadings that facts constituting the cause of action must be specifically pleaded is as fundamental as it is elementary. [23 A] H

4. 'Connivance' may, in certain situations amount to 'consent'. Dictionaries give 'consent' as one of the meanings of the word 'connivance'. But it is not true to say that 'connivance' invariably and necessarily means or amounts to 'consent', that is to say, irrespective of the context of the given situation. The two cannot, therefore, be equated. Consent implies that parties are *ad idem*. Connivance does not necessarily imply that parties are of one mind. They may or may not be, depending upon the facts of the situation. [23 B-C]

5. Precision in pleadings particularly in Election Petitions is necessary. The importance of a specific pleading in election petitions can be appreciated only if it is realised that the absence of a specific plea puts the respondent at a great disadvantage. He must know what case he has to meet. He cannot be kept guessing whether the petitioner means what he says. The petitioner cannot be allowed to keep his options open until the trial and adduce such evidence as seems convenient and comes handy. It is therefore impermissible to substitute the word 'consent' for the word 'connivance' which occurs in the pleadings of the petitioners. [23 F, D-E]

6. In the absence of a pleading that the offence of undue influence was committed with the "consent" of the returned candidate, one of the main ingredients of section 18(1)(a) remains unsatisfied. [23 C]

7. When the Act was passed in 1952, section 18 (1) (a) provided that the Supreme Court shall declare the election of the returned candidate void if it is of opinion that the offence of bribery or undue influence has been committed by the returned candidate or by any person "with the connivance" of the returned candidate. This sub-section was amended by section 7 of the Presidential and Vice-Presidential Election (Amendment) Act, 5 of 1974. The word 'connivance' was substituted by the word 'consent' by the Amendment Act. If 'connivance' carried the same meaning as 'consent' and if one was the same as the other, the Parliament would not have taken the deliberate step of deleting the word 'connivance' and substituting it by the word 'consent'. The Amendment shows that 'connivance' and 'consent' connote distinct concepts for the purpose of section 18 (1) (a). [23 G-24 B]

8. The mere Act of canvassing for a candidate cannot amount to undue influence within the meaning of Section 171C of the Penal Code. [26 C]

Baburao Patel v. Dr. Zakir Hussain [1968] 2 SCR 133; *Shiv Kirpal Singh v. Shri V.V Giri* [1971] 2 SCR 197, 320, 321; *and Ram Dial v. Sant Lal* [1959] Suppl. 2 SCR 748 at 758, 759 referred to.

9. The laws of election are self-contained codes and the rights arising out of elections are the off springs of those laws. The provisions of the Representation of the People Act 1951 cannot be engrafted upon the Presidential and Vice-Presidential Elections Act 1952, to enlarge the scope of an election petition filed to challenge a Presidential or Vice-Presidential election. Such an election can be set aside only on the grounds specified in section 18 (1) of the Act. [28 B-C]

10. The use of Government machinery, abuse of official position and appeal to communal sentiments so long as such appeal does not amount to

undue influence, are not considered by the Legislature to be circumstances which would invalidate a Presidential or a Vice-Presidential election. [27 M; 28 A]

11. The Act cannot be held to be unconstitutional on the ground that it limits the challenge to the Presidential and Vice-Presidential Election to the grounds set forth in section 18 (1). While enacting a law in pursuance of the power conferred by Article 71 (3), Parliament is entitled to specify the praticular kind of doubts or disputes which shall be inquired into and decided by the Supreme Court. If every kind of fanciful doubt or frivolous doubt will have to be inquired into by this Court, election petitions will became a fertile ground for fighting political battles. [28 F; 28 G-H]

12. A candidate who wants to contest the election for the office of the President cannot take the oath in any of the forms prescribed by the Third Schedule to the Constitution. That Schedule does not prescribe any form of oath for a person who desires to contest a Presidential election. [29 E]

In the instant case, the averments in the Election petition, assuming them to be true and correct, do not disclose any cause of action for setting aside the election of the returned candidate on the ground stated in section 18 (1) (a) of the Act. [28 D]

CIVIL APPELLATE JURISDICTION: Election Petition No. 2 of 1982

(Petition under Article 71 of the Constitution.)

AND

Election Petition No. 3 *of* 1982.
(Petition under Article 71 of the Constitution.)

WITH

Election Petition No. 4 *of* 1982.
(Petition under Article 71 of the Constitution.)

Petitioner in person in Election Petition No. 2/82.

Hari Shanker Jain and *K.K. Gupta* for the Petitioner in Election Petition No.3/82.

Shujaatullah Khan and *K.K. Gupta* for the Petitioner in Election Petition No.4/82.

O.P Sharma, R.C. Gubrele, K.R Gupta and *R.C. Bhatia* for the Respondents in Election Petition No.2/82.

P.R. Mridul, A.K. Sen. O.P. Sharma, R.C. Gubrele, K.R Gupta and *R.C. Bhatia* for the respondent in Election Petition No.3/82.

A.K. Sen, J.S. Basu, O.P. Sharma, R.C. Gubrele, K.R Gupta and *R.C. Bhatia* for the respondent in Election Petition No. 4/82.

A *K. Parasaran*, Att. General and *R.D. Agarwala* in all the Election Petitions.

P.N Duda, H.L Tikkum, D.S. Narula, Vijay Pandit and *H.C. Agarwala* for the Intervenors.

B *A.S. Pundir* for the Intervenors.

D.B. Vohra for the Intervenors.

The Judgment of the Court was delivered by

C CHANDRACHUD, C.J. : These three Election petitions are filed under section 14 of the Presidential and Vice-Presidential Elections Act, 1952 to challenge the election of Respondent 1, Giani Zail Singh, as the President of India. The election to the office of the President of India was held on July 12, 1982. In all, 36 candidats had filed nomination papers including Shri Charan Lal Sahu who is the petitioner in Petition No. 2 of 1982 and Shri Nem Chandra Jain who is D the petitioner in election Petition No. 3 of 1982. The Returning Officer accepted the nomination papers of two candidates only : Gaini Zail Singh and Shri H.R. Khanna, a retired Judge of this Court. The result of the election was published in the Extraordinary Gazette of India on E July 15. 1982 declaring Giani Zail Singh as the successful candidate. He took oath of office on July 25, 1982.

We will first take up for consideration Election Petitions 2 and 3 of 1982 which are filed respectively by Shri Charan Lal Sahu and Shri Nem Chandra Jain both of whom, incidentally, are Advocates.

F

Election Petitions Nos. 2 & 3 of 1982:

In Petition No. 2 of 1982, the petitioner asks for the following reliefs:

G "(1) That the Constitutional Eleventh Amendment Act 1961 be declared ultra-vires of the Constitution.

(2) That the sections 5 (B) 6 and 5 (c) 21 (3) of the Presidential and Vice Presidential Election Act 1952 (Amended) with H Election Rules 1974 be declared, illegal, void and unconstitutional, under Article 58 of the Constitution.

(3) That is the post of Prime Minister and other Ministers be declared that they are in office of profit hence they have played undue influence in the election of the returned Candidate. A

(4) That the election of the (Returned Candidate) Respondent No. 1 be declared void and nomination of respondent No. 2 be declared illegally accepted thus the petitioner be declared as elected as President under the Constitution, as stated in the petition u/s 18 of the Act. B

(5) That the above system of election of President is bad and unconstitutional therefore, it should be held directly in future by all the electorals and Union of India be directed to amend Articles 54, 55 and 56 of the the Constitution of India. C

(6) That sections 4(1) (2), 5, 6, 7, & 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." (Advisedly, we have not touched up the prayer-clauses.) D

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In Petition No. 3 of 1982, the petitioner prays that the election of Respondent 1 be set aside on the various grounds mentioned in the petition.

Apart from making several vague, loose and offhand allegations, the petitioners allege that Respondent 1 exercised undue influence over the voters through his confidants. We do not consider it necessary to reproduce those allegations since we are of the opinion that these petitions are not maintainable. F

A preliminary objection is taken to the maintainability of these petitions by Shri Asoke Sen who appears on behalf of Respondent 1 and by the learned Attorney General. They contend that neither of the two petitioners was a 'candidate' within the meaning of section 13(1) of the Act and since, under section 14A, an election petition can be filed only by a person who was a candidate at the election, the petitioners have no standing to file the petitions and therefore, the petitions must be dismissed as not maintainable. G H

A Since the petitioners contested their alleged lack of locus to file the petitions, the following issue was framed by us a preliminary issue in each of the two election petitions :

> "Does the petitioner have no *locus standi* to maintain the petition on the ground that he was not a 'candidate' within
B the meaning of section 13(a) read with section 14A of the Presidential and Vice-Presidential Elections Act, 1952 ?"

Section 14 of the Act provides by sub-section (1) that no election shall be called in question except by presenting an election petition to the authority specified in sub-section (2). According to sub-section (2),
C the authority having jurisdiction to try an election petition is the Supreme Court. By section 14A(1) of the Act, an election petition may be presented on the grounds specified in section 18(1) and 19 "by any candidate at such election" or, "in the case of Presidential elelction, by twenty or more electors joined together as petitioners". Section 13(a) of the Act provides that unless the context otherwise requires,
D 'candidate' means a person "who has been or claims to have been duly nominated as a candidate at an election".

These provisions show that there are three pre-conditions which govern an election petition by which a Presidential election is challenged. In the first place, such a petition has to be filed in the Supreme
E Court. Secondly, the petition must disclose a challenge to the election on one or more of the grounds specified in sub-section (1) of section 18 or section 19. Thirdly, and that is important for our purpose, an election petition can be presented only by a person who was a candidate at the Presidential election or by twenty or more electors joined together as petitioners. Since the two election petition which are at
F present under our consideration have not been filed by twenty or more electors, the question which arises for our consideration is whether the two petitioners in the respective election petitions were 'candidate' at the election held to the office of the President of India.

The definition of the word 'candidate' in section 13(a) of the
G Act consists of two parts. 'Candidate' means a person who has either been duly nominated as a candidate at a presidential election or a person who claims to have been duly nominated. Neither of the two petitioners was duly nominated. This is incontrovertible. Section 5B (1) (a) of the Act provides that on or before the date appointed for
H making nominations, each candidate shall deliver to the Ruturning Officer a nomination paper completed in the prescibed form, sub-

scribed by the candidate as assenting to the nomination, and "in the case of Presidential election, also by at least ten electors as proposers and at least ten electors as seconders". It is common ground that the nomination papers filed by the two petitioners were not subscribed by ten electors as proposers and ten electors as seconders. In fact, it is precisely for that reason that the nomination papers filed by the two petitioners were rejected by the Returning Officer. Since the nomination papers of the two petitioners were not subscribed as required by section 5B (1) (a) of the Act, it must follow that they were not duly nominated as candidate at the election.

The petitioners, however, contend that even if it is held that they were not duly nominated as candidates, their petitions cannot be dismissed on that ground since they 'claim to have been duly nominated'. It is true that in the matter of claim to candidacy, a person who claims to have been duly nominated is on par with a person who, in fact, was duly nominated. But the claim to have been duly nominated cannot be made by a person whose nomination paper does not comply with the mandatory requirements of section 58 (1) (a) of the Act. That is to say, a person whose nomination paper, admittedly, was not subscribed by the requisite number of electors as proposers and seconders cannot claim that he was duly nominated. Such a claim can only be made by a peson who can show that his nomination paper conformed to the provisions of section 58 and yet it was rejected, that is, wrongly rejected by the Returning Officer. To illustrate, if the Returning Officer rejects a nomination paper on the ground that one of the ten subscribers who had proposed the nomination is not an elector, the petitioner can claim to have been duly nominated if he proves that the said proposer was in fact an 'elector'.

Thus, the occasion for a person to make a claim that he was duly nominated can arise only if his nomination paper complies with the statutory requirments which govern the filling of nomination papers and not otherwise. The claim that he was 'duly' nominated necssarily implies and involves the claim that his nomination paper conformed to the requirments of the statute. Therefore, a contestant whose nomination paper is not subscribed by at least ten electors as proposers and ten electors as seconders, as required by section 58(1) (a) of the Act, cannot claim to have been duly nominated, any more than a contestant who had not subscribed his assent to his own nomination can. The claim of a contestant that he was duly nominated must arise out of his compliance with the provisions of the Act. It cannot arise out of the violation of the Act. Otherwise, a person who had not filed

any nomination paper at all but who had only informed the Returning Officer orally that he desired to contest the election could also contend that he "claims to have been duly nominated as a candidate".

It is not the case of the petitioners that the Returning Officer had wrongly rejected their nomination papers even though they were subscribed by ten or more electors as proposers and ten or more electors as seconders. Not only were the nomination papers rightly rejected on the ground of non-compliance with the mandatory requirement of section 58(1) (a) of the Act, but the very case of the petitioners is that their nomination papers could not have been rejected by the Returning Officer on the ground of non-compliance with the aforesaid provision. Thus, their claim that they have been duly nominated is not within the framework of the Act but is *de hors* the Act. It cannot be entertained.

In *Charan Lal Sahu* v. *Shri Fakruddin Ali Ahmed*,(1) the petitioner claimed to have been duly nominated as a candidate though his nomination paper was rightly rejected on the ground of non-compliance with the provisions of sections 5B and 5C of the Act. It was held by this Court that merely because a candidate is qualified under Article 58 of the Constitution, it does not follow that he is exempt from compliance with the requirements of law which the Parliament has enacted under Article 71(3) for regulating the mode and the manner in which nominations should be filed. Since the petitioner did not comply with the provisions of the aforesaid two sections, it was held that he could not claim to have been duly nominated and was therefore not a "candidate". In the result, the election petition was dismissed by the Court on the ground that the petitioner did not have the *locus standi* to maintain it.

The challenge of the petitioners to the provision contained in section 5B (1) (a) of the Act on the ground of its alleged unreasonableness has no substance in it. The validity of that provision was upheld by this Court in *Charan Lal Sahu* v. *Neelam Sanjeeva Reddy*.(2) Besides, if the petitoners have no locus to file the election petitions, they cannot be heard on any of their contentions in these petitions.

Accordingly, our finding on the preliminary issue is against the petitioners. We hold that they have no *locus standi* to file the election

(1) AIR 1975 S.C. 1288
(2) [1978] 3 SCR

petitions since they were neither duly nominated nor can they claim to have been duly nominated as candidates at the presidential election. In view of this finding, Election Petition Nos, 2 and 3 of 1982 are dismissed.

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 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.

Election Petition No. 4 of 1982

This Election Petition is filed by 27 Members of the Parliament to challenge the election of Giani Zail Singh as the President of India. The petitioners belong to four Opposition Parties : The Lok Dal, The Democratic Socialist Party of India, the Bharatiya Janata Party and the Janata Party. These parties had jointly sponsored the candidature of Shri H.R. Khanna, a former Judge of this Court. Giani Zail Singh was returned as the successful candidate by a large margin of votes.

The petitioners, being Members of the Parliament, were electors at the Presidential election. Their standing to file this petition is unquestioned.

One of the principal challenges of the petitioners to the election of Giani Zail Singh is that he is not a "suitable person" for holding the high office of the President of India. The petitioners have given their own reasons in support of this contention in paragraphs 5 to 8

A of the petition. No useful purpose will be served by repeating those reasons in this judgment since, we are of the opinion that the election to the office of the President of India cannot be questioned on the ground that the returned candidate is not a suitable person for holding that office.

B The following issue arises on the above contention raised by the petitioners :

> "Can the election of a candidate to the office of the President of India be challenged on the ground that he is not a suitable person for holding that office?"

C

Section 18 of the Presidential and Vice-Presidential Elections Act, 1952, which specifies the "grounds for declaring the election of a returned candidate to be void", reads thus :

> "18. (1) If the Supreme Court is of opinion,—
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> D
>
> (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
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> E (b) that the result of the election has been materially affected—
>
> (i) by the improper reception or refusal of a vote, or
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> (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
>
> F
>
> (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
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> G (c) that the nomination of any candidate has been wrongly rejected or the nomination of the successful candidate has been wrongly accepted;
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> the Supreme Court shall declare the election of the returned candidate to be void.
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> H
>
> (2) For the purposes of this section, the offences of

bribery and undue influence at an election have the same meaning as in Chapter IXA of the Indian Penal Code," A

Section 19 of the Act which specifies the "grounds for which a candidate other than the returned candidate may be declared to have been elected" reads thus: B

> "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 C 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 :
>
> Provided that the petitioner or such other candidate shall not be declared to be duly elected if it is proved that the D 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".

These being the only provisions of the Act under which the election of a returned candidate can be declared void, the question E as to whether the returned candidate is suitable for holding the office of the President is irrelevant for the purposes of this election petition. While dealing with an election petition filed under section 14 of the Act, this Court cannot inquire into the question whether the returned candidate is suitable for the office to which he is elected. The rights arising out of elections, including the right to contest or chal- F lenge an election, are not common law rights. They are creatures of the statutes which create, confer or limit those rights. Therefore, for deciding the question whether an election can be set aside on any alleged ground, the courts have to consult the provisions of law governing the particular election. They have to function within the framework of that law and cannot travel beyond it. Only those G persons on whom the right of franchise is conferred by the statute can vote at the election. In the instant case, that right is conferred on every 'elector' as defined in section 2(d) of the Act, which provides:

> " 'elector', in relation to a presidential election, means a H member of the electoral college referred to in article 54, and

A in relation to a Vice-Presidential election, means a member of the electoral college referred to in article 66".

Only those persons who are qualified to be elected to the particular office can contest the election. In the instant case, that right is regulated by section 5A of the Act which provides :

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

C The election can be called into question in the manner prescribed by the statute and not in any other manner. In the instant case, section 14(1) of the Act provides that no election shall be called in question except by presenting an election petition to the authority specified in sub-section (2). By sub-section (2) of section 14, the Supreme Court is constituted the sole authority for trying an election D petition. Finally, an election can be called into question and set aside on those grounds only which are prescribed by the statute. In the instant case, the grounds for setting aside the election to the office of the President or the Vice President and the grounds on which a candidate other than the returned candidate may be declared to have been elected are laid down in sections 18 and 19 of the Act. The E election can neither be questioned nor set aside on any other ground. Therefore, the challenge to the election of the returned candidate on the ground of his want of suitability to occupy the office of the President cannot be entertained and must be rejected out of hand. (See *K. Venkateswara Rao* v. *Bekkam Narsimha Reddy*[1] & *Charan Lal Sahu* v. *Nandkishore Bhatt.*[2])

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Apart from the legal position that the rights flowing out of an election are statutory and not common law rights, it is impossible to conceive that any court of law can arrogate to itself the power to declare an election void on the ground that the returned candidate is not a suitable person to hold the office to which he is elected. Suitability G of a candidate is for the electorate to judge and not for the court to decide. The Court cannot substitute its own assessment of the suitability of a candidate for the verdict returned by the electorate. The verdict of the electorate is a verdict on the suitability of the

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(1) [1969] 1 SCR 679 at 684
(2) [1974] 1 SCR 294 at 296

candidate. 'Suitability' is a fluid concept of uncertain import. The ballot-box is, or has to be assumed to be, its sole judge. Were the Court to exercise the power to set aside an election on the ground that, in its opinion, the returned candidate is not a suitable person for the office to which he is elected, the statute will stand radically amended so as to give to the Court a virtual right of veto on the question of suitability of the rival candidates. And then, an unsuccessful candidate will challenge the election of the successful candidate on the ground that he is more suitable than the latter. That is an impossible task for the Courts to undertake and indeed, far beyond the limits of judicial review by the most liberal standard.

Accordingly, the challenge to the election of the returned candidate on the ground that he is not suitable for holding the office of the President of India fails and is rejected. Our finding on the issue is in the negative.

The other grounds on which the petitioners have challenged the election of Respondent 1 are these ; (1) That Shri M.H. Beg, former Chief Justice of the Supreme Court and now Chairman of the Minorities Commission, was engaged by Respondent 1 and by the Prime Minister Smt. Indira Gandhi "for influencing the votes of the Minority communities"; (2) that Rao Birendra Singh, a cabinet Minister of the Government of India, who is a "supporter and a close associate" of Respondent 1, exercised undue influence over the voters by misusing the Government machinery in that, a statement issued by him asking the voters to vote for Responent 1 was published by the Press Information Bureau, Government of India; (3) that the Prime Minister participated in the election campaign of Respondent 1 and misused the Government machinery for that purpose; (4) that the Prime Minister made a communal appeal to the Akali Dal that its members should vote for Respondent 1; and (5) that Government helicopters and cars belonging to the Government were misused for the purpose of election of Respondent 1. It is alleged by the petitioners that these various acts were committed by the well-wishers and supporters of Respondent 1 with his *connivance*.

It was contended by Shri Asoke Sen that, even assuming that these allegations are true, they do not disclose any cause of action for setting aside the election of Respondent 1. In view of these rival contentions, we framed the following issue for consideration :

"Whether the averments in the Election Petition, assum-

A ing them to be true and correct, disclose any cause of action for setting aside the election of the returned candidate (Respondent 1) on the ground stated in section 18(1) (a) of the Presidential and Vice-Presidential Elections Act, 1952?"

Section 18(1) (a) of the Act which we have already set out, B provides that the Supreme Court shall declare the election of the returned candidate to be void if it is of opinion—

> "that the offence of bribery and undue influence at the election has been committed by the returned candidate or by any person with the *consent* of the returned candidate." C (emphasis supplied).

We may keep aside the question of bribery since there is no allegation in that behalf. Nor is it alleged that the offence of undue influence was committed by the returned candidate himself. The allegation of the petitioners is that the offence of undue influence D was committed by certain supporters and close associates of Respondent 1 with his connivance. It is patent that this allegation, even if it is true, is not enough to fulfil the requirements of section 18(1) (a). What that section, to the extent relevant, requires is that the offence of undue influence must be committed by some other person with the "consent" of the returned candidate. There in no E plea whatsoever in the petition that undue influence was exercised by those other persons with the consent of Respondent 1.

It is contended by Shri Shujatullah Khan who appears on behalf of the petitioners, that connivance and consent are one and the same thing and that, there is no legal distinction between the F two concepts. In support of this contention, learned counsel relies upon the meaning of the word 'connivance' as given in Webster's Dictionary (Third Edition, Volume 1, p. 481); Random House Dictionary (p. 311); Black's Law Dictionary (p. 274); Words and Phrases (Permanent Edition, Volume 8A, p. 173); and Corpus Juris Secundum (Volume 15A, p. 567). The reliance on these dictionaries G and texts cannot carry the point at issue any further. The relevant question for consideration for the decision of the issue is whether there is any pleading in the petition to the effect that the offence of undue influence was committed with the consent of the returned candidate. Admittedly, there is no pleading of consent. It is then H no answer to say that the petitioners have pleaded connivance and, according to dictionaries, connivance means consent. The plea of

consent is one thing : the fact that connivance means consent (assuming that it does) is quite another. It is not open to a petitioner in an Election Petition to plead in terms of synonyms. In these petitions, pleadings have to be precise, specific and unambiguous so as to put the respondent on notice. The rule of pleadings that facts constituting the cause of action must be specifically pleaded is as fundamental as it is elementary. 'Connivance' may in certain situations amount to consent, which explains why the dictionaries give 'consent' as one of the meanings of the word 'connivance'. But it is not true to say that 'connivance' invariably and necessarily means or amounts to consent, that is to say, irrespective of the context of the given situation. The two cannot, therefore, be equated. Consent implies that parties are *ad idem*. Connivance does not necessarily imply that parties are of one mind. They may or may not be, depending upon the facts of the situation. That is why, in the absence of a pleading that the offence of undue influence was committed with the consent of the returned candidate, one of the main ingredients of section 18(1) (a) remains unsatisfied.

The importance of a specific pleading in these matters can be appreciated only if it is realised that the absence of a specific plea puts the respondent at a great disavantage. He must know what case he has to meet. He cannot be kept guessing whether the petitioner means what he says, 'connivance' here, or whether the petitioner has used expression as meaning 'consent'. It is remarkable that, in their petition, the petitioners have furnished no particulars of the alleged consent, if what is meant by the use of the word connivance is consent. They cannot be allowed to keep their options open until the trial and adduce such evidence of consent as seems convenient and comes handy. That is the importance of precision in pleadings, particularly in election petitions. Accordingly, it is impermissible to substitute the word 'consent' for the word 'connivance' which occurs in the pleadings of the petitioners.

The legislative history of the statute lends support to our view that for the purposes of section 18(1) (a), connivance is not the same thing as consent. Originally, when the Act was passed in 1952, section 18(1) (a) provided that the Supreme Court shall declare the election of the returned candidate void if it is of opinion that the offence of bribery or undue influence has been committed by the returned candidate or by any person 'with the connivance' of theretu rned candidate. This sub-section was amended by section 7 of the Presidential and Vice-Presidential Elections (Amendment) Act, 5 of 1974, which came

A into force on March 23, 1974. The word 'connivance' was substituted by the word 'consent' by the Amendment Act. If connivance carried the same meaning as consent and if one was the same as the other. Parliament would not have taken the deliberate step of deleting the word 'connivance' and substituting it by the word 'consent'. The amendment made by the Amendment Act of 1947 shows that B connivance and consent connote distinct concepts for the purpose of section 18(1) (a) of the Act.

Since, admittedly, there is no pleading in the Election Petition that the offence of undue influence was committed with the consent of the returned candidate, the petition must be held to disclose no C cause of action for setting aside the election of the returned candidate under section 18(1) (a) of the Act.

Apart from this, Shri Asoke Sen is right that granting everything in favour of the petitioners and assuming that all that they have alleged is true and correct, no case is made out for setting aside the election D of the returned candidate under section 18(1) (a) of the Act. We will first take up the allegation of the petitioners that Shri M.H. Beg, Chairman of the Minorities Commission, canvassed support for Respondent 1. The question which we have to consider is whether, in doing so, Shri Beg is guilty of the offence of undue influence. Section 18(2) of the Act provides that for purposes of section 18, E the offences of bribery and undue influence at an election have the same meaning as in Chapter IXA of the Penal Code. That Chapter which was introduced into the Penal Code by Act 39 of 1920, deals with "Offences relating to Elections". Sections 171B and 171C of the Penal Code define the offences of bribery and undue influence respectively. Section 171C reads thus :

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"*Undue influence at elections*:

171C. (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.

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(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 object of Divine displeasure or of spiritual censure,

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."

The gravamen of this section is that there must be interference or attempted interference with the 'free exercise' of any electoral right. 'Electoral right' is defined by section 171A(b) to mean the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote refrain from voting at an election. In so far as is relevant for our purpose, the election petition must show that Shri Beg interfered with the free exercise of the voters' right to vote at the Presidential election. The petition does not allege or show that Shri Beg interfered in any manner with the free exercise of the right of the voters to vote according to their choice or conscience. The petition alleges that Shri Beg commented severely upon the suitability of the rival candidate Shri H.R. Khanna by pointing out the so-called infirmities in his judgment in the Fundamental Rights case. On the supposition that Judges constitute brotherhood and are bound by ties of institutional loyalty, one may not approve of the tone and temper of the personal attack made by Shri Beg on Shri H.R. Khanna. But that is beside the point. We are neither concerned with the propriety of the statement made by Shri Beg nor with the question as to who, out of the two candidates, is more suitable to be the President of India. The point of the matter is that by conveying to the voters that Respondent 1 was a much safer candidate than Shri Khanna and that Shri Khanna would not be a suitable candidate to hold the office of the President of India by reason of a judgment of his, Shri Beg could not be said to have interfered with the free exercise of the right of the voters to vote at the election. If the mere act of canvassing in favour of one candidate as against another were to amount to undue influence, the very process of a democratic election shall have been stifled because, the right to canvass support for a candidate is as much important as the

A right to vote for a candidate of one's choice. Therefore, in order that the offence of undue influence can be said to have been made out within the meaning of section 171C of the Penal Code, something more than the mere act of canvassing for a candidate must be shown to have been done by the offender. That something more may, for example, be in the nature of a threat of an injury to a candidate or
B a voter as stated in sub-section 2(a) of section 171C af the Penal Code or it may consist of inducing a belief of divine displeasure in the mind of a candidate or a voter as stated in sub-section 2(b). The act alleged as constituting undue influence must be in the nature of a pressure or tyranny on the mind of the candidate or the voter. It is not possible to enumerate exhaustively the diverse categorise of
C acts which fall within the definition of undue influence. It is enough for our purpose to say, that of one thing there can be no doubt : The mere act of canvassing for a candidate cannot amount to undue influence within the meaning of section 171C of the Penal Code.

In *Baburao Patel* v. *Dr. Zakir Husain*,(1) this Court while em-
D phasising the distinction between mere canvassing and the exercise of undue influence, observed :

> "It is difficult to lay down in general terms where mere canvassing ends and interference or attempt at interference with the free exercise of any electoral right begins. That
E is a matter to be determined in each case; but there can be no doubt that, if what is done is merely canvassing, it would not be undue influence. As sub-section (3) of section 171C shows, the mere exercise of a legal right without intent to interfere with an electoral right would not be undue influence".

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In *Shiv Kirpal Singh* v. *Shri V.V. Giri*,(2) the Court observed that "if any acts are done which merely influence the voter in making his choice between one candidate or another, they will not amount to interference with the free exercise of the electoral right", that the expression 'free exercise' of the electoral right must be read in the
G context of an election in a democratic society and, therefore, candidates and their supporters must be allowed to canvass support by all legal and legitimate means. Accordingly, the offence of undue influence can be said to have been committed only if the voter is put under a

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(1) [1968] 2 S.C.R. 133.
(2) [1971] 2 S.C.R. 197, 225, 320, 321.

threat or fear of some adverse consequence, or if he is induced to believe that he will become an object of divine displeasure or spiritual censure if he casts or does not cast a vote in accordance with his decision : "But, in cases where the only act done is for the purpose of convincing the voter that a particular candidate is not the proper candidate to whom the vote should be given, that act cannot be held to be one which interferes with the free exercise of the electoral right", A B

Ram Dial v. *Sant Lal*[1] was a case of undue influence under proviso (a) (ii) to section 123(2) of the Representation of the People Act, 1951. The appellant therein had circulated a poster under the authority of the supreme religious leader of the Namdhari Sikhs in a constituency where a large number of voters were Namdhari Sikhs. This Court observed that there cannot be the least doubt that even a religious leader has the right freely to express his opinion on the comparative merits of the contesting candidates and to canvass for such of them as he considers worthy of the confidence of the electors. Such a course of conduct on his part will only be a use of his great influence amongst a particular section of the voters in the constituency and that, it will amount to an abuse of his great influence only if the words which he utters leave no choice to the persons addressed by him in the exercise of their electoral rights. On the facts of the case it was held that the religious leader, by his exhortations and warnings to the Namdhari electors, that disobedience of his mandate will carry divine displeasure and spiritual censure left no choice to them to exercise their right of voting freely. C D E

Thus, the allegation of the pestitioners that Shri Beg asked the voters to cast their votes in favour of Respondent 1 and not to cast them for Shri H.R. Khanna on the ground that the latter was not a safe or suitable candidate as compared with Respondent 1, does not make out the offence of undue influence as defined in Section 171C of the Penal Code. It must follow that the Election Petition does not disclose any cause of action for setting aside the election of Respondent 1 on the ground of undue influence as specified in section 18(1) (a) of the Act. F

The remaining grounds alleged by the petitioners for invalidating the election of Respondent 1 are misconceived. The use of Government machinery, abuse of official position and appeal to communal sentiments so long as such appeal does not amount to G H

(1) [1959] Suppl. 2 SCR 748 at 758, 759.

A undue influence, are not considered by the Legislature to be circumstances which would invalidate a Presidential or a Vice-Presidential election. Assuming, therefore, that any such acts were done, they cannot be relied upon for declaring the election of Respondent 1 void. As we have said already, the laws of election are self-contained codes and the rights arising out of elections are the off-springs of B those laws. We cannot engraft the provisions of the Represenation of the People Act, 1951 upon the statute under consideratiotn and thereby enlarge the scope of an election petition filed to challenge a Presidential or Vice-Presidential election. Such an election can be set aside on the grounds specified in section 18(1) of the Act only. Since the other allegations made by the petitioners do not fall within C the scope of that provision, they have to be rejected.

For these reasons, our finding on the issue under consideration is that the averments in the Election Petition, assuming them to be true and correct, do not disclose any cause of action for setting aside the election of the returned candidate on the grounds stated in section D 18(1)(a) of the Act.

It was contended on behalf of the petitioners that the Act would be unconstitutional if it is interpreted as limiting the challenge to the Presidential or Vice-Presidential election to the grounds set forth in section 18(1). In support of this argument reliance is placed E by learned counsel for the petitioners on the provisions contained in Article 71(1) of the Constitution which says : "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". It is urged that the Constitution has conferred upon the Supreme Court the power to inquire F into and decide upon every kind of doubt or dispute arising out of or in connection with a Presidential eleetion and since, section 18(1) restricts that power to the grounds stated therein. it is *ultra vires* Article 71(1). This argument overlooks that clause (3) of Art. 71 confers power upon the Parliament, subject to the provisions of the Constitution, to make a law for regulating matters relating to or G connected with the election of the President or the Vice-President. While enacting a law in pursuance of the power conferred by Article 71(3), the Parliament is entitled to specify the particular kind of doubts or disputes which shall be inquired into and decided by the Supreme Court. If the petitioners were right in their contention, H every kind of fanciful doubt or frivolous dispute under the sun will have to be inquired into by this Court and election petitions

will become a fertile ground for fighting political battles. A

That leaves for consideration one other contention. Article 58(1) of the Constitution provides that no person shall be eligible for election as President unless he (a) is a citizen of India, (b) has completed the age of thiry-five years, and (c) is qualified for election as a member of the House of the People. Article 84(a) B provides that a person shall not be qualified to be chosen to fill a seat in Parliment unless, *inter alia* he makes and subscribes an oath or affirmation set out for the purpose in the Third Schedule. The argument of the petitioners is that a candidate contesting a Presidential election must take the oath as prescribed by Article 84(a) and since Respondent 1 had not taken such oath, his election is C unconstitutional. This argument is unte nable. Article 58 which prescribes "Qualifications for elections as President", provides three conditions of eligibility for contesting the Presidential election. One of these conditions is that the, cadidate must be qualified for election as a member of the House of the People. Article 84 speaks of "qualifications for membership of Parliament". No person can fill D a seat in the Parliament unless, *inter alia*, he subscribes to the oath or affirmation according to the form set out in the Third Schedule. The form prescribed by the Third Schedule shows that it is restricted to candidates who desire to contest the election to the Parliament. In the very nature of things, a candidate who wants to contest the election for the office of the President cannot take the oath in any of the E forms prescribed by the Third Schedule. That Schedule does not prescribe any form of oath for a person who desires to contest a Presidential election.

In the result, Election Petition No. 4 of 1982 is also dismissed. There will be no order as to costs. F

N.V.K. *Petitions dismissed.*