

The Indian Law Reports

Before Hon'ble B. S. Nehra, J.

CH. KATAR SINGH, EX. FINANCE MINISTER,
HARYANA,—*Petitioner.*

Versus

SHRI HARI SINGH NALWA, M.L.A. HARYANA.—*Respondent.*

Election Petition No. 17 of 1991.

7th January, 1992.

*Representation of the Peoples Act, 1951—Ss. 33, 36, 81 & 83—
Nomination Papers filed on behalf of the candidate—Proposers
signed at wrong column—Candidate also signed at wrong column—
Rejection of such nomination papers—Whether such rejection is
valid.*

*Held that the failure on the part of Liakat and Parma Nand to
sign the nomination papers of Shri Chuhar Singh as proposers
cannot be called defects in completing the declaration as to symbols
and, therefore, it cannot be said that these are defects not of sub-
stantial character as envisaged under the Rules. These defects can
also not be termed as misnomer, or inaccurate description or
clerical, technical or printing error and, therefore, the returning
officer has neither the discretion to allow the candidate to correct
the same nor could he overlook the same as envisaged by the second
part of the proviso to sub-section (4) of Section 33.*

(Para 17)

*The failure on the part of Chuhar Singh to sign the second
part of nomination papers is tantamount to the failure on his part
to give assent to his candidate as also to declare his age.*

(Para 18)

*The failure to sign the declaration in the second part of the
nomination paper as regards the age of the candidate has rendered
the defect in the nomination paper to be of substantial character.*

R. L. Batta, Sr. Advocate, with G. C. Tangri, Advocate and
S. K. Pabbi, Advocate, *for the Petitioner.*

J. K. Sibal, Sr. Advocate (Sanjeev Sharma, Swarnjit Kohli and
Naresh Joshi, Advocates with his,—*for the Respondent.*

 JUDGMENT

B. S. Nehra, J.

(1) Whether an election petition, filed under the Representation of the People Act, 1951 (hereinafter referred to as 'the Act'), which does not disclose any cause of action, is liable to be dismissed at the threshold, is the crucial point for determination in this case. Before proceeding to analyse the point under consideration, it is necessary to set out the relevant facts of this case.

(2) The election petition has been filed by Ch. Katar Singh, Ex. Finance Minister, Haryana (hereinafter referred to as 'the petitioner') under Section 80-A and 81 read with Section 100 of the Act with the prayer that the election of Shri Hari Singh Nelwa, respondent (hereinafter referred to as 'the respondent') as Member of the Haryana Legislative Assembly from 18-Samalkha Constituency (the result of which was declared on 17th June, 1991) be declared void under Sections 100 (1) (c) and 100 (1) (d) (iii) & (iv) of the Act. The petitioner is a citizen of India, and is enrolled as voter in village Patti Kalyana, district Karnal. This village falls in 18-Samalakha Assembly Constituency of Haryana. The election to the Haryana Legislative Assembly was held on 20th May, 1991. The petitioner and the respondent besides others had filed nomination papers for the 18-Samalakha Assembly Constituency, the polling of which took place on 20th May, 1991. The election result was declared on 17th June, 1991. The respondent secured the highest number of votes and was declared elected. The votes polled by the petitioner and other candidates were as under :—

(i) Total votes polled :	74,586
(ii) Votes rejected :	3,961
(iii) Votes tendered :	14
(iv) Ch. Katar Singh Congress (I) :	22,479
(v) Phool Wati SJP :	19,927
(vi) Om Parkash BJP :	2,559
(vii) Jai Lal S/o Devi Ram :	869
(viii) Ram Phal :	116
(ix) Sat Pal :	112
(x) <i>Surinder</i>	176
(xi) Hari Singh Nalwa	24,225

One Shri Chuhar Singh had also filed his nomination papers on 26th April, 1991. In the first nomination paper No. 72, copy Annexure P-1, the name of the proposer of the said Shri Chuhar Singh, was Liakat. Similarly Annexure P-2, copy of nomination paper No. 73, was the second nomination filed by the same Liakat for Shri Chuhar Singh. Annexures P-3 and P-4 are copies of two more nomination papers filed by Shri Parma Nand for the said Shri Chuhar Singh. The candidate and the proposer had signed the above nomination papers. Their translations are Annexures P-1-A to P-4-A. The Returning Officer had issued receipts for Rs. 250 on account of cash security deposited by Shri Chuhar Singh. The oath was also administered to him by the Returning Officer. He (Chuhar Singh) along with his two proposers, viz, Liakat and Parma Nand was present before the Returning Officer on the date of the filing of the nomination paper. He, being an Ex. M.L.A., was a known public figure and was also known to the Returning Officer personally. The scrutiny of the nomination papers was held on 27th April, 1991 by the Returning Officer but he rejected all the four nomination papers of Shri Chuhar Singh without recording any reason therefor. On the same date, viz, 27th April, 1991, the nomination papers of one Shri Chandgi Ram, another candidate for this constituency, were rejected in which reasons were recorded by the Returning Officer. The petitioner's allegations is that there was no defect of substantial character in terms of sub-section (4) of Section 36 of the Act in the said nomination papers. Shri Chuhar Singh had fully complied with the requirements of Section 36(1) of the Act. The Returning Officer had fully satisfied himself regarding the particulars of Shri Chuhar Singh in the light of the relevant entries in the electoral rolls and also their correctness.

(3) It has further been alleged that the Returning Officer had improperly and illegally rejected 568 votes of villages Karkoli and Basera falling in 18-Samalakha Constituency during the course of counting. He has rejected in all 3,961 votes improperly on the date of counting of votes. About 3,000 votes were rejected by the Returning Officer on the ground that the signatures of the Presiding Officer were not found on the ballot papers. The petitioner had filed objections before the Returning Officer on 17th June, 1991. But he has illegally rejected the objections of the petitioner.—*vide* order dated 17th June, 1991. The majority of the valid ballot papers were polled in favour of the petitioner which were improperly rejected and this rejection has materially affected the result of the election of the successful candidate, Shri Hari Singh Nalwa. His

election is, therefore, liable to be declared void under Sections 100 (1) (d) (iii) and (iv) of the Act.

(4) On notice of this petition being issued to the respondent, he filed an application C.M. No. 11-E of 1991 under Order 6 Rule 16 and under Order 7 Rule 11 read with Section 151 of the Civil Procedure Code. The averments in the application are that the allegations of the petitioner are based on the improper rejection of nomination papers and also alleged irregularities in the counting of votes in violation of the Act. However, paragraphs 5, 6, 7, 8, 10, 11 and 12 of the election petition are vague, unnecessary, scandalous, frivolous and vexatious. These will tend to delay the fair trial of the petition. These paragraphs are, therefore, liable to be struck off from the pleadings in accordance with the provisions of Order 6 Rule 16 of the Civil Procedure Code. The contents of paragraphs 6, 7, 10, 11 and 12 have not been properly verified. For lack of proper verification, the petition is not maintainable. The petition is also not maintainable because it does not disclose any cause of action in as much as material facts prescribed under Section 83 of the Act have not been spelled out in the petition to constitute a cause of action. The respondent, has therefore, prayed (a) that the paragraphs 5, 6, 7, 8, 10, 11 and 12 of the election petition be struck off and (b) the election petition be dismissed at the threshold before it goes on trial as it does not disclose any cause of action.

(5) In his reply to the said objection petition of the respondent, the petitioner has denied that the contents of paragraphs 5, 6, 7, 8, 10, 11 and 12 of the petition are vague etc. and asserted that these paragraphs concern with the improper rejection of nomination papers of Chuhar Singh by the Returning Officer without stating any reason. According to the petitioner, paragraphs 6, 7, 10, 11 and 12 have been properly verified and further that the respondent has filed the present application to delay the trial of the election petition and, therefore, the petitioner has sought its dismissal.

(6) The perusal of the election petition, thus, shows that two points have been raised by the petitioner, assailing the election of the respondent to the 18-Samalakha Assembly Constituency. It has, first, been alleged that the Returning Officer had improperly rejected the nomination papers of Shri Chuhar Singh without recording any reasons as required by law and despite the fact that he knew Shri Chuhar Singh being a former M.L.A. and second that the Returning Officer had improperly rejected 3961 votes. According to the petitioner, if these votes had not been so rejected,

the majority of 3,000 votes would have gone in his favour and he would have thus been declared elected to the 18-Samalakha Assembly Constituency. On the other hand, the respondent's case is that even if the averments in the election petition are accepted, the petition is liable to be dismissed because no cause of action is shown to exist in favour of the petitioner. The respondent has added that the nomination papers of Chuhar Singh were rightly rejected and that the averments in the petition with respect to the wrongful rejection of votes are too vague to be tried in an election petition. Having heard the learned counsel for the parties at a considerable length, I find that the objections raised by the respondent in his application under Order 6 Rule 16 and under Order 7 Rule 11 read with Section 151 of the Civil Procedure Code, which have been set out above, are well founded and hence his application is liable to be allowed and Election Petition dismissed at the threshold as will be observed for the reasons discussed hereinafter.

(7) Section 83(1) of the Act deals with the contents of an election petition. Sub-section (1) of this Section provides that an election petition shall contain a concise statement of the material facts on which the petitioner relies. Section 86 of the Act deals with the trial of an election petition and sub-section (1) thereof provides that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117. It is true that this Section does not specifically provide that an election petition is also liable to be dismissed on the ground of the petitioner's failure to comply with the provisions of clause (a) of Section 83 of the Act but on careful analysis of the facts of this case in the light of the relevant provisions of the Act it leaves no manner of doubt for coming to the conclusion that an election petition is also liable to be dismissed, if the petitioner, as in this case, fails to comply with the provisions of Section 83(a) of the Act.

(8) In dealing with the first objection of the petitioner, which relates to the alleged wrongful rejection of the nomination papers filed in respect of Chuhar Singh, it is necessary to reproduce and examine the said four nomination papers, the translations of which are Annexure P-1-A to P-4-A :

"ANNEXURE P-1-A
FORM 2 B Reject
(See rule 4)

NOMINATION PAPER

Sd/-
Chuhar Singh

Election to the Legislative Assembly of Haryana.

I nominate as a candidate for election to Legislative Assembly from the *Samalkha* assembly constituency.

Candidate's name *Chuhar Singh*, Father's Name *Shri Soran*.

His postal address *Village Post Narayana, Sub Tehsil Samalakhia Distt. Panipat*.

His name is entered at S. No. 603 in Part No. 66 electoral roll for the *Samalakhia* assembly constituency.

My name is *Liakat* and it is entered at S. No. 397 in part No. 4 of the electoral roll for the *Samalakhia* assembly constituency.

Dated : 26th April, 1991.

Sd/-
Chuhar Singh
(Signature of Prosper)

I, the above-mentioned candidate, assent to this nomination and hereby declare :—

- (a) that I have completed 65 years of age ;
- (b) that I am (set up) at this election by the *Janta Party* ;
- (c) that the symbols I have chosen are, in order of preference
(i) *Haldhar chakar* (ii)————— (iii)—————.
- (d) My and My father's names have been properly mentioned in *Hindi*.
- (e) According to the best of my personal knowledge and belief I am (qualified) and not (disqualified) in filling up Haryana Vidhan Sabha by the process of election.

*I further declare that I am a member of—————caste/tribe which is a **scheduled caste/tribe of the State of Haryana in relation to ————— (area) in that State.

Dated : 26th April, 1991.

(Signature of Candidate)
Liakat

* Score out this paragraph, if not applicable.

** Score out the word not applicable.

Ch. Kartar Singh, Ex. Finance Minister, Haryana v. Shri Hari Singh Nalwa, M.L.A. Haryana (B. S. Nehra, J.) 7

(To be filled by the Returning Officer)

Serial No. of nomination paper 72.

(9) This nomination was delivered to me at my office at 1.30 (hour) on 26th April, 1991 (date) by the *candidate/prosper.
Date : 26th April, 1991.

Sd/-
Returning Officer. 26-4-91
18 Samalakha Vidhan Sabha
Constituency and
Distt. Revenue Officer Panipat.

Decision of Returning Officer Accepting or Rejecting the Nomination Paper.

I have examined this nomination paper in accordance with section 36 of the Representation of the People Act. 1951 and decide as follows :

Rejected

Sd/-
Returning Officer
18 Samalakha Vidhan Sabha
Constituency and Distt.
Revenue Officer, Panipat."

Date :

ANNEXURE P-2-A

FORM 28

(See rule 4)

NOMINATION PAPER

Election to the Legislative Assembly of Haryana.

I nominate as a candidate for election to Legislative Assembly from the *Samalakha* assembly constituency.

Candidate's name *Chuhar Singh*,
Father's Name *Shri Soran*

His postal address *Village Post Office Narayana Sub Tehsil Samalakha Distt. Panipat.*

His name is entered at S. No. 603 in part No. 66 electoral roll for the *Samalakra* assembly constituency.

My name is Liakat and it is entered at S. No. 397 in part No. 4 of the electoral roll for the *Samalakra* assembly constituency.
Date : 26th April, 1991.

Sd/-
Chuhar Singh
(Signature of Prosper)

I, the above mentioned candidate, assent to this nomination and hereby declare :

- (a) that I have completed 65 years of age ;
- (b) that I am (set up) at this election by the *Janta Party* ;
- (c) that the symbols I have chosen are. in order of preference
(i) Haldar Chakar (ii)————— (iii)—————.
- (d) My and My father's name have been properly mentioned in Hindi ;
- (e) According to the best of my personal knowledge and belief I am (qualified) and not (disqualified) filing up Haryana Vidhan Sabha by the process of election.

*I further declare that I am a member of—————caste/tribe which is a **scheduled caste/tribe of the State of Haryana in relation to ————— (area) in that State.

Date : 26th April, 1991.

(Signature of Candidate)
Liakat

* Score out this paragraph, if not applicable.

** Score out the word not applicable.

(To be filled by the Returning Officer).

Serial No. of nomination paper 73.

This nomination was delivered to me at my office at 1.32 (hour) on 26th April, 1991 (date) by the candidate/prosper.
Date : 26th April, 1991.

Sd/-
(Sd.) Returning Officer
18 Samalakha Vidhan Sabha
Constitutency and Distt.
Revenue Officer, Panipat.

Decision of Returning Officer Accepting or Rejecting the Nomination paper.

(10) I have examined this nomination paper in accordance with section 36 of the Representation of the Peoples Act, 1951 and decide as follows :—

Rejected
Returning Officer
18 Samalakha Vidhan Sabha
Constitutency and Distt.
Revenue Officer, Panipat.

Date :

ANNEXURE P-3-A

74

26th April, 1991

FORM 2 B

(See Rule 4)

NOMINATION PAPER

Election to the Legislative Assembly of Haryana

I nominate as a candidate for election to Legislative Assembly from the *Samalakha* assembly Constitutency.

Candidate's name Chuhar Singh

Father's Name Shri Soran.

His postal address Village Post Office Naryana, *Sub Tehsil Samalakha Distt. Panipat.*

His name is entered at Serial No. 603 in part No. 66 electoral roll for the *Samalakha* constituency.

My name is *Parmanand* and it is entered at Serial No. 133 in Part No. 63 of the electoral roll for the *Samalakha* assembly constituency.

Date : 26th April, 1991.

Sd/-
Chuhar Singh
(Signature of Prosper)

I, the above mentioned candidate, assent to this nomination and hereby declare :—

- (a) that I have completed 65 years of age ;
- (b) that I am (set up) at this election by the *Janta Party*
- (c) that the symbols I have chosen are, in order of preference
(i) *Haldhar Chakar* (ii)——— and (iii)———.
- (d) My and my father's names have been properly mentioned in Hindi ;
- (e) According to the best of my personal knowledge and belief I am (qualified) and not (disqualified) in filling up Haryana Vidhan Sabha by the process of election.

I further declare that I am a member of———caste/tribe which is a schedule caste/tribe of the State Haryana in relation to ——(area) in that State.

Date : 26th April, 1991.

Signature of Candidate
Parmanand

* Score out this paragraph, if not applicable.

** Score out the word not applicable.

Ch. Kartar Singh, Ex. Finance Minister, Haryana v. Shri Hari 11
Singh Nalwa, M.L.A. Haryana (B. S. Nehra, J.)

(To be filled by the Returning Officer)

Serial No. of nomination paper is 74.

This nomination was delivered to me at my office at 1.34 (Hour)
on 26th April, 1991 (date) by the Candidate/prosper.
Date : 26th April, 1991.

Sd/-

Returning Officer
18 Samalakha Vidhan Sabha
Constitutency and Distt.
Revenue Officer, Panipat.

Decision of Returning Officer Accepting or Rejecting the Nomi-
nation Paper.

I have examined this nomination paper in accordance with
section 36 of the Representation of the People Act, 1951 and decide
as follow :—

Rejected

Sd/-

Returning Officer
18 Samalakha Vidhan Sabha
Constitutency and Distt.
Revenue Officer, Panipat.

Date :

ANNEXURE P-4-A

75

26-4-1991.

Reject

FORM 2 B

(See Rule 4)

NOMINATION PAPER

Sd/-

Chuhar Singh

Election to the Legislative Assembly of Haryana

I nominate as a candidate for election to Legislative Assembly
from the *Samalakha* assembly constitutency. Candidate's name
Chuhar Singh Father's Name *Shri Soran*.

His postal address *Village Post Office Naryana, Sub Tehsil Samalakha Distt. Panipat.*

His name is entered at Serial No. 603 in part No. 66 electoral roll for the Samalakha assembly constituency.

My name is *Parmanand* and it is entered at Serial No. 133 in part No. 63 of the electoral roll for the *Samalakha* assembly constituency.

Date : 26th April, 1991.

Sd/-
Chuhar Singh
(Signature of Prosper)

I, the above mentioned candidate, assent to this nomination and hereby declare :—

- (a) that I have completed 65 years of age ;
- (b) that I am (set up) at this election by the *Janta Party* ;
- (c) that the symbols I have chosen are, in order of preference
(i) Haldar Chakar (ii)————— and (iii)—————.
- (d) My and my father's names have been properly mentioned in *Hindi*.
- (e) According to the best of my personal knowledge and belief I am (qualified) and not (disqualified) in filling up Haryana Vidhan Sabha by the process of election.

I further declare the I am a member of the——cast/tribe which is a schedule caste/tribe of the State of Haryana in relation to——(area) in that State.

Date : 26th April, 1991.

(Signature of Candidate)
Parmanand

* Score out this paragraph, if not applicable.

** Score out the word not applicable.

(To be filled by the Returning Officer)

Serial No. of nomination paper is 75.

This nomination was delivered to me at my office at 1.36 (Hour) on 26th April, 1991 (date) by the candidate/prosper.

Date : 26th April, 1991.

Sd/-

Returning Officer

26-4-1991.

18 Samalakha Vidhan Sabha
Constitutency and Distt.
Revenue Officer, Panipat.

Decision of Returning Officer Accepting or Rejecting the Nomination paper.

I have examined this nomination paper in accordance with section 36 of the Representation of the People Act, 1951 and decide as follows :—

Rejected

Sd/-

Returning Officer,
18 Samalakha Vidhan Sabha
Constitutency and Distt.
Revenue Officer, Panipat.

Date :

(11) As already noticed, nomination papers Annexures P-1 A and P-2-A were intended to have been filed by one Shri Liakat in respect of Chuhar Singh while nomination papers Annexures P-3-A and P-4-A were filed by one Shri Parma Nand in respect of the said Shri Chuhar Singh. A bare look at these nomination papers shows that these are in two parts, viz, the first part which is required to be signed by the proposer and the second part which is required to be signed by the candidate. Contrary to the requirement of law, the first part in all the four nomination papers, instead of being signed by the proposer, has in fact been signed by Chuhar Singh candidate while the second part in all these nomination papers, which was required to be signed by the candidate, has been signed by the proposer. To put it differently, the only inference that can be drawn from these nomination papers is that it is Shri Chuhar Singh who has proposed Liakat in the first two nomination papers and in

the third and the fourth nomination papers, it is Chuhar Singh again who has proposed Parma Nand. Rule 4 of the Conduct of Election Rules framed under the Act requires that every nomination paper shall be completed to such one of the Forms 2A to 2E as may be appropriate. The proviso added to this rule, however, lays down that the defect in completing, the declaration as to symbols in a nomination paper in Form 2A or Form 2B shall not be deemed to be a defect of a substantial character within the meaning of sub-section (iv) of Section 36 of the Act. All that this proviso stipulates is that a defect in completing the form as to symbols in a nomination paper shall not be deemed to be a defect of substantial character.

(12) Now the relevant portion of Section 33 of the Act may be noticed : It reads :

“(1) On or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer :

... ..

(4) On the presentation of a nomination paper, the returning officer satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls :

(Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the returning officer shall permit any such misnomer

or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked.”

Section 36 of the Act, which deals with the scrutiny of the nomination reads as under :

“36. *Scrutiny of nominations*,—(1) On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer of each candidate, and one other person duly authorised in writing by each candidate, but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.

(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, (reject) any nomination on any of the following grounds :—

(a) (that on the date fixed for the scrutiny of nominations the candidate) either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely :—

Articles 84, 102, 173 and 191, (Part II of this Act and sections 4 and 14 of the Government of Union Territory Act, 1963 (20 of 1963), or

(b) that there has been a failure to comply with any of the provisions of section 33 or section 34; or

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine.)

(3) Nothing contained in clause (b) or clause (c) of sub-section (2) shall be deemed to authorise the (rejection) of the

nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination in respect of which no irregularity has been committed.

- (4) The returning officer shall not reject nomination paper on the ground of any defect which is not of a substantial character.
- (5) The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 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.

Provided that in case (an objection is raised by the returning office 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.

- (6) 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.
- (7) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force of a constituency 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 a disqualification mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950).
- (8) Immediately after all the nomination papers have been scrutinized and decision accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board."

(13) The provisions of Section 33(i) of the Act, as extracted above, cast a duty on a candidate to file a nomination paper complete

in the prescribed form and signed by the candidate and by an elector of the constituency as proposer. On the presentation of such nomination papers, the returning officer is required to satisfy, under sub-section (4) Section 33 of the Act, that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls. According to the second part of the proviso to sub-section (4) of Section 33, the returning officer is authorised to permit any misnomer or inaccurate description of clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked.

(14) Mr. R. L. Batta, the learned Sr. counsel for the petitioner, contended that the signing of the nomination paper at wrong places by the candidate and his proposer as noticed above were merely in the nature of misnomer or inaccurate description or clerical, technical or printing error, which, either the returning officer should have allowed to be corrected by the candidate or he (returning officer) should have overlooked the same. The learned counsel further urged that since the returning officer knew Shri Chuhar Singh being a former M.L.A. and further because he (Chuhar Singh) had signed all these nomination papers on the top also, the returning officer should have overlooked the objections instead of rejecting the nomination papers. In the alternative, he submitted that these errors in the four nomination papers do not constitute defects of substantial character justifying the rejection of the nomination papers by the returning officer. The last limb of his contention in this behalf was that since the returning officer has failed to record reasons under sub-section (6) of Section 36 of the Act while rejecting the nomination papers, the election should be held to be void and the election petition allowed on that ground.

(15) It is, therefore, to be considered as to whether the defect in the four nomination papers filed by Shri Chuhar Singh can be called defects of substantial character. As already noticed, these nomination papers apparently do not show that the proposers have proposed the name of Shri Chuhar Singh nor do these show that Shri Chuhar Singh has assented to the nomination papers and signed the declaration as envisaged in the second part of these nomination

papers. The learned counsel for the petitioner relied on *M. Kamalam v. Dr. V. A. Syed Mohammed* (1). In this case, in an election petition, signatures had been put by the petitioner at the end of an affidavit and not on an election petition. The Supreme Court held that such a defect in the election petition does not constitute a ground for the dismissal of the petition. Obviously, this judgment is inapplicable to the facts of the present case for what is being dealt in the instant case is the objection with regard to the wrongful rejection of a nomination paper and not regarding the improper signing of an affidavit in election petition filed in the Court. Reliance has next been placed on *Mathura Prasad v. Ajeem Khan* (2). The relevant observations of the apex Court are contained in para 8 of the report. It has been observed therein that "It is correct that the Returning Officer should not reject a nomination papers merely on a mistake of technical or formal nature, where the identity of the candidate can be ascertained by him on the material made available to him. He should also give an opportunity to the candidate or his representative present at the time of scrutiny to remove the defect. However, in case neither the candidate nor his representative be present and without removing such defect in the nomination paper the identity of the candidate cannot be ascertained, then there is no statutory duty cast on the Returning Officer to make a roving enquiry by going through the material placed before him and to remove such defect himself." In that case, the nomination paper had been rejected by the returning officer as the candidate was not identified as per electoral roll and both he and his representative remained absent. Their Lordships of the Supreme Court, therefore, held that no duty was cast on the returning officer to peruse the entire electoral roll and consequently held the rejection of the nomination paper to be valid. This case is also apparently distinguishable on facts. The learned counsel for the petitioner then cited *Rangilal Choudhury v. Dahu Sao and others* (3). In that case, the facts were that "to fill up a vacancy in Bihar Legislative Assembly from Dhanbad Constituency, nomination papers were filed. Appellant was one of the candidates who had filed a nomination paper. The proposer had nominated the appellant for election from Bihar and not Dhanbad assembly constituency. The nomination was made on a Hindi form printed for the purpose by the Government. The printed form did not exactly conform to the

(1) A.I.R. 1978 S.C. 840.

(2) A.I.R. 1990 S.C. 2274.

(3) A.I.R. 1962 S.C. 1248.

Hindi printed form in the Rules framed under the Representation of the People Act, 1951. The heading in the specimen printed form in the Rules required the name of the State, in which the election was held, to be filled in the blank space there, but in the printed form supplied to the candidate the name of the State was already printed in the heading and therefore the blank space had to be filled in with the name of the constituency. The candidate therefore filled in the name of the constituency in the blank space in the heading. Thereafter the proposer filled in the next part of the form which had five columns———, after the main part which said that the proposer nominates". On these facts, the Supreme Court held that "considered in the background that the election was a bye-election and not a general election and that the mistake occurred in the printing form, the mistake committed in filling the form by the proposer, was not of a substantial character and that it was quite clear that the nomination was for the Dhanbad Constituency", and, therefore, held that the rejection of the nomination paper on this ground by the returning officer was improper. The facts of this case are also clearly distinguishable from the instant case before this Court.

(16) On the other hand, the learned counsel for the respondent vehemently urged that none of the four nomination papers filed by Shri Chuhar Singh can be called as nomination papers at all, for neither the two proposers, viz, Liakat and Parma Nand, can be said to have proposed Chuhar Singh nor can it be said that in the second part of the nomination papers, Shri Chuhar Singh has assented to his nomination and signed the declaration especially as regards his age as provided in clause (a) of the second part of the nomination paper. After careful consideration of the contention of the learned counsel, I find that the same is well-merited.

(17) The failure on the part of Liakat and Parma Nand to sign the nomination papers of Shri Chuhar Singh as proposers cannot be called defects in completing the declaration as to symbols and, therefore, it cannot be said that these are defects not of substantial character as envisaged in the proviso to rule 4 *ibid.* These defects can also not be termed a misnomer, or inaccurate description or clerical, technical or printing error and, therefore, the returning officer had neither the discretion to allow the candidate to correct the same nor could he overlook the same as envisaged by the second part of the proviso to sub-section (4) of Section 33 *ibid.* The defects in these nominations could be called a misnomer if, for instance, Chuhar Singh had been described as Chuhar Ram in the

electoral rolls but he had filled his name in the nomination paper as Chuhar Singh. It could be called an inaccurate description if Chuhar Singh, for instance, had merely described himself as Chuhar instead of Chuhar Singh. By no stretch of reasoning can these defects be called clerical, technical or printing errors within the meaning of the proviso *ibid.* In fact the conclusion is irresistible that Chuhar Singh had failed to complete the nomination papers in the prescribed form and similarly his electors had failed to fill up the relevant spaces in the form as proposers in accordance with law as required by section 33(1) of the Act. Except for merely asserting that Chuhar Singh had signed the four nomination papers on the top and that he was known to the returning officer being a former Legislator, the petitioner had failed to furnish any material facts for concluding that the returning officer had committed an illegality in rejecting the nomination papers.

(18) It has been found above that failure on the part of Chuhar Singh to sign the second part of the nomination papers is tantamount to the failure on his part to give assent to his candidature as also to declare his age even though in column (a) it has been stated that he has completed his 65 years of age. This declaration as already noticed has been signed either by Liakat or by Parma Nand in the four declaration forms and not by Chuhar Singh. The implication, therefore, is clear that Chuhar Singh has not given a declaration as regards his age. In *Brijenderlal Gupta and another v. Jawalaprasad and others* (4), the facts were that a candidate had omitted to make declaration regarding his age in the nomination paper. This defect was discovered at the time of scrutiny of the nomination paper and as a result his nomination paper was rejected by the returning officer. The question for consideration before the Supreme Court was whether the omission on the part of such a candidate to specify his age in the nomination paper amounts to defect and if so whether it is defect of substantial character under Section 36(4) of the Act. In paragraph 10 of the report, their Lordships observed that "there is little doubt that the age of the candidate is as important as his identity, and in requiring the candidate to specify his age the prescribed form has given a place of importance to the declaration about the candidate's age. Just as the nomination paper must show the full name of the candidate and his electoral roll number and just as the nomination paper must be duly signed by the candidate, so must it contain the declaration by the candidate about his age. It is significant that the statement about the age of the candidate is required to be made by the candidate above

(4) A.I.R. 1960 S.C. 1049.

his signature and is substantially treated as his declaration in that behalf. That being the requirement of the prescribed nomination form it is difficult to hold that the failure to specify the age does not amount to a defect of a substantial character." Relying on these observations of the apex Court the conclusion is irresistible that the failure on the part of Chuhar Singh, to sign the declaration in the second part of the nomination paper as regards his age, has rendered the defect in the nomination paper to be of substantial character.

(19) The next point to be considered is whether the provisions contained in sub-section (6) of Section 36 of the Act, which require that the returning officer shall record in writing a brief statement of his reasons while rejecting a nomination paper is mandatory or merely directory. Undoubtedly, the language of this sub-section tends to show as if it was mandatory on the part of the returning officer to record reasons while rejecting nomination paper. Relying on the ratio of the judgment of the Supreme Court in *State of U. P. v. Manbodhan Lal Srivastava* (5), the learned counsel for the respondent however, argued that in the circumstances of the case, the provisions of sub-section (6) of Section 36 of the Act are merely directory and not mandatory and, therefore, the failure on the part of the Returning Officer to record reasons cannot be taken to mean that the rejection of the nomination paper of Chuhar Singh was illegal or that this has any material affect on the result of the election. In *Manbodhan Lal Srivastava's case* (supra), the Supreme Court was considering the provisions of Article 320 (3) (c) of the Constitution of India. These provisions require prior consultation with the Public Service Commission before taking any disciplinary action against a Government servant. In that case, the Public Service Commission had not been consulted on a relevant issue by the Government. The question before their Lordships of the Supreme Court was whether, having regard to the provisions of Article 320 of the Constitution, it has to be construed as a mandatory provision or merely a directory one. In para 10 of the report, their Lordships of the Supreme Court had referred to the judgment of the Judicial Committee of the Privy Council in the case of *Montreal Street Rly Co. v. Normandin* (6), the relevant part of which is reproduced below :

"In that case the question mooted was whether the omission to revise the jury lists as directed by the statute, had

(5) A.I.R. 1957 S.C. 912.

(6) 1917 A.C. 170 (B).

the effect of nullifying the verdict given by a jury. Their Lordships held that the irregularities in the due revision of the jury lists, will not *ipso facto* avoid the verdict of a jury."

The Board made the following observations in the course of their judgment :

".....The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at. The cases on the subject will be found collected in Maxwell on Statutes, 5th ed., p. 596 and following pages. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold *null* and *void* acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done."

(20) Relying on these observations, it can be said in the instant case, that the Returning Officer was performing a public duty but the case is such that to hold *null* and *void* acts done by him in neglect of his duty would work serious general inconvenience inasmuch as the whole election process will be set as naught and this would cause injustice to persons who have no control over those entrusted with the duty and at the same time it would not promote the main object of Legislature and, therefore, I am inclined to hold that the provisions of sub-section of Section 36 of the Act were directory and not mandatory and hence the failure on the part of the Returning Officer to record reasons while rejecting the nomination paper of Chuhar Singh does not materially affect the result of the election in this case. For these reasons, the first point relating to the alleged wrongful rejection of the nomination papers of Chuhar Singh is found to be devoid of any merit for declaring the election of the respondent to be void as the petitioner has failed to point out any cause of action in this regard.

(21) That takes me to the second contention of the learned counsel for the petitioner that the returning officer had improperly

rejected some votes. The relevant allegation, in this behalf, is contained in para 12 of the election petition and on being briefly summarised, it is found to contain three parts to be dealt with. The first part relates to the alleged illegal rejection of 568 votes of villages Karkoli and Basera; the second part deals with the improper rejection of 3961 votes on the date of counting and the third part deals with the wrongful rejection of 3,000 votes by the returning officer, out of which the petitioner claims that he would have got the majority of these votes. No material facts have been given by the petitioner as to how 568 votes of villages Karkoli and Basera were wrongly rejected by the returning officer nor with regard to the wrongful rejection of 3961 votes on the date of counting. The petitioner has also not been able to bring out as to what would have happened if these votes had not been so rejected by the returning officer. In other words, he has failed to furnish material facts to show that these votes could have been polled in his favour. The only point which can be seriously looked at for consideration is the allegation with respect to the alleged rejection of 3,000 votes by the returning officer, out of which the petitioner claims that he would have got majority of votes. According to simple arithmetic, the majority of 3,000 votes would come to 1,501 votes and viewed in this context, the best that can be said is that the petitioner claims that he would have got 1,501 votes out of the said 3,000 votes had not these been wrongly rejected. The averments contained in para 4 of the petition indicate that the petitioner had obtained 22,479 votes while the respondent, who was declared successful in this election, had secured 24,225 votes. In this way, there was margin of 1,746 votes by which the respondent had won the election against the petitioner. Thus even if the 1,501 votes, which the petitioner, by inference, claims that he would have secured out of 3,000 allegedly wrongly rejected votes, he would still not have won the election because the margin of votes by which he had lost against the respondent was much more than 1,501 votes. Even on the second point, thus, the petitioner has failed to furnish material facts as to how the returning officer had acted illegally in rejecting these 3,000 votes. In *Hardwari Lal v. Kanwal Singh* (7), it was held by the Supreme Court that an election petition, which does not set out material facts so as to furnish a cause of action, can be dismissed by virtue of section 87 though not under section 86 of the Act.

(22) It has been held by the apex Court in *Dhartipakar Madan Lal Agarwal v. Shri Rajiv Gandhi* (8), (para 14 of the report) that

(7) A.I.R. 1972 S.C. 515.

(8) A.I.R. 1987 S.C. 1577.

“Section 83 lays down a mandatory provision in providing that an election petition shall contain a concise statement of material facts and set forth full particulars of corrupt practice. The pleadings are regulated by Section 83 and it makes it obligatory on the election petitioner to give the requisite facts, details and particulars of each corrupt practice with exactitude. If the election petition fails to make out a ground under Section 100 of the Act it must fail at the threshold.....The emphasis of law is to avoid a fishing and roving inquiry.” In para 11 of the report of this case,, their Lordships—
—held that the pleadings have to be precise, specific and unambiguous and if the election petition does not disclose a cause of action, it should be rejected *in limine*. If the allegations contained in the election petition do not set out ground of challenge as contemplated by section 100 of the Act and if the allegations do not conform to the regulations of Sections 81 and 83 of the Act, the pleadings are liable to be struck off and the election petition liable to be rejected. If after striking out defective pleadings the Court find that no cause of action remains to be tried it would be duty bound to reject the petition under O. VII, R. 11, Civil P.C. If a preliminary objection is raised before the commencement of the trial, the court is duty bound to consider the same, it need not postpone the consideration for subsequent stage of the trial. In *Udhav Singh v. Madhav Rao Scindia* (9), the Supreme Court held that “All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are material facts.....all those facts which are essential to clothe the petitioner with a complete cause of action, are material facts which must be pleaded and failure to plead even a single material facts amounts to disobedience of the mandate of Section 83(1) (a). These observations have a direct bearing on the present case for rejecting the petition.

(23) While upholding the objections raised by the respondent in his application C.M. No. 11-E of 1991, it is held that the petitioner has failed to disclose any cause of action for setting aside the election of 18-Samalakha Assembly Constituency held on 20th May, 1991. Accordingly C.M. No. 11-E of 1991 is allowed and resultantly the election petition is dismissed at the threshold. The parties are left to bear their own costs.

S.C.K.