
(2008) 09 AHC CK 0249
In the Allahabad High Court

Major S.N. Tripathi

APPELLANT

Vs

Election Commission of India and Others

RESPONDENT

Date of Decision : 10-09-2008

Acts Referred:

Constitution of India, 1950 — Article 102, 13, 14, 170, 173
Representation of the People Act, 1951 — Section 100, 123, 15, 169, 2

Citation : (2008) 09 AHC CK 0249

Hon'ble Judges : S.S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.S. Chauhan, J.—The petitioner belongs to the 84 Mahona Assembly Constituency (for short the "constituency"). The petitioner being an elector of the constituency of the returned candidate and feeling that the election of the returned candidate was not in accordance with the provisions of the Representation of Peoples Act (for short the R.P. Act) and the constitutional mandate felt his duty to challenge the election.

2. The elections to the Assembly were notified u/s 15(2) of the R.P. Act on 21st February, 2007, whereby election in all the 403 Assembly Constituencies in Uttar Pradesh was to be held. In pursuance to the notification u/s 15(2) of the R.P. Act, the opposite party No. 1 issued notice u/s 30 of the the R.P. Act, notifying various dates to hold the election. The nominations were to be filed between 3rd of April, 2007 to 10th of April, 2007 and scrutiny was to be made on 11th of April, 2007. In the notice it was also provided that any candidate may withdraw nomination by 13th of April, 2007 and allotment of the symbols was to be made on the said date at 3.00 p.m. Thirty six persons filed their nominations on the prescribed form and the returned candidate being one of the candidates also filed his nomination after being shown as candidate on the form prescribed by the Constitution in the Third Schedule. Out of the thirty six nominations, one nomination was rejected and the remaining thirty five nominations were declared

to be valid. After holding of the election, immediately the opposite party No. 3 was declared as elected on 11th of May, 2007.

3. The petitioner has filed the election petition, inter alia, on the ground specified in Section 100(1) (a); (b) and (d)(1)(iv) of the R.P. Act. It has also been pleaded that the nomination paper of the returned candidate has been improperly accepted which was liable to be rejected u/s 36(2) of the R.P. Act, since free and fair election has not been held. The Bahujan Samaj Party (for short BSP) being a juristic person there is no provision and no concept of recognizing political party in the Constitution and in our democratic system and, therefore, the election contested by the returned candidate was in violation of Articles 173, 170, 324, 375, 246(3), 19(1)(c), 19(4), 19(1)(a), 21, 14 and 13(2) of the Constitution and Sections 2(1)(f), 5(c), 15(2), 29-A(7), 32, 33(1), 79 (b) and (d), 36(2)(a), 123(2), 169 of the R.P. Act and Rule 5 of the Conduct of Election Rules, 1961 (for short Rules of 1961) and on account of the illegal holding of election the result of the returned candidate is void. The returned candidate is not a qualified candidate and he is disqualified on account of mandate of Article 173 of the Constitution and Rule 5 of the Rules. Since the election has not been conducted in accordance with the provisions of the R.P. Act, the provisions of The Election Symbols (Reservation and Allotment) Order, 1968 (herein-after referred to as the "Symbols Order" for short) are a blatant transgression of the prescribed limits of power under Article 324(1) and delegated power u/s 29-A(7) of the R.P. Act and Rule 5 and 10 of Rules of 1961. Further submission is that it is a total fraud on the Constitution of India and a conspiracy against the R.P. Act, by which a positive instrument of direct election in each constituency directed to ascertain the popular will of each constituency separately from the others, both in reality and form, has been transformed into a mere ritual calculated to generate illusion of difference to mass-opinion, highlighting the popularity of the recognized political parties.

4. The petitioner further submits that Article 173 poses a rider on a person to be qualified to be chosen to fill a seat in the Legislature of a State unless he is a citizen of India and makes and subscribes before some person authorized in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule; is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and in the case of a seat in the Legislative Council, not less than thirty years of age; and possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament. The emphasis of the petitioner is in regard to the Clause (C) of Article 173 and on that basis he asserts that unless permitted by Article 173(c) the returned candidate could not have contested the election as agent of BSP and was disqualified. The only category of persons who can contest the election is described under Article 173. The returned candidate, who has contested the election on the symbol of BSP is disqualified to contest the election on the symbol of BSP as he cannot contest election as an Agent of any person or party since it violates Article 173 (a) and (c). The petitioner submits that since

returned candidate was not qualified, his nomination paper was improperly accepted, which vitiated the election. The Returning Officer has not discharged his duty fairly. In fact, it is not necessary to establish that the election was materially affected when such disqualification is attached. It has also been submitted that how the election is materially affected is stated in the petition and to buttress his argument he further submits that when election is contested in the given circumstances, then the question of materially affecting the election has to be taken into consideration.

5. The petitioner further states that he has sent a registered letter on 12th of March, 2007 to the Returning Officer and the same has not been considered while accepting the nomination of the returned candidate. The objection of the petitioner has been ignored whereas it was incumbent upon the Returning Officer to have considered the said objection as contemplated u/s 36(2) of the R.P. Act. Section 36(2) of the R.P. Act embraces within itself the provisions of Articles 324, 102, 173 and 191. The petitioner, therefore confines his argument in regard to violation of Article 173(1)(c) and emphasizes for Clause (c) wherein it has been provided that a person shall be qualified for membership of the State Legislature if he possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament. The sum and substance of the argument of the petitioner is that the returned candidate could not have contested the election as an agent of any person or party. The election of any candidate can be declared void on any grounds specified u/s 100 of the R.P. Act and the returned candidate was not possessing the qualification as laid down under Constitution as well as under the R.P. Act. The election of returned candidate is void as he was not qualified to be chosen to fill the seat on account of non-compliance of the provisions of the Constitution or the R.P. Act or any rules or orders made thereunder. The non-compliance has been alleged as regards to the non-fulfillment of qualification as contemplated under Article 173(c).

6. The petitioner has also submitted that Section 79 of the R.P. Act defines a candidate to mean a person who has been or claims to have been duly nominated as a candidate at any election and the returned candidate means a candidate whose name has been published u/s 67 of the R.P. Act as duly elected.

7. The petitioner has placed reliance upon (i) Harikrishna Lal Vs. Babu Lal Marandi, ; (ii) N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, ; (iii) Sushil Kumar Vs. Rakesh Kumar, ; (iv) Ram Prasad Sarma Vs. Mani Kumar Subba and Others, ; (v) D. Ramachandran Vs. R.V. Janakiraman and Others, ; (vi) AIR 1949 78 (Privy Council) ; (vii) Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, ; (viii) Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, ; (ix) Hari Shankar Jain Vs. Sonia Gandhi, ; (x) Durga Shankar Mehta Vs. Thakur Raghuraj Singh and Others, ; (xi) Jibontara Ghatowar Vs. Sarbananda Sonowal and Others, .

8. After filing of the election petition, notices were issued to the returned candidate and the returned candidate has filed an application under Order 7,

Rule 11 of the CPC (hereinafter referred to as the CPC), inter alia, pleading therein that the election petition does not disclose any cause of action and the material facts set out do not disclose complete cause of action and the petition does not give rise to any triable issue. It has also been pleaded as to in what manner the election of the returned candidate has been affected and which provision of the Act and the orders made thereunder have been violated has not been disclosed. The concept of recognized political party has been duly accepted by the Parliament through Act No. 1 of 1989, by means of which Part IV-A has been inserted in the R.P. Act. The Symbols Order of 1968 has been issued by the Election Commission of India through the notification dated 31st August, 1968. Article 324 of the Constitution vests general powers of superintendence, direction and control of the elections to the Election Commission and it provides for classification of political parties and its recognition and de-recognition. The validity of the Symbols Order of 1968 was challenged before the Apex Court, which upheld the constitutional validity of the Symbols Order of 1968.

9. The learned Counsel for the returned candidates further states that now by means of Act No. 1 of 1989, Part IV-A has been inserted in the R.P. Act, which recognizes the political parties. None of the grounds mentioned u/s 100 of the R.P. Act are attracted in the present case in any manner and neither the disqualification as pleaded by the petitioner is legally sustainable and in what manner the returned candidate has been disqualified is altogether missing in the election petition by breaching the provisions of the Constitution of India or R.P. Act or any Rules and orders made thereunder. The election petition is barred in view of the law laid down by the Apex Court in *Kanhiya Lal Omar Vs. R.K. Trivedi and Others*, which has upheld the validity of the Act and the Symbols Order of 1968. It is on the aforesaid assertions that it has been pleaded that the election petition does not disclose any cause of action and the opposite party No. 3 even on merit as pleaded in the election petition is not disqualified in any manner and so the petition may be dismissed on the threshold.

10. An objection has been filed by the petitioner to the application under Order 7, Rule 11 of the CPC, reiterating the allegations made in the election petition and re-emphasizing the disqualification of the returned candidate and also submitting that the election of the returned candidate on account of disqualification is liable to be declared void. The parties have also filed their written arguments, which have been taken on record.

11. The learned Counsel for the returned candidate has placed reliance upon (i) *Kanhiya Lal Omar* (supra); (ii) *Azhar Hussain Vs. Rajiv Gandhi*, ; (iii) *Bhagwati Prasad Dixit "Ghorewala" Vs. Rajeev Gandhi*, ; (iv) *Mr. V. Narayanaswamy Vs. Mr. C.P. Thirunavukkarasu*, ; (v) *Jaipal Singh Vs. Smt. Sumitra Mahajan and Another*, ; (vi) *Lata Devi (Mali) Vs. Haru Rajwar*, ; (vii) *Shiv Charan Singh Vs. Chandra Bhan Singh and Ors*, ; (viii) *Kamalnath Vs. Sudesh Verma*, .

12. The learned Counsel for the parties have been heard at length, giving them full opportunity to argue on facts and law points as formulated by them.

13. The question which falls for consideration in this election petition is as to whether any of the reliefs prayed for could be granted to the petitioner if the averments made in the petition are taken to be true. If the answer to the question is in affirmative, the maintainability of the petition has to be upheld.

14. The petitioner happens to be an elector. He has pleaded that there is a constitutional disqualification on the part of the returned candidate as contemplated under Article 173(c) on account of the fact that he did not possess the qualifications which are prescribed in that behalf by or under any law made by Parliament. To give force to his argument, he has further argued that Article 173 lays down the qualification for membership of the State Legislature and puts a rider and carves out an exception in regard to the qualification or rather lays down disqualification in regard to a candidate who wants to contest or is contesting election. The first rider is that a candidate should be citizen of India and should make and subscribe before some person authorized in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule. Clause (b) prescribes in addition to the above that in the case of a seat in the Legislative Assembly the candidate should not be below twenty five years of age and Clause (c) prescribes for some other additional qualifications which are to be possessed by a candidate, which may be prescribed by or under any law made by Parliament. The submission that the R.P. Act does not provide anything in regard to the returned candidate to contest election on behalf of BSP has to be considered in the light of the law propounded by the Apex Court and also the provisions of the R.P. Act. In order to appreciate the controversy on which the petitioner wants to emphasize the Court has to consider the various case laws which have been relied upon by him so as to prove his point and also prove the disqualification of the returned candidate.

15. In N.P. Ponnuswami (supra) the Apex Court has held as follows:

...This argument displays great dialectical ingenuity, but it has no bearing on the result of this appeal and I think it can be very shortly answered. u/s 36, Representation of the People Act, 1951, it is the duty of the Returning Officer to scrutinize the nomination papers to ensure that they comply with the requirements of the Act and decide all objections which may be made to any nomination. It is clear that unless this duty is discharged properly, any number of candidates may stand for election without complying with the provisions of the Act and a great deal of confusion may ensue....

16. In Durga Shankar Mehta (supra) again the Constitution Bench re-emphasized the duty of the Returning Officer and thereby held as follows:

...If the want of qualification of a candidate does not appear on the face of the nomination paper or of the electoral roll, but is a matter which could be established only by evidence, an enquiry at the stage of scrutiny of the nomination papers is required under the Act only if there is any objection to the nomination. The Returning Officer is then bound to make such enquiry as he

thinks proper on the result of which he can either accept or reject the nomination. But when the candidate appears to be properly qualified on the face of the electoral roll and the nomination paper and no objection is raised to the nomination, the Returning Officer has no other alternative but to accept the nomination....

17. Then in para 9 of the said case, it was held as under:

...When a person is incapable of being chosen as a member of a State Assembly under the provisions of the Constitution itself but has nevertheless been returned as such at an election, it can be said without impropriety that there has been non-compliance with the provisions of the Constitution materially affecting the result of the election. There is no material difference between "non-compliance" and "non-observance" or "breach" and this item in Clause (c) of Sub-section (2) may be taken as a residuary provision contemplating cases where there has been infraction of the provisions of the Constitution or of the Act but which have not been specifically enumerated in the other portions of the clause.... If it is said that Section 100 of the Act enumerates exhaustively the grounds on which an election could be held void either as a whole or with regard to the returned candidate we think that it would be correct view to take that in the case of a candidate who is constitutionally incapable of being returned as a member there is non-compliance with the provisions of the Constitution in the holding of the election and as such Sub-section (2)(c) of Section 100 of the Act applies....

18. Much emphasis has been given by the petitioner in repeating the words used in well celebrated case of Mohinder Singh Gill (supra), wherein Their Lordships ruled as under:

...If civics mean anything to a self-governing citizenry, if participatory democracy is not to be scuttled by the law, we shall not be captivated by catchwords. The straight-forward conclusion is that every Indian has a right to elect and be elected and this is a constitutional as distinguished from a common law right and is entitled to cognizance by Courts subject to statutory regulation.... The appellant has a right to have the election conducted not according to humour or hubris but according to law and justice....

19. In Jibontara Ghatowar (supra) in para 14 it was held as under:

...In an election dispute, a consensus contrary to law or a failure to discharge statutory obligation cast on an election officer which has resulted in prejudicing the result of the election, cannot ipso facto claim immunity from challenge. In the present case the Returning Officer has clearly failed in discharging his obligation cast by the first proviso below Clauses (g) and (h) of Sub-rule (2) of Rule 56. Disagreeing with the High Court, therefore, we hold that these 824 ballot papers should have been included for the purpose of counting.

20. Then in para 16 of the said case, it was held as under:

This Court noted the observation made earlier in Bhag Mal v. Ch. Parbhu Ram

that the Constitution and connected laws aim at ensuring true democracy functioning in the country, and the will of the people to prevail. That can be achieved by allowing the one to represent the constituency who has obtained the majority of valid votes by proper and due process of law....

21. Then again in para 17 it was held as under:

...for the purity of the election process needs to be preserved unpolluted so as to achieve the predominant goal of democracy that only he should represent the constituency who has been chosen by the majority of the electors. This is the purpose and object of the election law.

22. In Harikrishna Lal (supra) the principles laid down in Durga Shankar Mehta (supra) were followed and it was held that if there is an objection only then the Returning Officer is bound to make such enquiry as he thinks proper on the result of which he can either accept or reject the nomination but when the candidate appears to be properly qualified on the face of the electoral roll and the nomination paper and no objection is raised to the nomination, the Returning Officer has no other alternative but to accept the nomination.

23. On the above case laws the argument of the petitioner has to be considered and looked into so as to arrive at the disqualification appended to the returned candidate as alleged by the petitioner. What has persuaded the petitioner to file the election petition seems to be his understanding in regard to Article 173 and the provisions of the R.P. Act, Rules and Orders issued thereunder. The disqualification which has been pleaded is that the returned candidate cannot contest election as a nominee of any political party and the concept of political party is not recognized either under the R.P. Act or under the Constitution and for this purpose the petitioner has placed reliance upon Article 173 r/w Section 100(1), Clause (d)(iv) of the R.P. Act. For perusal Clause (d)(iv) of the R.P. Act is reproduced below for perusal:

100. Grounds for declaring election to be void-

(i) Subject to the provisions of Sub-section (2) if the High Court is of opinion-

(a) ...

(b) ...

(c) ...

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-

(i) ...

(ii) ...

(iii) ...

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act the High Court shall declare the election of the returned candidate to be void.

24. The non-compliance of the Constitution in the understanding of the petitioner is that the concept of contesting election on behalf of political party is foreign to the Constitution of India. The attention drawn towards Section 36 of the R.P. Act has also been in the spirit that the Returning Officer should have considered the objection and rejected the nomination of the returned candidate as the objection of the petitioner was lying there since 12th of March, 2007. In order to appreciate the argument, the scheme of the Act has to be looked into and so far as Section 36 of the R.P. Act is concerned, it circumscribes the function of the Returning Officer to certain limitation. The Returning Officer on the date fixed for scrutiny in regard to nominations which have been filed u/s 30 of the R.P. Act will permit the candidates, their election agents, one proposer of each candidate, and one other person duly authorized in writing by each candidate but no other person to attend the scrutiny at such time and place as appointed by him. He will 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 of the R.P. Act. The scheme of the Act seems to be that proper opportunity in regard to filing of objection has to be given to the candidates, their election agents, one proposer of each candidate, and one other person duly authorized in writing by each candidate but not other person. The words "duly authorized in writing by each candidate" qualified by the words "but no other person" leads to only one conclusion that the exercise is limited by the Returning Officer only to the extent of all contesting candidates. As far as the petitioner's anxiety to get his objection decided is concerned, in my opinion, the law does not entitle him to file objection at that stage as the functioning of the Returning Officer is very sensitive with the cumbersome process of election to be held shortly after the scrutiny. The petitioner may be a public spirited person and may also be concerned with the electoral process with all sincerity and anxiety but the conditions imposed u/s 36 of the R.P. Act take me to the otherwise conclusion. u/s 36(2) of the R.P. Act the Returning Officer is to examine the nomination papers and is to decide all objections as aforesaid and if he thinks necessary may reject any nomination on any such grounds enumerated therein. The nomination of the returned candidate is sought to be questioned on account of violation of Article 173, which finds place in Section 36(2)(a) of the R.P. Act, alongwith Articles 84, 102 and 191.

25. The disqualifications under the R.P. Act can be of different dimensions which have been laid down in Chapter II and Chapter III. In Chapter II, Section 5 a rider has been imposed that a person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless he is a member of Scheduled Caste or Scheduled Tribe and is an elector for any Assembly constituency in that State and in the case of any other seat, he is an elector for any Assembly constituency in that state and u/s 8 the disqualification has been provided on

attainment of conviction. Article 173 itself imposes a disqualification in the form that the candidate should be a citizen of India and he should subscribe to the oath provided by the Election Commission as set out in the Third Schedule and also he should not be below twenty five years of age. So, the disqualifications provided under the Act and Article 173 are clear in their form and the legislative intent appears to be clear in this regard.

26. Part IV-A of the R.P. Act was inserted by the Act 1 of 1989 w.e.f. 15.06.1989. Part IV-A deals with the registration of the associations and bodies as political parties. Section 29-A of the R.P. Act provides for registration of any association or body of individual citizens of India as a political party. Any such association or body with a view to avail itself of the provisions of Part IV-A will make an application to the Election Commission for its registration as a political party. If the association or body is in existence at the commencement of the Act 1 of 1989, the application has to be made within sixty days from the date of such commencement and if the association or body is formed after such commencement, within thirty days next following such commencement. The application has to be signed by the Chief Executive Officer of the association or body and presented to the Secretary to the Commission or sent to such Secretary by registered post. The Commission will be at liberty to call for any such other particular as it may deem fit from the association or body and after considering all the particulars in its possession and any other necessary and relevant factors and after giving the representatives of the association or body reasonable opportunity of being heard, the Commission shall decide either to register the association or body as a political party for the purposes of this Part, or not so to register it; and the Commission shall communicate its decision to the association or body. The association or body shall not be registered as a political party if it does not comply with the mandate of Sub-section (5). The decision of the Commission shall be final. After the association or body has been registered as a political party, any change in its name, head office, office bearers, address or any other material matters shall be communicated to the Commission without delay.

27. The introduction of Part IV-A in the R.P. Act itself goes to indicate that the concept of political party has been recognized in the Act. Section 29-A is not to be read in isolation but has to be read in accordance with the entire scheme of election. The scheme of election does not work on single factor but there are numerous factors which contribute and are essential for holding a free and fair election. The Parliamentary form of the Government is to survive on certain contingencies and requirements. The R.P. Act has taken care of the same alongwith the Symbols Order of 1968 and if one adverts to Form 2B which has been framed in pursuance to Rule 4, then Part-I deals with the candidate set up by recognized political party and from Part-III it is clear that the candidate has to indicate as to whether he is a candidate set up by the recognized national/state political party and that the symbol reserved for the above party be allotted to him or that he is a candidate set up by the registered unrecognized political party

or that he is contesting as an independent candidate. Rule 4 also acquires significance in reference to Form 2B. Rule 4 lays down that every nomination presented u/s 33(1) R.P. Act shall be completed in such one of the Forms 2A to 2E as may be appropriate. It has further been provided that failure to complete or 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 Section 36(4). Therefore, it is evident from the reading of Section 29-A alongwith Rule 4 and Form 2B that elections are to be held by three modes, viz., a person can contest election - (i) as a candidate of the recognized national/state political party; (ii) as a candidate of the registered unrecognized political party; and (iii) as an independent candidate. For the purposes of election for any Parliamentary or Assembly constituency, to which this Symbols Order of 1968 applies, a candidate shall be deemed to be set up by a political party, if, and only if - (a) the candidate has made the declaration to this effect in his nomination paper; (b) a notice by the political party in writing, in Form 2B, to that effect has, not later than 3 p.m. on the last date for making nominations, been delivered to the Returning Officer of the constituency; (c) the said notice is signed by the President, the Secretary or any other office bearer of the party, and the President, Secretary or such other office bearer sending the notice has been authorised by the party to send such notice; (d) the name and specimen signature of such authorized person are communicated by the party to the returning Officer of the constituency and to the Chief Electoral Officer of the of the State or Union Territory concerned, not later than 3 p.m. on the last date for making nominations; and (e) Form A and B are signed, in ink only, by the said office bearer or person authorized by the party.

28. The mechanism set-forth in the R.P. Act and Rules and the Symbols Order of 1968 read with Form 2B makes it explicit and clear that a candidate can contest election as a representative of a political party. More or less identical argument came up for consideration in *Kanhiya Lal Omar* (supra) and Their Lordships while considering the entire scheme of the Act and Symbols Order of 1968 also considered the definition of political party as defined in Clause 2(1)(h) of the Symbol Order of 1968 and held in para 10 as under:

It is true that till recently the Constitution did not expressly refer to the existence of political parties. But their existence is implicit in the nature of democratic form of Government which our country has adopted. The use of a symbol, be it a donkey or an elephant, does give rise to an unifying effect amongst the people with a common political and economic programme and ultimately helps in the establishment of a Westminster type of democracy which we have adopted with a Cabinet responsible to the elected representatives of the people who constitute the Lower House. The political parties have to be there if the present system of Government should succeed and the chasm dividing the political parties should be so profound that a change of administration would in fact be a revolution disguised under a constitutional procedure. It is no doubt a paradox that while the country as a whole yields to no other in its corporate sense of unity and

continuity, the working parts of its political system are so organized on party basis - in other words, "on systematized differences and unresolved conflicts". That is the essence of our system and it facilitates the setting up of a Government by the majority. Although till recently the Constitution had not expressly referred to the existence of political parties, by the amendments made to it by the Constitution (Fifty-second Amendment) Act, 1985 there is now a clear recognition of the political parties by the Constitution. The Tenth Schedule to the Constitution which is added by the above Amending Act acknowledges the existence of political parties and sets out the circumstances when a member of Parliament or of the State Legislature would be deemed to have defected from his political party and would thereby be disqualified for being a member of the House concerned. Hence it is difficult to say that the reference to recognition, registration etc. of political parties by the Symbols Order is unauthorised and against the political system adopted by our country.

29. The above dictum of the Apex Court leads to only one conclusion that in a democratic form of Government which our country has adopted after the Fifty-second Amendment Act of 1985, there is a clear recognition of the political parties by the Constitution. The law has not restricted there. It has further gone by introducing Part IV-A in the R.P. Act. With the introduction of Part IV-A in the Act by Amendment Act 1 of 1989 w.e.f. 15.06.1989 the concept of recognized political parties has been introduced in the R.P. Act as well as in the Constitution. Taking a guide and the binding nature of the effect of the law declared by the Apex Court, it would be appropriate to adopt the same line of reasoning and hold that the returned candidate could have contested as a candidate of the political party.

30. The next question which has been argued with great emphasis by the petitioner is that the election petition as framed if raises a triable issue, then the same is to be tried in accordance with the procedure prescribed. It is another thing that it may finally fail on account of the settled legal position.

31. In support of his argument the petitioner has placed reliance on *Makhan Lal Bangal v. Manas Bhunia and Ors.* (2001) 2 SCC 652; *Orissa Mining Corporation Limited v. Klockner and Co. and Ors.* AIR 1995 Ori 163 and *M/s. Raptakos Brett and Co. Ltd. Vs. Ganesh Property, .*

32. The reliance placed by the petitioner on the case of *Makhan Lal Bangal* (supra) in regard to Order 14 of the CPC relates to the framing of issues. The settlement of issues arises after the admission by one party and denial by the other. The self concise decision further provides in para 19 that the petition may be disposed of at the first hearing if it appears that the parties are not at issue on any material question of law or of fact and the Court at once may pronounce the judgement. The said case is not applicable in the present set of facts as the said case related to the non-framing of the proper issues.

33. The petitioner has also placed reliance upon the case of *Orissa Mining*

Corporation Limited (supra). In the said case Single Judge of the Orissa High Court held that the question to be determined in the trial is on the basis of material which may be produced by the party at the appropriate stage in the suit and for wiping out the suit under Order 7 Rule 11(a) the averments made in the plaint are only to be looked into. Here in the present case also the petition as a whole has been taken into consideration and also the pleadings made therein and the triable issue raised for determination before the Court.

34. To substantiate his argument the petitioner has further placed reliance upon the case of D. Ramachandran (supra). In the said case, it was held that the election petition as framed discloses a cause of action which if unrebutted could void the election and there it was held that the Order 7 Rule 11 of CPC does not apply. It was also held in the said case that the Court cannot dissect the pleading into several parts and consider whether each one of them discloses a cause of action and there cannot be a partial rejection of the plaint or petition. But, at the same time, the proposition of law which has been laid down is that election petition is to be tried if assuming to be true would entitle the petitioner for the relief asked for.

35. The case of Raptakos Brett (supra) has also been relied upon by the petitioner to contend that the mode of construction of the averments made in the plaint would be to have a conjoined reading of all the paragraphs of the plaint and not to cull out certain portion of the pleading to state that the cause of action is not made out. The principle of law does not vary in this case as a whole and remains unchanged as far as the maintainability of the election petition is concerned as contemplated under Order 7 Rule 11(a) of the CPC.

36. In the case of Mahadeorao Sukaji Shivankar Vs. Ramaratan Bapu and Others, the same principles have been laid down reiterating that if material facts are not stated in the plaint or petition, the same is liable to be dismissed on that ground alone. The Apex Court after evaluating the allegations made in the election petition came to the conclusion that the allegation of corrupt practice was made out in view of the clear averment in that regard but it was emphasized what particulars could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down.

37. The foregoing decisions in unequivocal terms lay down that the material facts have to be set out in election petition and if material facts are not stated in the plaint or petition, the same is liable to be dismissed on that ground alone, as the case would be covered by Clause (a) of Rule 11, Order 7 of the CPC. The words "material facts" have neither been defined in the R.P. Act nor the CPC but in sum and substance the material facts are those facts upon which a party relies for its claim or defence i.e. they are the facts on which the plaintiff's cause of action or the defendant's defence depends. What constitute a material fact in respect of a case will depend upon the nature of the allegations made in the election petition and the case set up by the petitioner.

38. The moot question which falls for consideration is as to whether on the basis of the material facts stated in the election petition if taken to be true can lead to only one conclusion and the relief prayed for by the petitioner is to be granted. In my serious persuasion the Constitutional disqualification as pleaded by the petitioner taking the material facts as set out in the election petition does not lead to the conclusion that the relief prayed for can be granted to the petitioner. The Constitutional disqualification pleaded by the petitioner stands settled by the Apex Court in the case of Kanhiya Lal Omar (supra) and the law in the aforesaid case was laid down way back in the year 1985 when there was no amendment in the R.P. Act in the form of Part IV-A, which recognizes the political parties being the national/state level parties.

39. Forms 2A to 2C have been introduced w.e.f. 09.08.1996 and Parts II and III of Form 2A also recognize the legal sanctity of the candidate to contest election on behalf of political party. The Symbols Order of 1968 also recognizes the contesting of election on behalf of political party in the Parliamentary form of Government. Thus, the facts pleaded in the election petition if taken to set out the complete cause of action, the relief prayed for by the petitioner cannot be granted.

40. Although in the written argument certain other points have been raised but they have not been argued by the petitioner. The petitioner has also not pressed the argument in regard to the corrupt practice. The petitioner has argued with full vehemence in regard to the Constitutional disqualification attached to the returned candidate. The petition is solely based on the aforesaid premises.

41. The election petition if taken on the face value raises only one question in regard to the competence of the opposite party No. 3 to contest the election on behalf of a political party. The petitioner's anxiety to demand for the trial of the election petition over-ruling the preliminary objection may be a cherished desire as the law does not suppose that election petitions should be tried for academic purposes only or for a law point which stands decided and concluded by the judgement of the Apex Court and thereby waste the valuable time of the Court. No doubt, the petitioner in his election petition has made reference to various provisions of the R.P. Act and the Constitution but in spite of that it would be a futile exercise on the part of the Court to allow the trial of the election petition in absence of any triable issue.

42. The argument of the petitioner cannot be appreciated that even though the election petition may ultimately fail but if the cause of action as contemplated under law is complete, then it should be put to trial. Only triable issue which is triable can be tried, which has impact and bearing on the validity of the election. If the objection of the petitioner is to be accepted, then no election in the entire State of U.P. or rather in the country is safe. Therefore, the argument of the petitioner that the election should be put to trial does not appeal to reason and is hereby rejected.

43. On a careful consideration of the pleadings and the law propounded on the subject by the Apex Court, I find no force in the election petition and it is hereby dismissed.

44. There shall be no order as to costs.