
(2018) 07 UK CK 0056
In the Uttarakhand High Court
Case No : Election Petition No. 04 of 2017

Smt. Hema Purohit

APPELLANT

Vs

Sri Trivendra Singh Rawat and others

RESPONDENT

Date of Decision : 11-07-2018

Acts Referred:

Constitution of India, 1950 — Article 329
Representation of the People Act, 1951 — Section 33, 80, 81, 86(1), 100
Code of Civil Procedure, 1908 — Section 35B, Order 7 Rule 11

Citation : (2018) 07 UK CK 0056

Hon'ble Judges : LOK PAL SINGH, J

Bench : Single Bench

Advocate : Sudhir Kumar, Jitendra Chaudhary, Satyapal Jain, Rakesh Thapliyal

Final Decision : Dismissed

Judgement

LOK PAL SINGH, J.

1) Present election petition is instituted under Article 329 of the Constitution of India read with Section 80 / 81 of the Representation of the People Act, 1951.

2) Brief facts of the election petition are that the Election Commission of India issued a Notification on 20th January 2017, for conducting the election

of Assembly Constituencies in State of Uttarakhand, by means of aforesaid Notification the election schedule was notified as under:

- 27th January 2017, last date for making nomination;
- 30th January 2017, for scrutiny of nomination papers,
- 1st February 2017, last date for withdrawal of candidatures;
- 15th January 2017, date for polling - 15th March 2017, the date before which the election process be completed.

3) The name of election petitioner was enlisted in the electoral roll of 2017-18 in regard to 23, Doiwala Legislative Assembly Constituency and she

was fully eligible to contest the election in said constituency.

4) She submitted her nomination paper on 27th January 2017 to the Returning Officer as an independent candidate along with the ten electorals of 23,

Doiwala Legislative Assembly Constituency and also deposited the requisite fee. The respondent nos. 1 to 11 also submitted their nomination forms. It

is contended that as per the guidelines and rules framed by the Election Commission of India, it was the duty of the Returning Officer to point out the

defect if any in nomination paper. An allegation has been made that the election petitioner, who earlier belongs to the Indian National Congress, she

was the suitable candidate, but the respondent no. 6 Sri Heera Singh Bisht succeeded to become the candidate of Indian National Congress, at that

point of time the Government was of INC in State of Uttarakhand and the Returning Officer was under the influence of respondent no. 6, the

Returning Officer rejected the nomination form of the petitioner for non-signing format 2-Kha Part 3 and Part 2 and declaration and other papers.

5) The election in the State of Uttarakhand for Legislative Assembly were held on 15.02.2017 and result was declared on 11.03.2017, whereby Sri

Trivendra Singh Rawat (respondent no. 1 herein) was declared elected as Member of Legislative Assembly of Doiwala constituency.

6) In the election petition the order of rejection of the nomination paper of the petitioner dated 30.01.2017 and consequential order dated 01.02.2017

have been challenged and a prayer has also been made that the election of returned candidate Sri Trivendra Singh Rawat from 23, Doiwala

Legislative Assembly Constituency be declared void and the Election Commission of India be directed to notify afresh election for the aforesaid

constituency.

7) In election petition allegations have been made that the Returning Officer has worked at the instructions of Sri Heera Singh Bisht, who was the

candidate of the then ruling party in the State and the Returning Officer extended his unusual obligation towards the ruling party, i.e., Indian National

Congress and illegally and arbitrarily rejected the nomination form of the election petitioner, otherwise there was no such defect which cannot be

cured.

8) The cause of action to file the election petition has been described in paragraph 28 of the election petition. The contents of paragraph 28 of election petition are extracted hereunder:

That the cause of action arose in favour of the petitioner while the respondent no. 3 Returning Officer rejected her nomination form and further

on the day when her representation was rejected by respondent no. 2 and on that day when the respondent no. 3 was declared a winning candidate

from Diowala seat and the cause of action is still continuing.

9) Initially, the Election Commission of India; State Election Commission of Uttarakhand; Returning Officer of 23 Vidhan Sabha Doiwala / SDM

Doiwala, Dehradun; Sri Trivendra Singh Rawat; Sri A. Hameed; Sri Heera Singh Bisht; Sri Gajendra Singh; Sri Balvendra Singh Negi; Smt. Shikha

Negi; Sri Subhash Chandra Purohit; Sri Surendra Dutt Paitwal; Sri Arun; Smt. Usha Rani and Sri Prakash Chandra Tiwari were arrayed as

respondents in the election petition.

10) The result of the Legislative Assembly Election was declared on 11.03.2017 and election petition was filed on 21.04.2017. The election petition

was put up before the Court on 22.04.2017 and it was admitted and notices were issued to all the respondents calling their response.

11) A Civil Misc. Application no. 6627 of 2017 was moved on behalf of the then respondent no. 1, Election Commission of India seeking direction for

deletion of its name from the array of the parties. Objections were invited on said application, which application was directly sent to the Court. During

the pendency of aforesaid application, another application, being Civil Misc. Application no. 7054 of 2017 was filed to delete names of respondent

nos. 2 and 3 viz. The State Election Commission of Uttarakhand and the Returning Officer from the array of parties.

Arguments were heard on both the applications by this Court and vide order dated 26.10.2017, both the applications were disposed of, directing to

delete the names of original respondent nos. 1, 2 and 3, the names of original respondent nos. 1 to 3 have been deleted from the array of parties and

new memo of parties of election petition has been filed.

12) Returned Candidate has filed his written statement and has raised the preliminary objections of the maintainability of the election petition. It is

contended that at the time of filing the election petition, the copies of the

election petition supplied to the respondents have not been signed and verified by the election petitioner and the mandatory requirement of the rules, regarding signed copy of election petition to the respondents has not been complied with. It is further contended that some paragraphs of the election petition are blank in the copies supplied to the respondents and the copy supplied to the respondent cannot be said to be the correct copy of the election petition as filed in the Court. It is further contended that since the copy supplied to the petitioner is not the correct copy of the election petition and the signatures have not been made on the certified copy, the election petition is liable to be dismissed. It is also contended that the election petition does not disclose the cause of action, thus the election petition is liable to be rejected under Rule 11 of Order VII of the Code of Civil Procedure.

13) Civil Misc. Application no. 14961 of 2017 under Rule 11 of Order VII of the Code of Civil Procedure has been filed by respondent no. 1

(Returned Candidate) along with an affidavit, stating therein that in the affidavit filed by the election petitioner in support of her election petition, she

does not indicate on which date and before whom the same was verified. It is also contended that in the copy of election petition supplied to

respondent no. 1 (returned candidate), no time is mentioned in the affidavit; details of Oath Commissioner is completely missing. It is also contended

that election petition has not been filed on a prescribed form 25 as per the Requirement of Rule 94A of the Conduct of Election Rules, 1961 framed

under the Representation of the People Act, 1951. It is further contended that the true copy of the election petition which is required to be attested by

election petitioner under her own signatures was not presented before the Registrar of this Court as per the requirement of Rule 3 of Chapter XVA of

the Allahabad High Court Rules, 1952 (as applicable to this Court) and there is no compliance of Section 81 of the Representation of the People Act,

1951 and as such the election petition is liable to be dismissed under Section 86(1) of the Representation of the People Act read with Rule 11 of Order

VII of CPC.

14) Objections were invited from the election petitioner against said application. In reply, it is stated that non-filing of nomination form properly by the

election petitioner as per Form 25 and as per the requirement of Rule 94A of the Conduct of Election Rules, 1961 was not such a defect which could

not be cured at the time of scrutiny. It is further contended that if the signed copy of the election petition was not filed before the Registry of this

Court, the Registrar of this Court should have made an objections to it and the election petitioner cannot be blamed for it. It is also stated that while

filing an election petition on the prescribed format as provided in Form 25 as per requirement of Rule 94A of the Conduct of Election Rules, 1961 all

requirement and formalities provided under the law were fulfilled at the time of filing of election petition and there is no procedural defect in it.

Necessary compliance under Rule 3 of Chapter XVA of the Allahabad High Court Rules, including Section 81, 82, 83 and 117 of said Act were made.

An affidavit referred to in the proviso to sub-section (1) of Section 83 as stipulated in Rule 94A of the Conduct of Election Rules, 1961 it is mandatory

that an affidavit shall be sworn before a Magistrate of First Class or a notary or a Commissioner of Oaths and shall be in Form 25, and the election

petitioner has made full compliance of aforesaid Rule 94A by annexing the affidavit sworn before Oath Commissioner on the prescribed format of

Form 25 and there was no defect whatsoever in it. Therefore, it is requested that the application moved under Rule 11 of Order VII should be

dismissed with cost.

15) Heard Mr. Sudhir Kumar & Mr. Jitendra Chaudhary, Advocates for the election petitioner and Mr. Satyapal Jain, Senior Advocate along with Mr.

Rakesh Thapliyal, Advocate appearing on behalf of respondent no. 1 (Returned Candidate).

16) Mr. Satyapal Jain, learned Senior Counsel appearing on behalf of respondent no. 1 would submit that since the nomination paper was not filed on a

prescribed form and it was not duly signed, therefore, at the time of scrutiny the Returning Officer was not supposed to permit the election petitioner

to cure the defects, which were incurable. He would further submit that the election petitioner, who is literate and filed nomination form for contesting

the election of Legislative Assembly, cannot be treated as lay-woman and it is expected from such person to be vigilant in signing the nomination form.

17) Mr. Jain, learned Senior Counsel for the respondent no. 1 would submit that it was not within the domain of Returning Officer on the date of

scrutiny to permit the petitioner to cure the defects, which are incurable.

18) Honâ??ble Apex Court in Rattan Anmol Singh and another vs Ch. Atma Ram

and others, AIR 1954 S.C. 510 has held that since the nomination papers were not properly subscribed, therefore, the Returning Officer has rightly rejected the nomination papers. The relevant paras of the judgment (supra) are extracted as under:

13. The four nomination papers we are concerned with were not signed by the proposers and seconders in the usual way by writing their names, and as their marks are not attested it is evident that they have not been signed, in the special way which the Act requires in such cases. If they are not signed either in one way or the other, then it is clear that they have not been subscribed because subscribing imports a signature and as the Act sets out the only kinds of signatures which it will recognise as valid for the purposes of the Act, we are left with the position that there are no valid signatures of either a proposer or a seconder in any one of the four nomination papers. The Returning Officer was therefore bound to reject them under section 36(2)(d) of the Act because there was a failure to comply with section 33, unless he could and should have had resort to section 36(4).

14. That sub-section is as follows:

The Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character.

The question therefore is whether attestation is a mere technical or unsubstantial requirement. We are not able to regard it in that light. When the law

enjoins the observance of a particular formality it cannot be disregarded and the substance of the thing must be there. The substance of the matter

here is the satisfaction of the Returning Officer at a particular moment of time about the identity of the person making a mark in place of writing a

signature. If the Returning Officer had omitted the attestation because of some slip on his part and it could be proved that he was satisfied at the

proper time, the matter might be different because the element of his satisfaction at the proper time, which is of the substance, would be there, and the

omission formally to record the satisfaction could probably, in a case like that, be regarded as an unsubstantial technicality.

But we find it impossible to say that when the law requires the satisfaction of a particular officer at a particular time his satisfaction can be dispensed

with altogether. In our opinion, this provision is as necessary and as substantial

as attestation in the cases of a will or a mortgage and is on the same footing as the II subscribing "" required in the case of the candidate himself. If there is no signature and no mark the form would have to be rejected and their absence could not be dismissed as technical and unsubstantial. The ""satisfaction"" of the Returning Officer which the rules require is not, in our opinion, any the, less important and imperative.â??

19) Honâ??ble Apex Court in the case of Ram Dayal vs Brijraj Singh and others, AIR 1970 S.C. 110 has held that in view of Section 33(1), Section

36 of the Representation of the People Act, the requirement of signing of nomination papers by a candidate and his / her proposer / proposers is mandatory. In case, nomination papers are not signed by the candidate or the proposer and not attested as per required law, the defect in view of

Section 36(4) is incurable. The relevant para of the judgment (supra) is extracted here-in-under:

â??4 Sec. 33(1) of the Representation of the People Act, 1951, requires that each candidate shall deliver to the returning officer a nomination paper

completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer. The expression ""sign"" is defined in s.

2 (1) of the Act as amended by Act 27 of 1956 as meaning ""in relation to a person who is unable to write his name authenticate in such manner as

may be prescribed"". Rule 2(2) of the Conduct of Election Rules, 1961 provides :

For the purposes of the Act or these rules, a person who is unable to write his name shall, unless otherwise expressly provided in these rules, be

deemed to have signed an instrument or other paper if-

(a) he has placed a mark on such instrument or other paper in the presence of the Returning officer or the Presiding officer or such other officer as

may be specified in this behalf by the Election Commission.

(b) such officer on being satisfied as to his identity has attested the mark as being the mark of that person.

Where a person is unable to write his name, he may place his mark on the instrument or other paper and the requirements of law are complied with,

provided he puts the mark in the presence of the Returning officer or the Presiding officer or such other officer as may be specified in that behalf by

the Election Commission and such officer on being satisfied as to his identity attests the mark as being the mark of that person. Gokla was illiterate.

He impressed his thumb mark on the nomination paper : but it was not placed in the presence of any of the designated officers, nor was there any authentication or attestation of the thumb-mark The requirement under s. 33 (1) of the Act that the nomination shall be signed by the candidate and by the proposer is mandatory. Signing, whenever signature is necessary, must be in strict accordance with the requirements of the Act and where the signature cannot be written it must be authorised in the manner prescribed by the Rules. Attestation is not a mere technical or unsubstantial, requirement within the meaning of s. 36(4) of the Act and cannot be dispensed with. The attestation and the satisfaction must exist at the stage of presentation and omission of such an essential feature may not be subsequently validated at the stage of scrutiny any more than the omission of a candidate to sign at all could have been : Rattan Anmol Singh and Another v. Atma Ram & Others .(1). The nomination papers of Dhani Ram were filed on the last day fixed for receiving the nomination papers. Not being attested as required by law on the date of filing, the defect could not be rectified at the time of scrutiny. Evidence of witnesses for the appellant who deposed that that at the date of scrutiny. Gokla was present outside the office of the Returning Officer and that Dhani Ram brought to the notice of the Returning Officer that Gokla was present and that his signature may be attested, and that the Returning officer declined to accede to the request need not be considered. The Returning officer could not allow Dhani Ram or his proposer to rectify the defect in the nomination papers after the last date of nomination.â??

20) The first limb of submission of Mr. Jain is on improper filing of nomination papers and second limb of his submission is on the principle of Rule 11 of Order VII of the CPC. Mr. Jain would submit that since the application under Rule 11 of Order VII CPC has been filed, therefore, it is the duty cast upon this court to first decide the application and the Court cannot proceed further to decide the election petition on merit.

21) There is no quarrel in this regard as an application under Rule 11 of Order VII of the CPC should be decided at first instance as and when it is moved before the Court at any stage of suit or election petition.

22) Per contra, Mr. Sudhir Kumar learned counsel for the petitioner would submit that the facts stated in the written statement are irrelevant and

while dealing with an application and provisions of Rule 11 of Order VII of CPC, this Court has only to consider the averments of the election petition.

In view of this Court to decide an application under Rule 11 of Order VII CPC the averments made in the plaint or the election petition should be

considered in its entirety. There is no quarrel to the submission advanced by the learned counsel for the election petitioner that only the averments of

the plaint or the election petitioner should be considered while dealing with the application under Rule 11 of Order VII of CPC.

23) Learned counsel for the election petitioner would submit that the written statement has already been filed by the respondent no. 1, therefore, it

would be appropriate to decide the election petition on merit instead of deciding the application under Rule 11 of Order VII of CPC.

24) The Honâ??ble Apex Court in R.K. Roja vs U.S. Rayudu and another, (2016) 14 SCC 275, has held that once an application is filed under Rule

11 of Order VII of CPC, the Court has to dispose of the same before proceeding with the trial. There is no point or sense in proceeding with the trial

of the case, in case the plaint (election petition in the present case) is only to be rejected at the threshold.

25) As per the dictum of Honâ??ble Apex Court, this Court is of the firm opinion that without proceeding any further in the matter, application under

Rule 11 of Order VII of CPC should be decided first.

26) A perusal of the election petition and more particularly, contents of paragraph 28 of the election petition would reveal that there is no whisper of

any allegation against the Returned Candidate. The name of Returning Officer of 23, Vidhan Sabha Doiwala / S.D.M. Doiwala, Dehradun, District

Dehradun has already been deleted from the memo of parties pursuant to the order dated 22.08.2017.

27) An application under Rule 11 of Order VII of CPC was filed by the Returned Candidate after deletion of the name of respondent nos. 1, 2 and 3

from array of parties in the election petition, but the election petitioner has not made any efforts to amend the pleadings and the averments in election

petition remained intact, as they were at the time of filing of the election petition.

28) It is trite that a plaint or election petition cannot be rejected in part and if no cause of action has arisen in the election petition or plaint it should be

rejected as a whole.

29) Honâ??ble Apex Court in the case of Sopan Sukhdeo Sable vs Asstt. Charity Commissioner, (2004) 3 SCC 137, has held that the provisions of

Rule 11 of Order VII of the CPC can be invoked at any stage. A perusal of the plaint would further reveal that in fact cause of action as mentioned in

the election petition is not available to the election petitioner against the returned candidate and other respondents.

30) The purpose of enactment of the provisions of Rule 11 of Order VII of CPC to reject the plaint or election petition at the earliest stage is so that it

may not waste the valuable time of the Court and not to drag the defendants / respondents in a vexatious litigation. Apart from the money, the time is

essential and important for everyone either it is a litigant or the Court. The Parliament in its wisdom, considering the fact that vexatious claims / cases

are being filed in the court of law for ulterior motive like blackmailing, extortion, popularity and sometimes to compel the opposite party to enter into

compromise and other such purposes and to stop such practice, the provisions of Rule 11 of Order VII of CPC and Section 35B of CPC have been

made.

31) For disposal of an application under Rule 11 of Order VII of CPC and its objections, it is necessary for this Court to consider the averments of

election petition alone.

32) A perusal of election petition would reveal that the election petitioner had not signed the nomination form at the time of its presentation to the

Returning Officer and she has not presented the correct copy of the election petition in duplicate in the Registry of this Court.

33) The issue crop up before this Court -â??as to whether non-signing of the nomination form before the Returning Officer as well as non-filing of

correct duplicate copy of the election petition at the time of filing the election petition before the Registrar of this Court, which is mandatory in view of

sub-clause (e) of Rule 11 of Order VII of CPC, the defects as pointed out in the election petition are curable or not?

34) Provisions contained in Rule 11 of Order VII of the Code of Civil Procedure, 1908, are extracted hereunder:

â??11. Rejection of plaintâ?" The plaint shall be rejected in the following cases:â?"

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

(b) where the relief claimed is undervalued, and the plaintiff, on being required

by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the

Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of Rule 9;

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the

Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or

supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave

injustice to the plaintiff.]â??

35) An election petition can be filed on the grounds enumerated in Section 100 of Representation of the People Act, 1951. Section 100 of the Act is

extracted hereunder:

â??100. Grounds for declaring election to be void.

â?" (1) Subject to the provisions of sub-section (2) if [the High court] is of opinion-

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this

Act [or the Government of Union Territories Act, 1963 (20 of 1963)]; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of returned

candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

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

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate⁴[by an agent other than his election agent], or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(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.]

(2) If in the opinion of [the High Court], a returned candidate has been guilty by an agent other than his election agent, of any corrupt practice but [the

High Court] is satisfied-

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed

contrary to the orders, and [without the consent], of the candidate or his election agent;

(b)[Omitted]

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

Then [the High Court] may decide that the election of the returned candidate is not void.â??

36) The election petitioner has been filed by the election petitioner on the ground that her nomination paper has improperly been rejected by the

Returning Officer, which is violation of clause (c) Sub-section (1) of Section 100 of the Representation of the People Act.

37) It is an admitted case of the election petitioner that she has not subscribed the nomination paper properly and due to non-signing of the nomination

papers, the nomination paper of the election petitioner was rejected by the Returning Officer at the time of scrutiny.

38) It is also admitted by the counsel for the election petitioner that on showing the copy of the election petition supplied to the respondent no. 1 that

the paragraphs have not been filled, the date and verification has not been made in the copy supplied to the respondent no. 1 through Registry of this

Court.

39) The counsel for the returned candidate would submit that non-signing of the

nomination form by the candidate is defect incurable, the election

petitioner has also not filed the correct copy of the election petition in the Registry which is mandatory in view of Clause (e) Rule 11 of Order VII of

CPC. He would further submit that the correct and signed duplicate copy of the election petition has not been filed before the Registry of this Court

which is mandatory in view of Clause (e) Rule 11 of Order VII of CPC and the Rules of the Court.

40) Honâ??ble Apex Court in the case of Rattan Anmol Singh (supra) has held that since the nomination paper was not signed and subscribed by the

election petitioner, the defect is incurable.

41) Per contra, counsel for the election petitioner has placed reliance on a decision of Honâ??ble Apex Court in Nandiesha Reddy vs Kavitha

Mahesh, (2011) 7 SCC 721. Two Judges of Honâ??ble Apex Court considering the provisions of sub-section (4) of Section 33 of the Act have held

in paragraph no. 24 of the judgment (supra) that when a nomination paper is presented it is the duty of the Returning Officer to receive the nomination,

peruse it, point out the defects, if any, and allow the candidate to rectify the defect and when the defects are not removed then alone the question of

rejection of nomination would arise.

42) Provisions of Section 33 of the Representation of the People Act, 1951 are extracated hereunder:

â??9[33. Presentation of nomination paper and requirements for a valid nomination. â?"(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 :

[Provided that a candidate not set up by a recognised political party, shall not be deemed to be duly nominated for election form a constituency unless

the nomination paper is subscribed by ten proposers being electors of the constituency:

Provided further that no nomination paper shall be delivered to the returning officer on a day which is a public holiday:

Provided also that in the case of a local authorities' constituency, graduates' constituency or teachers' constituency, the reference to "'an elector of the constituency as proposer'" shall be construed as a reference to ten per cent. of the electors of the constituency or ten such electors, whichever is less, as proposers.]

[(1A) Notwithstanding anything contained in sub-section (1) for election to the Legislative Assembly of Sikkim (deemed to be the Legislative

Assembly of that State duly constituted under the Constitution), the nomination paper to be delivered to the returning officer shall be in such form and

manner as may be prescribed :

Provided that the said nomination paper shall be subscribed by the candidate as assenting to the nomination, andâ?

(a) in the case of a seat reserved for Sikkimese of Bhutia-Lepcha origin, also by at least twenty electors of the constituency as proposers and twenty

electors of the constituency as seconders;

(b) in the case of a seat reserved for Sanghas, also by at least twenty electors of the constituency as proposers and at least twenty electors of the

constituency as seconders;

(c) in the case of a seat reserved for Sikkimese of Nepali origin, by an elector of the constituency as proposer:

Provided further that no nomination paper shall be delivered to the returning officer on a day which is a public holiday.]

(2) In a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination

paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe

is a Scheduled Caste or, as the case may be, a Scheduled Tribe of the State.

(3) Where the candidate is a person who, having held any office referred to in 2[section 9] has been dismissed and a period of five years has not

elapsed since the dismissal, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a

certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the

State.

(4) On the presentation of a nomination paper, the returning officer shall 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.]

(5) Where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny.

[(6) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper:

Provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the returning officer for election in the same constituency.]

[(7) Notwithstanding anything contained in sub-section (6) or in any other provisions of this Act, a person shall not be nominated as a candidate for election,â?

(a) in the case of a general election to the House of the People (whether or not held simultaneously from all Parliamentary constituencies), from more than two Parliamentary constituencies;

(b) in the case of a general election to the Legislative Assembly of a State (whether or not held simultaneously from all Assembly constituencies),

from more than two Assembly constituencies in that State;

(c) in the case of a biennial election to the Legislative Council of a State having such Council, from more than two Council constituencies in the State;

(d) in the case of a biennial election to the Council of States for filling two or more seats allotted to a State, for filling more than two such seats;

(e) in the case of bye-elections to the House of the People from two or more Parliamentary constituencies which are held simultaneously, from more than two such Parliamentary constituencies;

(f) in the case of bye-elections to the Legislative Assembly of a State from two or more Assembly constituencies which are held simultaneously, from more than two such Assembly constituencies;

(g) in the case of bye-elections to the Council of States for filling two or more seats allotted to a State, which are held simultaneously, for filling more than two such seats;

(h) in the case of bye-elections to the Legislative Council of a State having such Council from two or more Council constituencies which are held simultaneously, from more than two such Council constituencies.

Explanation.â?" For the purposes of this sub-section, two or more bye-elections shall be deemed to be held simultaneously where the notification

calling such bye-elections are issued by the Election Commission under section 147, section 149, section 150 or, as the case may be, section 151 on the

same date.]â??

43) A perusal of sub-section (4) of Section 33 of the Act will clearly indicate that the aforesaid section casts a duty upon the Returning Officer to

apprise the candidate to cure the defects which are only clerical, technical and suggest the printing error in regard to the name of the candidate or his /

her proposer. But the Returning Officer cannot permit the candidate and proposers to sign the nomination paper, submitted to the Returning Officer, a

nomination paper is to be subscribed before the Magistrate First Class or the Oath Commissioner and before whom the signatures are to be made on

the nomination papers by the candidate and proposers, after subscribing the oath on affidavit before the Magistrate First Class or Oath Commissioner

nothing can be added in the nomination papers on the direction of the Returning Officer.

44) Facts of the present case are entirely different as the defects, whereupon the nomination form of the election petitioner was cancelled for non-

signing the nomination paper. After subscribing the nomination paper before the Magistrate First Class or Oath Commissioner, sub-Section (4) of

Section 33 of the Representation of the People Act, does not authorize the Returning Officer to apprise the election petitioner that the nomination

paper has not been properly signed and to permit the candidate to cure it.

A Returning Officer is only competent to permit the candidate at the time of submission of nomination paper to remove the arithmetical, clerical or

printing error and not more than that.

45) Honâ??ble Judges of Honâ??ble Apex Court in the case of Rattan Anmol (supra) have held that non-signing the nomination form is defect

incurable and the facts of the present case are exactly the same, in view of this Court, the defect of non-signing of nomination form by the election

petitioner is defect incurable. As there is no foundation of cause of action against the respondents in the election petition, from a perusal of the

averments of the election petition, more particularly, the averments made in paragraph 28 of the election petition pertains to the alleged cause of action

against the Returning Officer, whose name has been deleted from the array of parties. In view of this Court no cause of action is available to the

election petitioner against the present respondents. Since the election petitioner firstly has failed to sign the nomination paper at the time of subscribing

the oath before the Magistrate First Class or Oath Commissioner which was defect incurable. Secondly, the election petitioner has not complied with

the Clause (e) of Rule 11 of Order VII of CPC and the Rules of the Court in non-filing the correct and signed duplicate copy before the Registrar of

this Court. Since in view of this Court the non-signing of the nomination paper by the election petitioner was the defect incurable and at the time of

filing the election petition, the election petitioner has again failed to file the duplicate copy of the election petition as per clause (e) of Rule 11 of Order

VII of CPC and the Rules of the Court, the election petitioner has no cause of action to file the election petition. The election petition is liable to be

dismissed at the threshold without proceeding further. This Court is of the firm opinion that filing of present election petition is mere abuse of process

of law and seems to be vexatious litigation, which has consumed precious time of

the Court, as also the valuable time and money of the respondents as they were dragged in unnecessary litigation. Thus, the election petition is liable to dismissed with exemplary cost.

46) In view of the findings recorded above, the election petition is dismissed with exemplary cost of rupees two lacs.

47) Record of the election petition be consigned to the record room.