15

ELECTION LAW

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I INTRODUCTION

SURVEY OF Election law for the year 2016 includes the analysis of leading Supreme Court judgments dealing with electoral issues mainly emanating under the provisions of the Representation of People Act, 1951.[1] Following the pattern of preceding years, the coverage is confined to the cases that are reported in All India Reporter (AIR) during the calendar year 2016. Six critical issues have been crystalized for consideration as under.

The first issue, which is critical in the determination of an election petition in the first instance, is how to determine in the given fact-matrix whether the allegations made in it reveal any cause of action for setting aside the election of the returned candidate.[2] The second issue relates to differentiating the scope of two sections 100(1)(d) and section 100(1)(c) of the Act of 1951, which are seemingly analogous provisions. This has been done by pointing out that under section 100(1)(d), an election is liable to be declared void on the ground of *improper acceptance* of a nomination if such improper acceptance of the nomination has materially affected the result of the election; whereas in case of section 100(1)(c) dealing with 'improper rejection' of a nomination, which, in itself, is a sufficient ground for invalidating the election without any further requirement of proof of material effect of such rejection on the result of the election, implying thereby that it would be wrong to read the provisions of the latter section into those of the former.[3] How should the election court in the exercise of their power determine differentially whether the pleading struck out or amended fall within the ambit of Rule 16 of Order VI of the Code of Civil Procedure, 1908

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1 Hereinafter simply, the Act of 1951.

2 See *infra*, Part II: "Corrupt Practices under the Representation of the People Act, 1951: When does an election Petition is held to disclose triable issues?".

3 See *infra,* Part III: "Election of the returned candidate on ground of improper acceptance of his nomination paper: Can it be annulled without determining whether the result of election of that constituency was materially affected due to such acceptance."

(CPC) which obliges the court to do so in case the same is found to be (a) unnecessary, scandalous, frivolous or vexatious, or (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or (c) which is otherwise an abuse of the process of the court. This is the third critical issue considered in this survey.[4] The fourth issue that has come up before the Supreme Court is relatively a bit intriguing, but highly socially relevant. It raises the question whether or not a person, belonging to a Scheduled Caste in the State of Punjab, who is a Muslim by birth, is qualified to contest the election from a constituency exclusively reserved for Scheduled Castes under section 5(a) of the Act of 1951.[5] It is interesting to examine how the Supreme Court has answered this question by reversing the decision of the high court, which is based on the societal entrenched notion of caste.[6] In the fifth issue, the central concern highlighted by the Supreme Court is how the high court, designated as the election court, should or should not proceed to adjudicate the election disputes involving the basic rights of the citizenry of India.[7] The sixth and the last issue dealt herein relates to, whether the legislation enacted by the State, disqualifying a persons to contest Panchayat election on such counts as those 'who do not possess the specified educational qualification' and those who are 'not having a functional toilet at their place of residence, is constitutionally valid.'[8]

II CORRUPT PRACTICES UNDER THE REPRESENTATION OF THE PEOPLE ACT, 1951: WHEN DOES AN ELECTION PETITION IS HELD TO DISCLOSE TRIABLE ISSUES?

In case of challenge to the election of the returned candidate on grounds of corrupt practice, under section 83(1) of Act, 1951, it is incumbent upon the election petitioner in his election petition to include, *inter alia*, "a concise statement of the material facts" relating to alleged corrupt practice on which the petitioner relies;[9] "set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice;"[10] and that such a petition "shall also be accompanied by an affidavit in the prescribed

4 See *infra,* Part IV: "Pleadings relating to corrupt practices under the RP Act of 1951: Underlying principles of striking out pleadings under Order VI Rule 16 of the Code of Civil Procedure, 1908."

5 See, *infra,* Part V: "A candidate Muslim by birth: Whether qualified to contest election from a constituency reserved for scheduled castes."

6 *Ibid.*

7 See *infra,* Part VI: "Compliance of proviso to section 83(1)(c) of the Act of 1951: How should it be deciphered by the Election Court?".

8 See *infra,* Part VII: "Widening the ambit of disqualifications for contesting Panchayat elections: Whether constitutionally tenable?".

9 *Supra* note 1 s. 83(1)(a).

10 *Id.*, s. 83(1)(b).

form in support of the allegation of such corrupt practice and the particulars thereof."[11] In view of these express stipulations, it is always open to the respondent to point out limitations in meeting the mandatory requirements, and come up with an application under Order VI Rule 16 (Striking out pleadings) and Order VII Rule 11 (rejection of plaint) of the CPC for dismissal of the election petition contending that on account of deficiencies in the pleadings no triable issue(s) is disclosed to justify a regular trial of the allegations made. The critical question in every election petition in the first instance, therefore, is whether the allegations made reveal any cause of action. How to determine this question? The case in point is *Navjot Singh Sidhu* v. *Om Parkash Soni*.[12]

In *Navjot Singh Sidhu*, the election of the appellant-respondent, the returned candidate, in the election held for the parliamentary constituency in the year 2009, was challenged by the respondent-petitioner by way of filing an election petition before the high court alleging corrupt practices under the relevant provisions of the Act of 1951. On initial scrutiny, the high court found that there were three broad categories of allegations contained in the election petition that disclosed "triable issues", and accordingly ordered a "regular trial" of the same.[13] Aggrieved by this holding, the appellant has filed the appeal before the Supreme Court.

The three broad categories of allegations presented before the apex court are as under:

(a) The appellant had incurred expenditure in contravention of the limit prescribed under the relevant provisions of the Representation of the People Act, 1951.[14]
(b) The appellant had received assistance from the named gazette officer so as to "further" his "election prospects."[15]
(c) Complaint against the Returning Officer with regard to counting of votes in the election held in 2009.[16]

The analysis of the apex court of these three sets of allegations is instructive both in terms of brevity and specificity.

The third category of allegation relating to counting of votes in the election is ticked off from the realm of consideration inasmuch as the life of the House "for which the election took place has long expired," and, therefore, "by efflux of time the said issue has become academic rendering it unnecessary for us to enter into any discussion on the said question."[17]

11 *Id.,* proviso appended to s. 83(1).
12 AIR 2016 SC 4965, *per* Ranjan Gogoi J. (for himself and Abhay Manohar Sapre, J.) Hereinafter, *Navjot Singh Sidhu.*
13 *Navjot Singh Sidhu* at 4965 (para 2).
14 *Id.* at 4966 (para 5).
15 *Id.* at 4973 (para 13).
16 *Id.* at 4973 (para 16).
17 *Ibid.*

The second category of allegations on which the election petition is founded relates to the assistance received by the appellant from the named specially transferred officer to promote his election prospects. On this count, the apex court has pointed out:[18]

> The pleadings contained in paragraphs 17 to 20 of the Election Petition makes it clear that it is alleged that while Jagjit Singh Suchu was an officer of the Punjab State Electricity Board the Appellant had got him transferred to the post of Additional Superintending Engineer, East Division, Verka Circle, Amritsar under the State of Punjab and that the Appellant had received assistance from him so as to further his election prospects. The allegation in the Election Petition is that the post to which Jagjit Singh Suchu was transferred from the Punjab State Electricity Board was under the State Government and the assistance received by the returned candidate from the said person is while he was rendering service as Additional Superintending Engineer, namely, while he was performing the duties in the State Government.

In view of these revealing details of allegation, the Supreme Court has dismissed the appeal on this count by observing, "If that be so, the aforesaid issue also will have to go for a full trial as ordered by the High Court."[19] The Supreme Court has justifiably devoted relatively more space and time to deal with the first issue; namely, incurring of expenditure in excess of the prescribed statutory limit under section 77(3) of the Act of 1951.[20] This is so because it is required to be critically examined whether the details furnished by the election petitioner are in conformity with the mandatory statutory requirements and thereby adequately sufficient to hold them to constitute a 'triable issue'. In the opinion of the high court, the pleadings on this count did serve a cause of action meriting a regular trial of the same, and, therefore, as contended by the appellant, those pleadings could not be struck off to his advantage.[21]

For its critical appraisal, the Supreme Court, in order to determine whether the issue of excess expenditure merits a regular trial, has considered the same in two

18 *Id*.at 4973 (para 15).

19 *Ibid*.

20 *Supra* note 1, s. 77: deals with the account of election expenses. Sub-s. (1) of s. 77 makes it obligatory for every candidate at an election, "either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive." Sub-section (2) makes it mandatory to maintain the account with "such particulars as may be prescribed." Under Sub-section (3), "The total of the said expenditure shall not exceed such amount as may be prescribed," which, at the relevant time, was stated to be of Rs. 25,00,000.00.

21 *Supra* note 12 at 4965 (para 2).

parts on the basis of details furnished by the election petitioner: one, expenditure incurred by the appellant on advertisements in different newspapers and through electronic media; two, expenditure made by the appellant in connection with public meetings held by him on different dates and in different venues.

In respect of the expenditure incurred by the appellant-respondent on advertisements in different newspapers, like 'The Daily Ajit', 'Dainik Bhaskar', 'Dainik Jagran', 'The Tribune', 'Jag Bani', and 'Punjab Kesari', the election petitioner has meticulously provided the details of advertisements published/issued. These details include the dates of publication, names of the newspaper, the page numbers on which advertisement appeared, sizes of advertisement, and the rates at which charges are calculated during the period from the date of nomination and the date of polling.[22] The total expenditure incurred by the appellant, according to the petitioner, amounted to Rs.19,16,234.[23]

Likewise, the details of the expenditure incurred by the returned candidate/ Appellant on advertisements on local TV channels, *etc.*, are also mentioned with specificity. In the election petition, it is categorically stated that the returned candidate, had also displayed an advertisement of 70 seconds on metro/filmy channel and movies channel of Siti Cable/Digi Cable in Amritsar, at the rate of Rs. 825 for 30 seconds on metro/filmy channel and Rs. 900/- per 30 seconds on movie channel during the period April 22, 2009 to May 13, 2009 between 8 A.M. to 10 P.M.[24] The advertisement was displaced for 18 times on each channel, and thereby incurring the amount of Rs. 15,93,800.[25]

On the basis of these calculated figures, it is contended in the election petition that the actual expenses incurred by the returned candidate on advertisements alone is in excess of the total prescribed limit of Rs. 25,00,000/-. In this backdrop, the short question to be answered by the apex court is whether this pleading provides the cause of action in terms of mandatory requirements stipulated in section 83 whereby the petitioner is obliged to make a concise statement of the material facts and is also required to set forth full particulars of any corrupt practice that he alleges. In addition, an affidavit in the form in support of the allegations of corrupt practice and the particulars thereof is also required to be furnished.

Opposing the petition, the appellant contended that the cognate conditions as spelled out clearly under the provisions of rules of procedure and guidance in the matter of trial of election petitions under part VI of the Act of 1951, as amended (clause 12) and specifically Form 'B' and Form 'BB' prescribed there under, it is also necessary for the election petitioner to enclose along with the election petition all relied upon documents in the form(s) prescribed.[26] Since in the instant case, the election

22 *Id*. at 4966-4970 (para 6), reproducing para 10 of the election petition.

23 *Ibid*. These also include the extra charges of 25% more during the election time, *ibid*.

24 *Id*. at 4970 (para 6), reproducing para. 11of the election petition.

25 *Ibid.*

26 *Id.* at 4971 (para 7).

petitioner had failed to enclose with the election petition photocopies of the relevant newspapers containing the advertisements mentioned in paragraph 10 of the election petition, which constitutes the very foundation of the election petition, the same is liable to be dismissed at the threshold without doing anything more.[27] For this assertion, the appellant has relied upon two decisions of the Supreme Court; namely, *Azhar Hussain* v. *Rajiv Gandhi*[28] and *Ramakant Mayekar* v. *Celine D'Silva*.[29]

In order to respond specifically to the argument, whether the absence of appending photocopies of the relevant newspapers containing the advertisements mentioned in the election petition would jeopardize the chance of holding "full-fledged trial", the Supreme Court has recalled the two settled propositions:

(a) "In case of an Election Petition founded on allegations of corrupt practice not only the 'material facts' have to be pleaded but even the full particulars thereof have to be furnished at the stage of filing of the Election Petition itself. This is specifically provided for in Section 83(1)(b) of the R.P. Act."[30]

(b) Functional distinction between 'material facts' and 'material particulars': The "facts" on which the party relies for his claim are called "material facts" (*facta probanda*); whereas the facts by means of which "material facts" are proved are called "material particulars" (*facta probantia*). The former must be stated in the pleadings, whereas the latter, which are only relevant facts, being in the nature of evidence, need not be set out in the pleadings, but required to be proved at the trial in order to establish the facts in issue.[31]

In view of these propositions, on the basis of bare reading of the averments, revealing clearly the dates on which the advertisements had appeared; the particulars of the newspapers in which such advertisements were published; the cost incurred for each type of advertisement in each newspaper, the Supreme Court is of "considered view" that it cannot be said that full particulars of the allegation of corrupt practice as required under section 83(1)(b) of the Act of 1951 have not been furnished by the election petitioner.[32] On this count, the Supreme Court has squarely dealt with the argument,[33] whether furnishing photocopies of the newspapers along with the Election Petition is a MUST on the strength of earlier decisions of the apex court in *Azhar*

27 *Ibid*.

28 1986 (Supp) SCC 315.

29 (1996) 1 SCC 399.

30 *Supra* note 12 at 4971 (para 9).

31 *Id*. at 4971 (para 8), citing *Virender Nath Gautam* v. *Satpal Singh* (2007) 3 SCC 617 (para 50).

32 *Id*. at 4972 (para 10).

33 *Id*. at 4972 (para 11).

Hussain[34]and *Ramakant Mayekar.*[35] In the opinion of the Supreme Court enclosing the photocopies of the newspapers in the election petition is not necessary inasmuch as ingredients of the corrupt practice alleged in *Navjot Singh Sidhu* are complete and comprehensible from the furnished details, whereas the same were conspicuous by their absence in *Azhar Hussain* in which posters in question themselves contained the ingredients of the corrupt practice alleged, and, accordingly, the failure of the election Petitioner to include the said posters as a part of the election petition was held to be fatal.[36] Likewise, the ratio of *Ramakant Mayekar* is inapplicable in the case in hand, because in that case also the election petitioner did not enclose photographs of posters, banners and the wall-paintings that were allegedly used by the returned candidate while canvassing for votes in the name of Hindu religion. Since those posters, wall-paintings, *etc.,* "contained the ingredients of the commission of corrupt practice alleged that the non-furnishing of the same along with the election petition was held to be fatal."[37] In view of this exposition, the Supreme Court, affirming the decision of the high court, has held that election expenses incurred by the appellant-returned candidate on advertisements in the newspapers and electronic media, and as set in the election petition "require to go for a full-fledged trial and the appeal insofar as the aforesaid part of the decision of the High Court has to fail."[38] However, the approach of the Supreme Court to the averments of the election petitioner in respect of expenditure in holding public meetings on different dates and in different venues by the appellant-returned candidate may be contrasted. Here the election petitioner has contended that the expenses incurred on these public meetings is much more than what has been shown in the return of election expenses under the said head (Rs. 1,83,466/-).[39] With a view to substantiate his allegation, he has given the details of the meetings; that is, the time, date and venue of the meetings held, and also the number of persons who are claimed to have attended those meetings, but without a mention how the election petitioner had arrived at the quantum of expenses which he alleges to have been incurred by the returned candidate in holding each of the said meetings.[40] The apex court specifically has asked about the source(s) of information of the election petitioner with regard to the details furnished; whether he has personal knowledge of any of the said meetings; who are the persons who informed him of the details of such meetings; what is the basis of the estimate of the number of persons present and the facilities

34 *Supra* note 28.

35 *Supra* note 29.

36 Supra note 12 at 4972 (para 11).

37 *Ibid*. In fact, in this case, the election petitioner specifically averred that he had taken photographs of the wall-paintings which were not enclosed to the election petition but prayed for leave to produce the same at a later stage of the case.

38 *Ibid*.

39 *Supra* note 12 at 4972 (para 12), referring to paras 12-15 of the election petition.

40 *Ibid*.

(chairs *etc.*) that were hired and the particulars of the refreshments served are nowhere pleaded.[41] Since all such particulars that are an integral part of the allegation of corrupt practice alleged are absent, the same do not disclose any triable issue so as to justify a regular trial of the said allegations. Accordingly, the allegations "mentioned in paragraphs 12 to 15, so far as commission of corrupt practice of submission of false/ incorrect return of election expenses is concerned, are, therefore, struck off."[42] To this extent, the decision of the high court has been reversed, and the appeal is partly allowed.[43] Resultantly, the trial of the election petition on the remaining issues/ allegations that survive in terms of the election expenses on advertisements has been ordered "to recommence."[44]

III ELECTION OF THE RETURNED CANDIDATE ON GROUND OF IMPROPER ACCEPTANCE OF HIS NOMINATION PAPER: CAN IT BE ANNULLED WITHOUT DETERMINING WHETHER THE RESULT OF ELECTION OF THAT CONSTITUENCY WAS MATERIALLY AFFECTED DUE TO SUCH ACCEPTANCE?

This indeed is the issue that has come before the Supreme Court in *Rajendra Kumar Meshram* v. *Vanshmani Prasad Verma*.[45] In this case, the election of the appellant to the state legislative assembly was set aside by the high court in an election petition filed by the respondent. The validity of the said order of the high court is the subject matter of appeal before the Supreme Court. With a view to decide the appeal, the apex court, in the first instance, has identified the critical issue by employing the strategy of, what we may term, elimination and abstraction. It has first eliminated the issues that were considered by the high court in favour of the appellant-returned candidate, and are not agitated by the respondent-petitioner by filing cross appeal.[46] The left over issue for deciding the appeal is, thus, confined to the correctness of the order of the high court in which the election the appellant-returned candidate was set aside under section 100(1)(a) along with section 100(1)(d)(i) of the Act of 1951. The allegation was that he had failed to furnish, along with the nomination paper, a copy/ certified copy of the electoral roll of the constituency in which his name was claimed to be appearing against the specified serial number, and the returning officer had

41 *Ibid*.

42 *Ibid.*

43 *Id*. at 4973 (para 17).

44 *Ibid*.

45 AIR 2016 SC 4700, *per* Ranjan Gogoi, J (for himself and Prafulla C. Pant, J). Hereinafter, *Rajendra Kumar Meshram.*

46 In this category fall two issues: one relating to wrongful rejection of election petitioner's nomination by the returning officer; the other election petitioner's allegation that the Appellant-returned candidate was a government servant at the relevant time. *Id*. at 4701, 4702 (paras 2, 5 and 8).

committed an illegality in accepting the nomination of the returned candidate, instead of rejecting the same on account of non-compliance of sections 33(5) and 36(2)(b) of the Act of 1951.[47]

For getting the exact profile of this issue, the Supreme Court has extracted the relevant part of the pleadings contained in the election petition,[48] and the seven issues framed by the high court in the light of the written statement of the returned candidate and the pleadings of the parties.[49] Out of the seven issues so framed by the high court, five of these, including particularly the issue no. 6 that raises the question of material effect of the improper acceptance of nomination of the returned candidate on the result of the election, have been found to be relevant,[50] which "center round the question of improper acceptance of the nomination form of the returned candidate."[51]

The probing analysis of the Supreme Court on the central issue of improper acceptance of nomination paper of the appellant-returned candidate may be abstracted as under:

(a) "Under Section 100(1)(d), an election is liable to be declared void on the ground of improper acceptance of a nomination if such improper acceptance of the nomination has materially affected the result of the election."[52]

(b) If the provisions of Section 100(1) (d) are compared and contrasted with those of Section 100(1)(c),[53] it would be instantly evident that in case of the former unlike the latter, the proof of whether the improper acceptance of the nomination had materially affected the

47 *Id*. at 4701-4702 (paras 2, 3 and 5).

48 *Id.* at 4702 (para 6).

49 (1) Whether the returning officer has malafidely rejected the Petitioner's nomination form as the candidate sponsored by the Indian National Congress under the influence of the then ruling party? (2) Whether respondent no. 1 was in government service at the time of acceptance of his nomination form by the returning officer? (3) Whether respondent no. 2 has committed illegality in accepting the nomination form of respondent no. 1(4) Whether respondent no. 1 has failed to prove that his name was in the voter list of 80 Singrauli Constituency? (if so, effect) (5) Whether respondent no. 1 has failed to submit valid caste certificate for contesting the election from the constituency reserved for scheduled caste category? (6) Whether result of election of 81 Devsar Constituency was materially affected due to improper acceptance of nomination of respondent no. 1? (7) Relief and costs? *Id.* at 4702 (para 7).

50 Since issue nos. 1 and 2 have been answered in favour of the returned candidate and there is no cross appeal, it is only the remaining issues that survive for consideration of the apex court. *Id.* at 4702-4703 (para 8).

51 *Ibid.*

52 *Id*., at 4703 (para 9). Emphasis added.

53 *Supra* note 1, s.100(1)(c), which deals with *improper rejection* of a nomination, and which itself is a sufficient ground for invalidating the election without any further requirement of proof of material effect of such rejection on the result of the election.

result of the election petition is an integral part of voiding the election.

(c) In the instant case, which deals with 'improper acceptance of a nomination', since the High Court, notwithstanding the framing of issue No. 6, which specifically obliges it to address to this issue, had failed to do so, "it was not empowered to declare the election of the Appellant returned candidate as void even if we are to assume that the acceptance of the nomination of the returned candidate was improper (inasmuch as he had not filed the electoral roll or a certified copy thereof and, therefore, had not complied with the mandatory provisions of Section 33(5) of the 1951 Act)."[54]

(d) It is impermissible to read the provisions of section 100(1)(a) into the provisions of section 100(1)(d) of the Act of 1951 for the following reasons:[55]

(1) Under Section 100(1) (a) the election of the returned candidate is liable to be declared void if, inter alia, he was not qualified for membership of the State Legislature, and for this purpose it is required to shown that under Section 5 of the Act of 1951, which deals with qualifications for membership of a Legislative Assembly of a State, he is not an elector or voter of any Assembly constituency of the State.[56]

(2) No such objection was taken by the respondent-election petitioner either at the time of scrutiny of nomination papers,[57] nor was "any objection taken [in the election petition] to the effect that the returned candidate was not eligible to participate in the election as he had not furnished the electoral roll of the Constituency in which he was a voter or a certified copy thereof."[58]

(3) In accordance with the provisions of the Code of Civil Procedure, 1908, while trying an election petition under Section 87 of 1951

54 *Ibid*.

55 An argument was advanced on behalf of the respondent-election petitioner that the high court had also found the election to be void on the grounds mentioned in section 100(1)(a), because the failure of the returned candidate to furnish the electoral roll of the constituency where his name appears as a voter or the certified copy thereof would, by itself, establish that he was not qualified to take part in the election as he had failed to prove that he is a voter. *Id*. at 4703 (para 10).

56 *Id*. at 4703 (para 11).

57 *Id*. at 4703 (para 12).

58 *Id.* at 4703-4704 (para 12). However, "in the election petition filed, it was pleaded in para 1.11 of the election petition, that the returned candidate had 'failed to furnish a certified copy of the voter list to entitle him to contest the election from Devsar constituency as he is registered voter of 80, Singrauli constituency and without filing the certified copy of relevant part of voter list he was not eligible to contest from other constituency'." *Ibid*.

Act, in the absence of any such pleadings that the election of the returned candidate was void on grounds mentioned in Section 100(1)(a), even the High Court of its own could not render a decision as "no issue on this score was struck and no opportunity to the returned candidate to adduce relevant evidence was afforded," and accordingly, in their "considered view," the Supreme Court has held that the High Court, "could not have found that the election of the returned candidate was void Under Section 100(1)(a)."[59]

(4) In fact, it was never the case of the Respondent-election Petitioner that the Appellant-returned candidate was not qualified to contest the election. This issue has cropped up only before the Supreme Court, "and that too in the oral arguments made, that it has been urged, by relying on the order of the High Court, that the returned candidate was not qualified to contest the election Under Section 100(1)(a) of the 1951 Act and therefore his election was rightly set aside by the High Court."[60]

(5) On the contrary, as is evident from the election petition, the election petitioner all along pleaded that the returned candidate had "failed to furnish a certified copy of the voter list to entitle him to contest the election from Devsar constituency as he is registered voter of 80, Singrauli constituency and without filing the certified copy of relevant part of voter list he was not eligible to contest from other constituency."[61]

(6) Such a pleading of non-enclosure of the requisite electoral roll or a certified copy thereof along with his nomination papers, which made him ineligible to contest the election, must be seen in the light of the provisions of Section 33(4) and 33(5):[62] Section 33(4) requires the returning officer to satisfy himself that a candidate's name and electoral roll number are the same as claimed/entered in the nomination paper. If the candidate is a voter of the same constituency from which he seeks election, there is no difficulty the electoral rolls would be readily available with the returning officer. But if the candidate is a voter of another constituency, then Section 33(5) requires him to enclose along with the nomination or at the time of scrutiny, the electoral roll or certified copy of the same pertaining to that constituency.

59 *Id*. at 4704 (para 14).

60 *Id*. at 4704 (para 13).

61 *Id.* at 4704 (para 14), citing para 1.11 of the election petition.

62 *Ibid*.

(7) In view of the three established and uncontroverted facts; namely, the specific pleadings of the respondent-election petitioner,[63] the issues framed by the High Court, and the evidence led by the parties, the apex court has conclusively held by observing "we cannot agree with the High Court that the Respondent-election Petitioner had made out a case for declaration that the result of the election in favour of the returned candidate was void Under Section 100(1)(a) of the 1951 Act."[64]

(8) This holding even obviates the necessity for the Supreme Court "to go into the question raised on behalf of the Respondent-election Petitioner that failure to produce the copy of the electoral roll of the constituency in which a candidate is a voter or a certified copy thereof, by itself, would amount to a proof of lack of/absence of qualification Under Section 5 of the 1951 Act."[65]

IV PLEADINGS RELATING TO CORRUPT PRACTICES UNDER THE REPRESENTATION OF THE PEOPLE ACT, 1951: UNDERLYING PRINCIPLES OF STRIKING OUT PLEADINGS UNDER ORDER VI RULE 16 OF THE CODE OF CIVIL PROCEDURE, 1908

Order VI, Rule 16 of the CPC stipulates that the court may at any stage of the proceedings order to be struck out or amended any matter in any pleading - "(a) which may be unnecessary, scandalous, frivolous or vexatious, or (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or (c) which is otherwise an abuse of the process of the Court." However, the critical question is how should the court determine in the exercise of their power whether the pleading to struck off fall within the ambit of the said Rule 16 of Order VI of CPC? This issue has come up before the Supreme Court somewhat in a precipitant manner in *Ajay Arjun Singh* v. *Sharadendu Tiwari*.[66] In this case, election of the appellant-returned candidate was challenged by the respondent-election petitioner on ground of commission of various

63 "The entire case of the election Petitioner as pleaded is that the Appellant-returned candidate was a voter of another constituency i.e. No. 80 Singrauli constituency but he had not enclosed or produced the electoral roll of that constituency or a certified copy thereof thereby making him ineligible to contest the election." Ibid.

64 *Id*. at 4704 (para 15).

65 *Ibid*. See also, *id*. at 4704 (para 16): "Though a number of precedents have been cited on behalf of the Respondent-election Petitioner to sustain the arguments advanced, it will not be necessary for us to take any specific note of the principles of law laid down in any of the said cases inasmuch as all the said cases relate to rejection of nominations on account of failure to comply with the provisions of Section 33(5) of the Act of 1951 which is not in issue before us in the present appeal."

66 AIR 2016 SC 4087, per Jasti Chelameswar, J. (for himself and Abhay Manohar Sapre, J.). Hereinafter simply, *Ajay Arjun Singh.*

corrupt practices under the relevant provisions of section 123 of the Act of 1951. The appellant filed interim application, invoking Order VI Rule 16, the CPC praying that various paragraphs of election petition be struck off, because allegations contained in those paragraphs are frivolous and vexations, *etc*. The said I.A. was dismissed by the high court, resulting into appeal before the Supreme Court for deciding the issue whether the high court was correct in refusing to strike off the said pleadings. In order to respond to this question, the Supreme Court in the first instance has thought it "profitable" to examine the "scheme," "purpose," "scope" *etc.* of Order VI, Rule 16"[67], and derive some relevant principles, which can be abstracted with the following effects:

(i) "the very purpose of the Rule 16 is to ensure that parties to a legal proceeding are entitled ex debito justitia [that is, as a matter of right, as opposed to something which may be a matter of judicial discretion] to have the case against them presented in an intelligible form so that they may not be embarrassed in meeting the case."[68]

(ii) Each one of the grounds specified under Clauses (a), (b) and (c) of the said Rule 16 bears a "distinct" character, and, therefore, "the test to be applied" by the court in case of each ground has to be explored differentially. [69]

(iii) One of the basic principles that is required to be kept in view while applying Rule 16 is that "a court examining an election petition may order striking out of charges which are vague."[70]

(iv) Another equally established principle is that while determining application of Rule 16 is that "the averments in the election petition must be taken to be factually correct,"[71] and then proceed as such.

67 *Id.* at 4089 (para 5).

68 *Id.* at 4089 (para 6), citing *Golding* v. *Wharton Salt Works* (1876) 1 Q B D 374.

69 *Ibid.* The court in the instant case has exemplified the distinctive character by observing that, under clause (a) if "a pleading or part of it is to be struck out on the ground that it is unnecessary, the test to be applied is whether the allegation contained in that pleading is relevant and essential to grant the relief sought," and accordingly "[a]llegations which are unconnected with the relief sought in the proceeding fall under this category." "Similarly, if a pleading is to be struck out on the ground that it is scandalous, the court must first record its satisfaction that the pleading is scandalous in the legal sense and then enquire whether such scandalous allegation is called for or necessary having regard to the nature of the relief sought in the proceeding." "The authority of the court under Clause (c) is much wider," and, therefore, "such authority must be exercised with circumspection and on the basis of some rational principles."

70 *Supra* note 66 at 4090 (para 7), citing *Bhikaji Keshao Joshi* v. *Brijlal Nandlal Biyani,* AIR 1965 SC 610. Emphasis added.

71 *Id*. at 4090 (para 8). In the instant case, this principle has been drawn on the basis of observations made by the Supreme Court its earlier decision in *Ponnala Lakshmaiah* v. *Kommuri Pratap Reddy* (2012) 7 SCC 788: AIR 2012 SC 2638, wherein the court considered the scope of an application under Order VII Rule 11 Code of Civil Procedure. In *Ponnala Lakshmaiah*, while determining an application filed by the returned candidate praying that the election petition be dismissed for non-disclosure of any cause of action, the Supreme Court opined that for the

In the light of principles as abstracted above, the Supreme Court has proceeded to examine how, in what manner and to what extent the appellant prayed to strike off various paragraphs of the election petition under Order VI, Rule 16 of CPC. For this purpose, the apex court first of all narrowed down the area of its examination by stating: [A] that the election of the appellant-returned candidate was challenged by the respondent-election petitioner on grounds of three main corrupt practices under section 123 of the Act of 195: bribery [section 123(1)],[72] soliciting votes on ground of religion [section 123(3)][73] and incurring of expenditure in contravention of section 77 of the Act [section 123(6)][74]; [B] the appellant has adopted differential approach to the allegations of three sets of corrupt practices in terms of Order VI, Rule 16 of CPC: first, the appellant in his interim application o. 12911 of 2014 makes no case of striking off paragraph 18 of the election petition regarding commission of corrupt practices falling under section 123(3);[75] second, the allegations regarding the commission of corrupt practices falling under section 123(1), which are to be found in paragraph 19 of the election petition, "are not disputed by the Appellant"[76]; instead,

purpose of determining such an application, the averments in the election petition must be taken to be factually correct and thereafter examine whether such averments furnish the cause of action for granting the relief to the petitioner. Such a conclusion was recorded on the basis of the law laid down still in an earlier judgment of the Supreme Court in *Liverpool and London S.P. and I Assn. Ltd.* v. *M.V. Sea Success I* (2004) 9 SCC 512 (para 8), wherein, while exercising its power exercise of powers under Order 7 Rule 11, it is held that the disclosure of a cause of action in the plaint is a question of fact and the answer to that question must be found only from the reading of the plaint itself.

72 (1) "Bribery", "that is to say - (A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing - (a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or (b) an elector to vote or refrain from voting at an election, or as a reward to - (i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or (ii) an elector for having voted or refrained from voting; (B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward - (a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or (b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature. …"

73 "(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate: Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause. …"

74 "(6) The incurring or authorizing of expenditure in contravention of Section 77."

75 *Ajay Arjun Singh,* at 4091 (para 10).

76 *Id.* at 4091-4092 (para 12).

"he chose to explain his conduct in paragraph 24 of the I.A.,"[77] third, the appellant has prayed to strike off several paragraphs pertaining to the allegation of corrupt practice falling under 123(6).[78]

Taking note of the differential approach of the appellant, the apex court has proceeded to examine the submissions of the appellant and the stance of the high court in refusing to strike off the pleadings in respect of corrupt practices in second and third category as alluded immediately above.

In response to the allegations regarding the commission of corrupt practices falling under section 123(1) and referred to in paragraph 19 of the election petition, the appellant's own submission is,[79] that the stipulated amount of 20 lakhs rupees spent by him as a member of Madhya Pradesh Legislative Assembly is the amount, which is the "voluntary grant" received by him per year, and which he is entitled to spend in his constituency in his "sole discretion," and that he has disbursed this grant by issuing drafts to the persons concerned "as per procedure" laid down for this purpose.[80] The cryptic response of the Supreme Court to this explanation of the appellant is:[81]

> Whether the explanation is factually correct and, if so, what are the legal implications of the said explanation are matters to be decided in trial of the election petition. If the explanation is either found to be untrue or legally unacceptable, the allegation made in paragraph 19 of the election petition is sufficient to hold that the Appellant is guilty of the corrupt practice Under Section 123(1).
>
> For determining the veracity of the explanation offered by the appellant, it is enough to put the matter on trial, and accordingly, the Supreme Court has not deciphered "any error in the order of the High Court in refusing to strike off the pleadings in paragraph 19 of the election petition."[82]

77 *Id*. at 4092 (para 12).

78 *Id.* at 4091 (para 11). The allegations contained in each one of these paragraphs pertain to the expenditure incurred under different heads by the Appellant in connection with the election campaign, and according to the Respondent-election petitioner the total amount of expenditure so incurred by the appellant is in excess of the limit prescribed under s. 77 of the Act. Ibid.

79 See para 24 of the interim application no. 12911 of 2014 reproduced at 4092 (para 12): "The answering Respondent hereby respectfully submits that an amount of Rs. 20 lakhs is earmarked for expenditure by every member of the Madhya Pradesh Legislative Assembly every year in his constituency. A minister and leader of opposition are provided Rs. 20 lakhs per year for voluntary grant. The manner in which this grant is to be distributed is the sole discretion of such minister/leader of opposition. The minister/leader of opposition gives a list to the Secretary of the Vidhan Sabha containing the names of the persons and the amount to whom the grant is to be made. Accordingly, the drafts are issued to the persons concerned as per procedure*."*

80 *Ibid*.

81 *Supra* note 66 at 4092 (para 13).

82 *Ibid*.

Thenceforth, the Supreme Court has proceeded to examine the major plea of the appellant about the validity of the impugned order insofar as it pertains to the incurring of expenditure by him beyond the permissible limits prescribed by law under section 123(6) of the Act of 1951. In this respect, the appellant is required to meet petitioner's allegations on as many as three distinct heads.[83]

In respect of allegations regarding the quantity and quality of the material used by the Appellant during the course of his election campaign and the value of such material, his major plea is that all the expenditure incurred by him is in accordance with the prescribed procedure as laid down under Rule 90 of Conduct of Elections Rules, 1961,[84] and once the accounts rendered by him have been accepted by the District Election Officer at the relevant time, the election court has no jurisdiction "to give its own valuation of the election material, as the same would be beyond the scope of trial of election petition under the Representation of People Act of 1951."[85] This argument has been counteracted by the apex court on the following counts:

(i) It is well-established that "until proved otherwise the allegations in the election petition must be presumed to be true."[86]
(ii) The burden of counteracting those allegations essentially lies upon that appellant-respondent-returned candidate.[87]
(iii) "Each of the paragraphs contains allegations that the Appellant incurred some expenditure (specified) under some head or the other" and that "[t]he sum total of such amount would exceed the permissible limits of expenditure Under Section 77 of the Act."[88]
(iv) The Election Commission cannot be "conclusive of the prices of the material used by any candidate at the election."[89]
(v) Additionally, "the actual quantity of the campaign material used by any candidate at an election and its cost is always a question of fact," and that after an election is concluded, "it is always open to any election Petitioner to demonstrate in an election petition that the campaign material used by the returned candidate is more expensive than what was determined by the Election Commission, after all the value of the material depends both upon the quality and quantity of the material used."[90]

83 *Supra* note 66 at 4092 (para 14).
84 *Id.* at 4093, 4094 (para 15), citing interim application (paras 5, 6, and 9).
85 *Ibid.*
86 *Ibid.*
87 *Ibid.*
88 *Ibid.*
89 *Id.* at 4094 (para 17), submission made by the Respondent-election petitioner, and accepted in *to-to* by the Supreme Court, *id.* at 4094 (para 18). "There is no statutory basis for such an exercise".
90 *Ibid.*

(vi) "All these are questions of fact which are required to be examined and determined by the court in an election petition."[91]

In view of this stance, on this issue of 'quantity and quality of the material used' by the appellant, the apex court has held that, "we are of the opinion that there is nothing which warrants striking out of all those pleadings invoking Order VI Rule 16 Code of Civil Procedure"[92] and that "the High Court rightly rejected the application of the Appellant on this count."[93] The only other "major issue" in the category of excess expenditure, which the Supreme Court has examined,[94] relates to the expenditure allegedly incurred in connection with holding of public meetings at places outside his own the constituency – the constituency from which he himself was not an election candidate. In this regard, the incurred expenditure falls in two "sub-headings": one, expenditure in connection with the erection of the *pandals*, security arrangement, *etc.,* at such meetings, including mobilization of voters and hiring vehicles for that purpose;[95] two, expenses incurred in travelling by chartered flights to the place of meetings.[96] In respect of the first 'sub-heading', there is no specific denial by the appellant of the allegation in the election petition that he had hired a large number of vehicles to facilitate voters from his constituency to attend the said public meeting. No-specific denial stance of the appellant has been construed as "significant", inasmuch as "absolutely silent regarding that allegation" "must not be understood to be holding that if the Appellant had denied the allegation, such denial would suffice to strike out of the pleadings."[97] In effect, this observation signifies that the appellant does not deserve the benefit of striking off respondent's pleading under this sub-heading. However, appellant's stand in respect of second sub-heading[98] relating to the use of chartered Helicopter and the expenditure incurred by him as a 'star campaigner', as

91 *Ibid.* See also, *id.* at 4093 (para 5): The whole exercise involves "pure questions of fact which are required to be established on evidence;" *id.* at 4094 (para 18): "There can never be any presumption that the candidates used the same quality of material in the actual process of campaigning. Apart from that the quantity and the quality of the material used in the election campaign and the real cost of the material actually used by any candidate are always questions of fact, which are required to be established in evidence."

92 *Id.* at 4093 (para 15).

93 *Id*., at 4094 (para 18).

94 *Id.,* at 4094 (para 19).

95 According to the respondent-election petitioner, such expenditure would be to the tune of Rs. 13,88,073/- and the same is required to be added to the election expenditure of the Appellant. See, ibid, citing para 14L of the election petition.

96 That the appellant between Nov.4, 2013 to Nov.19, 2013 traveled on 8 occasions by chartered flights between Bhopal to Sidhi, and according to the respondent-election petitioner, on this count alone the Appellant incurred an expenditure of Rs. 40 lakhs. *Id.* at 4094-95 (para 19), citing para 14(M) of the election petition for the specific details of such flights.

97 *Id.* at 4095 (para 21).

98 See, the relevant portion of the pleading at para 20 of the IA No. 12911 of 2014, reproduced in *id.*, 4096 (para 24).

alleged specifically in paragraph 14(M) of the election petition, has found favourable consideration by the Supreme Court for the following reasons:

> (i) The Appellant used the helicopter on many occasions during the relevant period only between Bhopal and Sidhi, both of which are outside the constituency of the Appellant.[99]
> (ii) It is an admitted fact "that the Appellant was one of the star campaigners for the said election for the State of Madhya Pradesh," and, therefore, "he was required to campaign for his political party, not only in his constituency but also in other constituencies of the State."[100]
> (iii) Although under Section 77 of the Act of 1951 every candidate in an election is obliged to keep a separate current account of all expenditures in connection with the election between the dates on which such a candidate has been nominated and the date of the declaration of result of that election, and yet Clause (a) of Explanation 1 to the said Section 77 declares that "the expenditure incurred by leaders of a political party[101] on account of travel by air or by any other means of transport for propagating programme of the political party" shall not form part of the expenditure of the candidate.[102]
> (iv) The appellant was admittedly one of the political leaders, whose name was duly communicated to the Election Commission and the Chief Electoral Officers of the States by the political party within stipulated period from the date of the notification for such election published in the Official Gazette of the State, he, as such, popularly called 'star campaigners' in connection with an election, was not obliged to include the expenditure for the use of the helicopter in

99 *Id.* at 4098 (para 31).

100 *Ibid.*

101 The expression "leaders of political party" occurring in explanation 1 is itself explained in Explanation 2 to the said Section, which states: "For the purpose of Cl. (a) of Explanation 1, the expression 'leaders of a political party', in respect of any election, means, (i) where such political party is a recognised political party, such persons not exceeding forty in number, and (ii) where such political party is other than a recognized political party, such persons not exceeding twenty in number, whose names have been communicated to the Election Commission and the Chief Electoral Officers of the States by the political party to be leaders for the purposes of such election, within a period of seven days from the date of the notification for such election published in the Gazette of India or Official Gazette of the State, as the case may be, under this Act."

102 See, *Ajay Arjun Singh,* at 4096 (para 25).

his own election expenses:[103] the same was outside the purview of the election expenditure of the Appellant.

(v) It is specifically noted that there is "absence of any allegation" by the respondent-election petitioner that the appellant-returned candidate had pressed the helicopter services for campaigning in his own constituency.[104]

All these reasons have prompted the Supreme Court to hold that in their "opinion", the expenditure incurred on the use of chartered helicopter services "cannot be included in the election expenditure of the Appellant" and, therefore, "paragraph 14M of the election petition is liable to be struck off and is, accordingly, struck off."[105] This is how the appeal in the instant case has been partly allowed striking out only paragraph 14M of the election petition" by keeping the rest of the paragraphs intact for trial.[106] However, before the conclusion of the case, the apex court has expressed its displeasure by observing and placing "on record that the procedure adopted by the Appellant in initially filing a petition under Order VII Rule 11 petition, praying that the election petition be dismissed and filing the instant application after a long gap is to be deprecated."[107] Such a practice, tending to delay the adjudication of the election petition, which are otherwise mandated by the Parliament to be decided within a period of six months, needs curbing by considering preliminary objections, if any, (in cases where there is more than one) in an election petition "at the earliest point of time and in one go."[108]Accordingly, the Supreme Court has declared and directed "that the later of such successive petitions must be dismissed by high courts *in limine* on that count alone."[109]

V A CANDIDATE MUSLIM BY BIRTH: WHETHER QUALIFIED TO CONTEST ELECTION FROM A CONSTITUENCY RESERVED FOR SCHEDULED CASTES

This issue has come up before the Supreme Court in *Mohammad Sadique* v. *Darbara Singh Guru*.[110] Fact matrix: in this case, the appellant, belonging to "Doom"

103 The exemption granted under Explanation 1 to s. 77 is limited only the expenditure incurred by the star campaigner, and that too on account of travel for propagating the programme of the political party. "In other words, the expenditure incurred in connection with arrangements like erection of *pandals* etc. for a meeting of a star campaigner does not form part of the exempted expenditure under explanation 1." *Id.* at 4097 (para 29).

104 See, *Ajay Arjun Singh* at 4098 (para 31).

105 *Ibid*.

106 *Id*. at 4098 (para 33).

107 *Id*. at 4098 (para 32).

108 *Ibid*.

109 *Ibid*.

110 AIR 2016 SC 2054, per Prafulla C. Pant, J. (for himself and Ranjan Gogoi, J). Hereinafter, *Mohammad Sadique.*

community, which is a Scheduled Caste in the State of Punjab, was declared elected from an Assembly Constituency reserved for Scheduled Castes. His election was challenged by the respondent-election petitioner, pleading that the appellant, being a Muslim by birth, could not be a member of Scheduled Caste, and as such he was not qualified to contest the election from a constituency exclusively reserved for Scheduled Castes under section 5 (a) of Act, 1951. The high court, allowed the election petition, and set aside the election of the appellant, holding that "he was a Muslim, and not a member of Scheduled Caste, as such not qualified to contest election" from the reserved assembly constituency.[111] Aggrieved by the judgment and order passed by the high court, the appellant-returned candidate had preferred appeal under section 116A of the Act of 1951.The main issue before the Supreme Court in appeal is, "whether the High Court has erred in holding that the Appellant was not a member of Scheduled Caste on the date of filing of his nomination papers from the Assembly Constituency 102 Bhadaur (SC) in Punjab, [and] as such he was not qualified, and his election from said constituency is bad in law."[112] In order to explore this issue, the apex court right in the first instance has thought it "just and proper" to understand the meaning of "caste," and thereafter the judicial construction of the expression "Scheduled Caste".

Literal and connotative significance of 'caste':

The meaning of the word "caste" as crystalized by the Supreme Court may be abstracted in two broad senses, literal and connotative. In literal sense, the word "caste," which has been derived from the Portuguese term "casta", means "breed", "race", or "kind", and in this sense "caste is a largely static, exclusive social class, membership in which is determined by birth and involves particular customary restrictions and privileges."[113] In connotative sense, the word "caste" was "first used to denote the Hindu social classification on the Indian subcontinent."[114] In relation to "Hinduism," it means "any of the four social divisions namely Brahmin (Priests), Khshatriya (Warriors), Vaishya (agriculturists and traders) and Shudras (servants)."[115] "While this remains the basic connotation, the word 'caste' is also used to describe in whole or in part social systems that emerged at various times in other parts of the world...."[116]

Judicial construction of 'scheduled caste'

The expression 'scheduled castes', as defined under clause (24) of article 366 of the Constitution, means "such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes

111 *Id.* at 2056 (para 9). This was so held by the High Court after recording evidence of the parties and hearing them.

112 *Id.* at 2060-61 (para 14).

113 *Id.* at 2061 (para 15), citing *Encyclopedia Americana*, vol. 5.

114 *Ibid*.

115 *Ibid*, citing *Webster Comprehensive Dictionary* (International Edition).

116 *Ibid*.

for the purposes of this Constitution." Article 341 empowers the President to make special provisions for the 'scheduled castes' by issuing "public notification," specifying "the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be." By virtue of this empowerment, the President has issued the Constitution (Scheduled Castes) Order, 1950.[117] In the light of this order, the Supreme Court in the instant case has examined the judicial response on issues relating to special reservations for 'scheduled castes' under the Constitution. This response, particularly in relation to resolve the issue in hand, may be abstracted as under:

(i) The meaning of the expression 'scheduled castes', as given under Clause (24) of Article 366, bears a "technical meaning",[118] which, inter alia, stands expounded in Paragraphs 2 and 3 of the Presidential Order of 1950.[119]

(ii) However, a person claiming the benefit of belonging to a 'scheduled caste' listed as required under Para 2, when read with Para 3 of the Presidential Order of 1950, does not mean that the person so claiming the reservation benefit must be a Hindu or Sikh by birth; that is, "It is not necessary that he should have been born a Hindu or a Sikh…" at the relevant time.[120]

(iii) Conversion (and re-conversion) of a person from one religion to another does not necessarily mean the loss of his "original caste."[121]

117 Hereinafter simply *Presidential Order of 1950*.

118 *Mohammad Sadique,* at 2061 (para 16) citing the Constitution Bench decision of the Supreme Court in *Guntur Medical College* v. *Y. Mohan Rao* (1976) 3 SCC 411 (para 3).

119 Paras 2 and 3 of the Presidential Order of 1950 provide: Para 2 - "Subject to the provisions of this Order, the castes, races or tribes or parts of or groups within caste or tribes specified in Part I to XIII of the Schedule to this Order shall, in relation to the States to which these parts respectively relate, be deemed to be scheduled castes so far as regards members thereof resident in the localities specified in relation to them in those Parts of that Schedule." Para 3 – "Notwithstanding anything contained in para 2, no person who professes a religion different from the Hindu or the Sikh religion shall be deemed to be a member of a Scheduled Caste."

120 *Mohammad Sadique* at 2061 (para 16). The question arose in *Guntur Medical College case, whether* the person claiming the benefit of reservation on the basis of his Madigan caste, which is listed as one of the castes in the Schedule appended to Part I of the Presidential Order of 1950, has to be a person professing Hindu or Sikh religion by birth. The Constitution Bench responded by stating, inter alia, that by reason of Clause (3), "It is not necessary that he should have been born a Hindu or a Sikh..."

121 *Mohammad Sadique* at 2061 (para 17), citing a three-judge bench decision of the Supreme Court in *S. Anbalagan* v. *B. Devarajan* (1984) 2 SCC 112, which is a case pertaining to election from Rasipuram Parliamentary Constituency (reserved for Scheduled Castes). In this case, a Hindu belonging to a scheduled cast became a convert to Christianity, and thereafter again reconverted to Hinduism. In this context, the three-Judge bench, inter alia, observed in *S. Anbalagan,* "Now, if such a Christian becomes a Hindu, surely he will revert to his original

(iv) Whether a person belonging to a schedule caste converted from one religion to another has lost his 'original caste' or not depends upon the religion to which that person has been converted.[122]

(v) If the new religion to which a person of a scheduled caste has converted is liberal and tolerant enough to permit him to be governed by the old laws, in that case, there is no loss of the 'original caste.'[123]

(vi) Where the new religion, however, does not at all accept or believe in the caste system, "the loss of the caste would be final and complete."[124] But, even in that case, if the convertee is reconverted to the original religion, the caste would be revived automatically, assuming that his caste was only under an "eclipse" and that his being a member of that caste is accepted by other members of the community.[125]

caste, if he had lost it at all. In fact this process goes on continuously in India and generation by generation lost sheep appear to return to the caste-fold and are once again assimilated in that fold. This appears to be particularly so in the case of members of the Scheduled Castes, who embrace other religions in their quest for liberation, but return to their old religion on finding that their disabilities have clung to them with great tenacity. We do not think that any different principle will apply to the case of conversion to Hinduism of a person whose forefathers had abandoned Hinduism and embraced another religion from the principle applicable to the case of reconversion to Hinduism of a person who himself had abandoned Hinduism and embraced another religion."

122 *Supra* note 110 at 2062 (para 18), citing *Kailash Sonkar* v. *Maya Devi* (1984) 2 SCC 91 (para 19) in which a three-judge bench of the Supreme Court in an election case arising from a reserved assembly constituency in Madhya Pradesh examined the question, whether the converted person has lost his original caste, and if he has, whether the loss of the caste is absolute, irrevocable so as not to revive under any circumstance.

123 There are number of cases where members belonging to a particular caste having been converted to Christianity or even to Islam retain their caste or family laws and despite the new order they were permitted to be governed by their old laws. In a large area of South and some of the North-Eastern States it is not unusual to find persons converted to Christianity retaining their original caste without violating the tenets of the new order which is done as a matter of common practice existing from times immemorial. In such a category of cases, it is obvious that even if a person abjures his old religion and is converted to a new one, there is no loss of caste. Moreover, it is a common feature of many converts to a new religion to believe or have faith in the saints belonging to other religions. For instance, a number of Hindus have faith in the Muslim saints, Dargahs, Imambadas which becomes a part of their lives and some Hindus even adopt Muslim names after the saints but this does not mean that they have discarded the old order and got themselves converted to Islam. See, ibid.

124 *Ibid.*

125 *Supra* note 110 at 2062 (para 19), citing *Kailash Sonkar* (para 34). However, the revival of the caste would depend on the will and discretion of the members of the community of the caste, as the three judge bench has found in *Kailash Sonkar* that the respondent was accepted by the community of her original Katia caste. But here also the Court has added a "rider": in case the person reconverted to the old religion had been converted to another religion, say, Christianity, since several generations, it may be difficult to apply the doctrine of eclipse to the revival of caste, and that any insistence on that count would lead to "grave consequences and unnecessary exploitation, sometimes motivated by political considerations." The three-judge bench did not dwell on this count anymore, because that question did not arise for consideration in that case.

(vii) The religion of a person belonging to scheduled caste at the time of his birth is not consequential as long as he is a Hindu or Sikh by religion at the time when he is seeking the benefit of caste reservation.[126]

In the light of these propositions, the Supreme Court has stated that it the "settled law that a person can change his religion and faith but not the caste, to which he belongs, as caste has linkage to birth."[127] In the instant case, though the appellant was admittedly born to Muslim parents, yet "it is proved that his family members though followed Islam but they belonged to "Doom" community," as is evident "on the record that the Appellant was issued a caste certificate as he was found to be member of 'Doom' community by the competent authority, after he declared that he had embraced Sikhism,[128] and he was accepted by the Sikh community."[129] Besides, it is also undisputed that 'Doom' community in Punjab is a Scheduled Caste under Constitution (Scheduled Castes) Order, 1950, and that nomination of the appellant for election in question was filed by him five years after he converted to Sikhism.[130] Moreover, retention of Muslim name after conversion to Sikhism has made him no-less Sikh, because "he accepted Sikhism and followed all rites and traditions of Sikh Religion."[131] He has kept his original name "since he was popular as a singer with the name - 'Mohammad Sadique'."[132] Moreover, "[i]t is not essential for anyone to change one's name after embracing a different faith."[133] At best, "change in name can be a

126 *Id*. at 2063 (para 21), citing *K.P. Manu* v. *Scrunity Committee for Verification of Community Certificate*, (2015) 4 SCC 1, in which one of the questions examined by the Supreme Court is - whether on re-conversion, a person born to Christian parents could, after reconversion to the Hindu religion, is eligible to claim the benefit of his original caste. Referring to various judicial precedents, including the Constitution Bench decision in *Guntur Medical College,* the apex court held that caste certificate issued to a person on the basis of the fact that though the great grandfathers of such person belonged to Pulaya community (*i.e.,* Scheduled Caste), but he was born after his ancestors embraced Christianity and thereafter, reconverted into Hindu religion is entitled to the Scheduled Caste certificate.

127 *Id.* at 2063-64 (para 22).

128 It is proved on the record that the Appellant embraced Sikh religion on April 13, 2006, and got published the declaration on Jan. 4, 2007 in the newspapers *Hindustan Times* (English) Exh. RA, and *Ajit* (Punjabi) Exh. RB.

129 *Ibid*. The Scheduled Caste Certificate No. 6149 dated 25.08.2006 (Exh. PG/2) was issued to the Appellant by the competent authority, which was not cancelled thereafter, and accepted as such by the returning officer. See, *ibid*.

130 *Ibid.* What is shown on behalf of the respondent is that vide communication on November 17, 2008 (Ext. PJ) state authorities informed and clarified to the deputy commissioner that members following islam are not entitled to the certificate of scheduled caste, and if issued, certificates may be cancelled.

131 *Ibid*. On the contrary, "he not only followed Sikh traditions, he never offered Namaz, nor observed Roza nor went to Haj." *Id*. at 2064 (para 23).

132 *Id*. at 2064 (para 22).

133 *Id.* at 2064 (para 23).

corroborating fact regarding conversion or reconversion into a religion/faith in appropriate cases."[134] Bearing these "circumstances" in mind, the Supreme Court has found that "the High Court has erred in law," in as much "evidence on record," unlike the holding of the high court on the basis of stray statements,[135] the statement of the appellant "regarding conversion to Sikhism," "is fully corroborated,"[136] Thus, on re-appreciation of the entire evidence on record, and keeping in view the law laid down by the apex court in its earlier decisions, the Supreme Court in the instant case allowed the appeal by setting aside the judgment of the high court.[137]

VI COMPLIANCE OF PROVISO TO SECTION 83(1)(C) OF THE ACT OF 1951: HOW IT SHOULD BE DECIPHERED BY THE ELECTION COURT?

The validity of an election can be challenged by filing an election petition on any one or more of the various grounds specified under section 100 of the Act, 1951.[138] One of the grounds on which the high court can declare the result of a returned candidate to be void relates to the commission of corrupt practice either by the "returned candidate or his election agent or by any other person with the consent of either the returned candidate or his agent."[139] The election of a returned candidate can also be set aside on the ground of the commission of corrupt practice "in the interest of the returned candidate by an agent other than his election agent" and by virtue of such corrupt practice "the result of the election, insofar as it concerns a returned candidate, has been materially affected".[140] In either case, the election petition is required to be accompanied by an affidavit in the prescribed form. This is specifically stipulated in proviso to section 83(1)(c) of the Act of 1951:

> An election petition shall be signed by the Petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings;

134 *Ibid.* Nor it is necessary in law "that entire family of a person should convert or reconvert to the religion to which he has converted." *Ibid*.

135 The high court gave undue importance to "form of declaration" and the interview said to have been given by Appellant to PW 6 Gulzar Singh Shaunki, author of book - "Sada Bahar Gayak - Mohammad Sadique: Jeevan Te Geet" (Exh. PK).

136 *Id.* at 2064 (para 24). The corroborative evidence was clearly furnished by RW-11 Darshan Singh, Ex-Sarpanch of village Kupkalan, RW-6 Rachhpal Singh, Secretary of Gurudwara Sahib Kupkalan, RW-9 Ms. Sukhjeet Kaur, co-singer in Gurudwara, and RW-14 Sant Shamsher Singh Jageda, who presented 'Saropa' to the appellant about appellant's conversion to Sikhism. See, *Ibid*.

137 *Id.* at 2064 (paras 25 and 26).

138 *Supra* note 1, s. 100 specifies the various grounds on which the election of the returned candidate can be declared void.

139 *Id.,* s.100(1)(b).

140 *Id.,* s.100(1)(d)(ii).

> Provided that where the Petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

The requisite format in which the necessary affidavit in support of allegation of corrupt practices is required to be filed with election petition is provided under Rule 94-A of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956.[141] This rule lays down that the affidavit referred to in the proviso to sub-section (1) of section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in form 25 (indicating the specific layout of the affidavit).[142] Furthermore, the manner in which the election petition is to be verified under the CPC is laid down in its Order VI Rule 15, which provides as under:

> (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case.
> (2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.
> (3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.
> (4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.

In view of these inserted provisions, the question has arisen whether an election petition challenging the election of a returned candidate on the ground of corrupt practice is required to be accompanied either by one affidavit or two affidavits – one in support of averments made in the election petition in terms of Order 6 Rule 15(4) of the CPC and another as required by the proviso to section 83(1) of the Act, 1951 in a case where resort to corrupt practices have been alleged against the returned candidate. The settled law in this respect is that "a composite affidavit" meets the requirement both in support of the averments made in the election petition and with regard to the

141 The Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956 have been framed by the Government of India in exercise of the power under Section 169 of the Act of 1951. Hereinafter simply the Rules of 1956.

142 The requirement of giving such affidavit where there are allegations of commission of corrupt practice in an election petition came to be inserted in the Act by virtue of an amendment in the year1962.

143 See, *G.M. Siddeshwar* v. *Prasanna Kumar* (2013) 4 SCC 776: AIR 2013 SC 1549 (paras 2, 30), overruling *P.A. Mohammed Riyas* v. *M.K. Raghavan* (2012) 5 SCC 511: AIR 2012 SC

allegations of corrupt practices by the returned candidate.[143] "Such a composite affidavit would not only be in substantial compliance with the requirements of the Act but would actually be in full compliance thereof."[144] Besides, the filing of two affidavits "is not warranted by the Act nor is it necessary, especially when a composite affidavit can achieve the desired result."[145] In this backdrop, the issue has arisen in *Ajay Arjun Singh* v. *Sharadendu Tiwari*,[146] whether the election petition was accompanied by an affidavit which is compliant with the requirement of statute under the proviso to section 83(1)(c) of the Act of 1951. On fact matrix, the election of the appellant, the returned candidate, to the state assembly was challenged by the respondent, the election petitioner, alleging the commission of corrupt practices under the relevant provisions of the Act of 1951. Abstracting the whole history of lingering litigation, the returned candidate, inter alia, filed an application and prayed that the election petition be dismissed because "the affidavit filed along with the Election petition is not in conformity with Form 25 of the Conduct of Election Rules, 1961."[147] In response to the said application, the election petitioner replied [before the high court]:[148]

> …. The Petitioner has filed the said affidavit along with the election petition which *is attached at page No. 394 and 395 of the election petition*[149] and also found mention at serial No. 57-A in the index filed along with the election petition. Since the Petitioner has also filed affidavit in support of the election petition and has also filed the affidavit in prescribed format, therefore, there is no defect in this regard. Though, the Petitioner respectfully submits that the petition and the affidavit is in proper order but if in the opinion of the court if there is any defect, the election Petitioner is willing to cure the same.[150]

This qualifying response of the election petitioner (indicated by the italicized statement) led the high court to dismiss the petition of the present appellant-returned candidate under Order VII, Rule 11 of CPC by passing the following orders:[151]

> In the instant case, the Petitioner has not filed the affidavit in the prescribed Form 25 in accordance with Rule 94-A of the Conduct of

2784 (para 25), which held that a single affidavit was not sufficient to satisfy the requirements of both the provisions.

144 *Ibid.*

145 *Ibid*.

146 AIR 2016 SC 1417: (2016) 6 SCC 576, per Jasti Chelameswar, J (for himself and Abhay Manohar Sapre, J) hereinafter *Ajay Arjun Singh.*

147 *Id*. at 1418 (para 9).

148 *Id.*, at 1418 (para 10).

149 Emphasis in original.

150 Emphasis supplied.

151 See, *Ajay Arjun Singh* at 1419 (para 13). High court's orders, Aug. 25, 2014 or Mar. 18, 2015

> Election Rules, 1961. Since aforesaid defect is curable, same can be cured by filing affidavit in the prescribed Form 25.[152]

As a sequel to this order, the high court further directed the respondent-petitioner to file an affidavit in form 25 within 15 days from the date of receipt of certified copy of the order.[153] Pursuant to this order, the third affidavit was filed admittedly by him within the stipulated period on August 31, 2014.[154] It is this stance of the high court permitting the respondent-petitioner to file the third affidavit to cover the initial lapse which has become the subject of special leave petition in the instant case by the appellant-returned candidate before the Supreme Court.[155] The clear and categorical response of the Supreme Court to the coverage of this lapse is required to be reproduced for analysis:[156]

> It is a wholly unsatisfactory way of dealing with any issue in a judicial proceeding and more so with election petitions. Election petitions deal with the basic rights of the citizenry of this country. Election is a "politically sacred" event and an election dispute is too serious a matter to be dealt with casually. Therefore, the Parliament thought it fit to entrust the adjudication of election disputes to the High Courts. It is unfortunate that the learned Judge chose to deal with the matter so casually…."

Why did the high court choose to proceed the way it did? And why that stance of the high court led the Supreme Court to label the decision-making of the high court as "wholly unsatisfactory" or "casual"? The following reasons may be culled from the judgment:

(a) The High Court proceeded to deal with the election petition "without first settling the basic facts and identifying the issues."[157]
(b) The High Court extracted the content of the affidavit which the petitioner submitted in compliance with the requirement of Section

152 See also the high court's order, dated Aug. 25, 2014, reproduced at 1421-22 (para 20): "I do not find any ground for rejection of the petition in limine Under Order 7 Rule 11 of the Code of Civil Procedure. Accordingly, I.A. No. 43/2014, filed by the Respondent No. 1 is hereby dismissed. The Petitioner is directed to file affidavit in Form 25 of the Conduct of Election Rules, 1961 within 15 days from the date of receipt of certified copy of the order. Respondent No. 1 is also directed to file written statement within two weeks from the date of receipt of certified copy of this order."

153 *Ibid*.

154 *Ibid*.

155 The returned candidate filed SLP No. 11096 of 2015, *id.* at 1422 (para 22).

156 *Id*. at 1422 (para 20). Emphasis added.

157 *Id*. at 1422 (para 23).

83(1)(c), but not the affidavit in Form 25 that was filed by him in compliance of proviso to Section 83(1) of the Act of 1951 at pages 394 and 395 of the Election Petition.[158]

(c) That singular omission of ignoring the second affidavit led the High Court to examine un-necessarily[159] "various authorities of the Supreme Court" prompting it to reach a wrong conclusion, namely "at the most it was a non-compliance of Section 83(1) of the Act of 1951 and same is curable....."[160]

(d) Accordingly, the High Court permitted the respondent-petitioner to file another affidavit to cure the so-called existing 'defect'.[161]

(e) Since the Interlocutory Application of the returned candidate persisting with his plea that there was no affidavit in Form No. 25 was dismissed, and subsequently his review petition as well, the election petitioner had neither a reason nor the necessity to challenge the correctness of the findings recorded in the order as the dismissal decision of the High Court was eventually in his favour.[162]

(f) All this "confusion"[163] led to the filing of two opposing SLPs – one by the petitioner aggrieved by the conclusion of the High Court that his affidavit was "not in the prescribed Form-25;"[164] and another by the returned candidate against the dismissal of his review petition, aasserting that there was no second affidavit as alleged by the election petitioner in compliance with the proviso to Section 83(1) of the Act of 1951 filed along with the election petition.[165]

(g) In order to sort out the confusion on fact matrix, the Supreme Court had adjourned the proceedings and referred the matter back to the High Court for ascertaining the "true state of facts,"[166] and answer

158 *Id*. at 1422, 1423 (paras 21, 23).

159 Such an assumption directed the high court to peruse the case law that permitted the curing of defects that were not of substantial character. *Id.* at 1420-1421 (paras 17 and 18).

160 *Id*. at 1422-1423 (para 23).

161 *Vide* order dated Mar.18, 2015 permitting the election-petitioner to file another affidavit. In fact, it is this order that eventually became the subject of review, which was earlier dismissed by the high court, and subsequently became the subject of SLP before the Supreme Court.

162 *Ajay Arjun Singh* at 1422 (para 20).

163 "The cryptic conclusions recorded in the order dated 18.03.2015 only add to the existing confusion." See, id., at 1423 (para 23).

164 SLP No. 15361 of 2015, on the ground that such a conclusion came to be recorded on an erroneous identification of the affidavit; that is, the election petitioner had filed in the first instance two separate affidavits along with the election petition and the high court's conclusion was based on an erroneous identification of the affidavit.

165 SLP No. 11096 of 2015, id. at 1423 (paras 24 and 25).

166 *Id*. at 1423 (para 26).

it categorically:[167] one, "whether there was one affidavit or two affidavits filed along with the election petition?"; two, what was "the actual date when those affidavits were filed?" and three, "Whether either of the two affidavits is filed in compliance with the requirement of Section 83(1)(c) of the Representation of the People Act, 1951?"

(h) The High Court accordingly recorded its finding that the election petitioner had filed two affidavits along with the election petition on the date on which the election petition was presented to the High Court, and the second affidavit was found to be figured at "page Nos. 394-395 of the election petition which finds mention at Sr. No. 57A in the index is 'in compliance with the requirement of proviso appended to Section 83(1)(c) of the Representation of People Act, 1951'." [168]

(i) Since the latter finding of the High Court in the preceding paragraph is contrary to the one found by it earlier,[169] the Supreme Court has examined the correctness of the same by holding as under:

(a) It is an admitted fact that the returned candidate received a copy of the election petition along with Annexure including the affidavit at page nos. 394-395 of the election petition at the first instance when he received summons, and he never disputed the statement of the election petitioner by filing a Rejoinder that such an affidavit was not filed along with the election petition.[170] Nevertheless, the returned candidate, it seems, has tried to deny the existence of the second affidavit at page 394-95 because no seal or signature of the Registrar was to be found upon the affidavit at page Nos. 394 & 395.[171] This stand has been negated by the Supreme Court by holding that if the existence of the 2nd affidavit at page nos. 394-395 of the election petitioner is not in dispute, the mere non-compliance of

167 *Id*. at 1424 (para 27).

168 By order dated Sep. 29, 2015 in IA No. 11665 of 2015. *Id.* at 1424, 1426 (paras 27 and 33).

169 The high court initially recorded clearly that the election petitioner did not file the affidavit in the prescribed Form 25, and that led it (the high court) to record further that such a defect is curable and, therefore, directed the election petitioner to cure the defect by filing a fresh affidavit in form 25. *Id.* at 1426 (para 35).

170 *Id.*, at 1430 (para 38). See also, *id*. at 1431 (para 39): "… the RETURNED CANDIDATE also at that point of time accepted that the affidavit at page nos. 394-395 was presented on the same date *i.e*., 20.1.2014."

171 *Id.* at 129 (para 37), "The High Court in its order dated 29.9.2015 in I.A. No. 11665 of 2015 recorded a finding: ….. [T]he Registrar, in compliance with Sub-rule (4) of Rule 8, has affixed his seal and signatures at every page of the election petition and the affidavit at page No. 70 and 71. However, no such seal or signature of the Registrar is to be found upon the affidavit at page Nos. 394 & 395...."

the relevant rule by the Registrar is not fatal to the election petition,[172] because "it is the settled proposition of law that the act or omission of the Court shall not harm any party."[173]

(b) The second major plea of the returned candidate was the fact that the Election Petitioner chose to file yet another affidavit pursuant to the order of the High Court dated 25.8.2014 amply showed that there was no second affidavit filed along with the election petition in conformity with Form 25 of the Conduct Rules, 1961, and that by doing so he merely wanted to rectify the mandatory requirement subsequently, which is impermissible to so do in law.[174] The apex court has discounted this plea as well by bringing into focus the "circumstances" that prompted the election petitioner to file another affidavit. He filed his third affidavit in response to the High Court order by stating clearly that he was doing so only "by way of abundant caution that if the court comes to a conclusion that his affidavit [in Form 25 filed earlier along with the election petition] is found to be defective for any reason, he is willing to file further affidavit to cure the defect."[175] However, the High Court directed the election petitioner to do so, "unfortunately," "without examining the question whether the affidavit at page Nos. 394-395 satisfies the requirement of Form 25 and (without recording a definite finding in that regard) simply recorded a conclusion that the defect is curable and the same can be cured by filing an affidavit in the Form 25."[176]

In the light of the above reasoning, appeals arising out SLPs filed by the appellant-returned candidate have been dismissed, and those of respondent-election petitioner allowed.[177]

172 The failure of the registrar to comply with the requirement of the relevant rule is sought to be explained by the high court by saying that such a lapse occurred probably because nobody pointed out to the Registrar regarding the existence of affidavit at page nos. 394-395. In the opinion of the Supreme Court such a conclusion is not tenable inasmuch as the rule in question casts a mandatory duty on the registrar to sign on each page of the election petition and also the affidavit filed along with the election petition. Such a mandatory duty must be performed irrespective of the fact whether somebody points out to the Registrar or not regarding the existence of the affidavit. *Id*. at 1430 (para 37).

173 *Ibid*.

174 The returned candidate through his counsel took the plea "that the ELECTION Petitioner having availed the benefit of the order in OR VII Rule 11 petition by filing another affidavit cannot now question the correctness of the finding that he did not file an affidavit which is compliance with proviso to Section 83(1). See, *id*., at 1431 (para 42).

175 *Id.* at 1431 (para 41).

176 *Ibid*.

177 *Id.* at 1431-32 (paras 44 and 45).

VII WIDENING THE AMBIT OF DISQUALIFICATIONS FOR CONTESTING PANCHAYAT ELECTIONS: WHETHER CONSTITUTIONALLY TENABLE?

It is one of the constitutional directives that obliges the state legislatures to take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.[178] In pursuance of this directive, laws have been made from time to time by the state legislatures in the exercise of their ordinary legislative powers.[179] This led to establishing a three-tier Panchayat system by 1980's. However, that system got a fillip by the 73rd Amendment of the Constitution, which accorded constitutional status to the Panchayats by specifically inserting a new part IX consisting of articles from 243 to 243A to 243O into the Constitution.[180] After defining the term "Panchayat" as "an institution (by whatever name called) of self-government"[181] for the rural areas, it is constitutionally stipulated that there shall be constituted in every state, Panchayats at the village, intermediate and district levels (hereinafter collectively referred to as Panchayat) in accordance with provisions of part IX.[182] The composition of Panchayats is to be determined by the legislature of the concerned state by enacting the law subject of course to various stipulations contained in part IX of the Constitution; [183] such as reservations of seats in favour of scheduled castes and scheduled tribes, *etc*.[184] The duration of the Panchayat is fixed for a maximum of five years subject to dissolution in accordance with law dealing with the subject.[185] There is a further stipulation that election to constitute a Panchayat be completed before the expiry of its tenure.[186] The broad contours of the powers and functions of Panchayats are also spelt out constitutionally which are to be structured by legislation of the state. [187] For ensuring free and fair elations, the establishment of an autonomous constitutional body to superintend the election process to the Panchayats is also stipulated under the Constitution.[188] In order to increase efficacy of Panchayati Raj institutions, the

178 Constitution of India, 1950, art. 40.

179 *Id*., art. 246(3) read with Entry 5 of List II empowers the State Legislature to make laws with respect to local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, districts boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

180 See part IX inserted by the Constitution (Seventy-third Amendment) Act, 1992 with effect from April 24, 1993.

181 *Supra* note 178, Cl (d) of art. 243.

182 *Supra* note 178, art. 243B (1) of the Constitution. However, Cl. (2) of art. 243B adds an exception by stipulating that notwithstanding anything in cl. (1), "Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs."

183 *Id.*, art. 243C.

184 *Id.*, art. 243D.

185 *Id.*, art. 243E.

186 *Ibid*.

187 *Id.,* art. 243G and 243H.

188 *Id*., art. 243K.

Constitution, amongst other things, also lays down certain disqualifications for membership:[189]

> (1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat—
>
> (a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned: Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;
>
> (b) if he is so disqualified by or under any law made by the Legislature of the State.
>
> (2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

A bare perusal of the constitutional provisions as abstracted above reveals that the state legislatures are required to amend/update the existing law governing Panchayats in tune with the Constitution as amended by the 73rd amendment. In pursuance of these constitutional provisions, the Haryana Panchayati Raj Act, 1994[190] was enacted. As per the constitutional mandate, a three tier Panchayat system at the Village, 'Samiti' and district level is established under the said Act with bodies known as Gram Panchayat, Panchayat Samiti and Zila Parishad. The Act of 1994, inter alia, mandates under its section 175 that persons suffering from any one of the disqualifications mentioned in the provisions of this section are neither eligible to contest the election to any one of the offices under the Act nor can they continue in office if they incur any one of the disqualifications, after having been elected. The categories so specified, includes disqualifications such as, convicts of certain categories of offences, adjudicated insolvent, people of unsound mind, people who hold any office of profit under any one of the three categories of Panchayats, *etc*.[191] However,

189 *Id.*, art. 243F.

190 Hereinafter referred to as the Act of 1994.

191 *Id.*, s 175. Disqualifications.—(1) No person shall be a Sarpanch or a Panch of a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad or continue as such who—

(a) has, whether before or after the commencement of this Act, been convicted—

(i) of an offence under the Protection of Civil Rights Act, 1955 (Act 22 of 1955), unless a period of five years, or such lesser period as the Government may allow in any particular case, has elapsed since his conviction; or (ii) of any other offence and been sentenced to imprisonment for not less than six months, unless a period of five years, or such lesser period as the Government may allow in any particular case, has elapsed since his release; or (aa) has not been convicted, but charges have been framed in a criminal case for an offence, punishable with imprisonment

since the year 2015 to the then existing list of disqualifications under section 174 of the Act of 1994, five more categories have been added that include: (i) persons against whom charges are framed in criminal cases for offences punishable with imprisonment for not less than ten years, (ii) persons who fail to pay arrears, if any, owed by them to either a primary agricultural cooperative society or district central cooperative bank or district primary agricultural rural development bank, (iii) persons who have arrears of electricity bills, (iv) persons who do not possess the specified educational qualification and (v) persons not having a functional toilet at their place of residence.[192]

for not less than ten years; (b) has been adjudged by a competent court to be of unsound mind; or (c) has been adjudicated an insolvent and has not obtained his discharge; or (d) has been removed from any office held by him in a Gram Panchayat, Panchayat Samiti or Zila Parishad under any provision of this Act or in a Gram Panchayat, Panchayat Samiti or Zila Parishad before the commencement of this Act under the Punjab Gram Panchayat Act, 1952 and Punjab Panchayat Samiti Act, 1961, and a period of five years has not elapsed from the date of such removal, unless he has, by an order of the Government notified in the Official Gazette been relieved from the disqualifications arising on account of such removal from office; or (e) has been disqualified from holding office under any provision of this Act and the period for which he was so disqualified has not elapsed; or (f) holds any salaried office or office of profit in any Gram Panchayat, Panchayat Samiti, or Zila Parishad; or (g) has directly or indirectly, by himself or his partner any share or interest in any work done by order of the Gram Panchayat, Panchayat Samiti or Zila Parishad; (h) has directly or indirectly, by himself or, his partner share or interest in any transaction of money advanced or borrowed from any officer or servant or any Gram Panchayat; or (i) fails to pay any arrears of any kind due by him to the Gram Panchayat, Panchayat Samiti or Zila Parishad or any Gram Panchayat, Panchayat Samiti or Zila Parishad subordinate thereto or any sum recoverable from him in accordance with the Chapters and provisions of this Act, within three months after a special notice in accordance with the rules made in this behalf has been served upon him; (j) is servant of Government or a servant of any Local Authority; or (k) has voluntarily acquired the citizenship of a Foreign State or is under any acknowledgement of allegiance or adherence to a Foreign state; or (l) is disqualified under any other provision of this Act and the period for which he was so disqualified has not elapsed; or (m) is a tenant or lessee holding a lease under the Gram Panchayat, Panchayat Samiti or Zila Parishad or is in arrears of rent of any lease or tenancy held under the Gram Panchayat, Panchayat Samiti or Zila Parishad; or (n) is or has been during the period of one year preceding the date of election, in unauthorised possession of land or other immovable property belonging to the Gram Panchayat, Panchayat Samiti or Zila Parishad; or (o) being a Sarpanch or Panch or a member of Panchayat Samiti or a Zila Parishad has cash in hand in excess of that permitted under the rules and does not deposit the same along with interest at the rate of twenty-one percentum per year in pursuance of a general or special order of the prescribed authority within the time specified by it; or (p) being a Sarpanch or Panch or a Chairman, Vice-Chairman or Member, President or Vice-President or Member of Panchayat Samiti or Zila Parishad has in his custody prescribed records and registers and other property belonging to, or vested in, Gram Panchayat, Panchayat Samiti or Zila Parishad and does not handover the same in pursuance of a general or special order of the prescribed authority within the time specified in the order; or (q) x x x (r) admits the claim against Gram Panchayat without proper authorization in this regard; (s) furnishes a false caste certificate at the time of filing nomination: Provided that such disqualifications under Clauses (r) and (s) shall be for a period of six years.

192 Initially, the five new categories were added through an ordinance, known as Haryana Panchayat Raj (Amendment) Ordinance, 2015, promulgated on Aug. 14, 2015, and later replaced by the Act which, which was passed by the Haryana Legislature on Sep.7, 2015 and subsequently

Later on, by taking note of these newly added disqualifications, on September 8, 2015, the state election commission issued a notification specifying the election schedule for the Panchayats of Haryana. The amended disqualifications instantly came to be questioned before the Supreme Court under article 32 of the Constitution in *Rajbala* v. *State of Haryana.*,[193] inasmuch as those disqualifications rendered the petitioners incapable of contesting elections for any one of the elected offices of Panchayats under the Act of 1994 (as amended) by violating their fundamental right to contest elections.[194] Although in respect of the right to contest an election for an office of the Panchayat, there may be some argument whether or not it is a fundamental right, but there is no dispute about the fact that it is unarguably a constitutional right.[195] Now, if it is assumed that right to contest election is a fundamental right, even then no fundamental right is an absolute right, implying thereby that the state is permitted to regulate that right by imposing reasonable restrictions through the enactment of a relevant law. For instance, say, if an enactment challenged as violative of article 14, it can be struck down only if it is found that it violates equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by clauses (a) to (g) of article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of article 19.

notified. This has been done by the State Legislature under art. 243F, which authorizes the concerned state legislature to stipulate disqualifications for being a member of the Panchayat. The added categories are specified in cl. (aa), (t), (u), (v) and (w): S. 174 (1)(aa) - (aa) has not been convicted, but charges have been framed in a criminal case for an offence, punishable with imprisonment for not less than ten years; (t) fails to pay any arrears of any kind due to him to any primary agriculture co-operative society, district central co-operative bank and district primary cooperative agriculture rural development bank; or (u) fails to pay arrears of electricity bills; (v) has not passed matriculation examination or its equivalent examination from any recognized institution/board: Provided that in case of a woman candidate or a candidate belonging to scheduled caste, the minimum qualification shall be middle pass: Provided further that in case of a woman candidate belonging to scheduled caste contesting election for the post of Panch, the minimum qualification shall be 5th pass; or (w) fails to submit self-declaration to the effect that he has a functional toilet at his place of residence.

193 AIR 2016 SC 33, per Jasti Chelameswar, J (for himself and Abhay Manohar Sapre, J) Hereinafter simply *Rajbala.*

194 The challenge on ground of constitutionality is confined to Cl. (t), (u), (v) and (w) of s. 175(1), implying thereby that the issue of constitutionality of Sub-section (1)(aa) of s. 175 which prescribes that "(1) No person shall be a ..... or continue as such who ... (aa) has not been convicted, but charges have been framed in a criminal case for an offence, punishable with imprisonment for not less than ten years" has not been touched. See *Rajbala* at 55 (para 53).

195 *Id.* at 51 (para 43), Jasti Chelmeswar J citing *Javed* v. *State of Haryana* (2003) 8 SCC 369, holding that "right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute. At the most, in view of part IX having been added in the Constitution, a right to contest election for an office in Panchayat may be said to be a constitutional right..." See also, *id*. at 71-72 (paras 98-101), per Abhay Manohar Sapre, J. (concurring) in a still more emphatic language: in their "considered opinion," "both the rights namely "Right to Vote" and "Right to Contest" are constitutional rights of the citizen," citing *PUCL* v. *Union of India* (2003) 4 SCC 399 (three-Judge Bench); *Javed* v. *State of Haryana*, (2003) 8 SCC 369 (three-Judge Bench).

The basic premise for this approach is that the legislature, composed as it is of the representatives of the people, is supposed to know and be aware of the needs of the people and what is good and bad for them, and that the court cannot sit in judgment over their wisdom.[196] In this backdrop, the Supreme Court in the instant case examined the issue of constitutionality of the newly inserted clauses of section 175(1) of the Act of 1994 (as amended). One common ground running through all the four clauses is the creation of a class of persons "who were eligible to contest the elections to Panchayats subject to their satisfying the requirements of law as it existed prior to the impugned Act but are rendered now ineligible because they fail to satisfy one of the other conditions prescribed under clauses (t), (u), (v) and (w) of Section 175(1) of the Act."[197] The emerging issue is whether such a classification is "without any intelligible difference between the two classes and such classification has no nexus with the object sought to be achieved."[198] Out of these four new clauses, Clause (v), which makes classification on the basis of educational qualification,[199] is typical to determine the common issue of 'reasonable classification'. In this respect, the question is, whether the factor of formal 'education', which disqualifies a large number of voter population and disables them to contest for various offices under the Act of 1994 (as amended), bears any rational relation with the objective sought to be achieved under the said Act. Keeping in mind the various functions and duties of Gram Panchayat that are required to be performed by its elected members,[200] the apex court in the instant case has held the formal education-based classification perfectly constitutional and cannot be said either based on no intelligible differentia unreasonable or without a reasonable

196 *Id.* at 59-60 (para 67), see the analysis of the decision of the Supreme Court in *State of Tamil Nadu* v. *Ananthi Ammal* (1995) 1 SCC 519.

197 *Id.* at 62 (para 70).

198 *Ibid.*

199 Cl. (v) prescribes a minimum educational qualification of matriculation for anybody seeking to contest an election to any one of the offices mentioned in the opening clause of s. 175(1), namely Sarpanch or a Panch of a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad. However, the minimum educational qualification is lowered insofar as candidates belonging to scheduled castes and women are concerned to that of "middle pass;" whereas a further relaxation is granted in favour of the scheduled caste woman insofar as they seek to contest for the office of Panch.

200 Various functions and duties of Gram Panchayat have been provided under Section 21 of the Act of 1994, which mandates that, subject to such rules as may be made, it shall be the duty of the Gram Panchayat within the limit of the funds at its disposal, to make arrangements for carrying out the requirements of *Sabha* area in respect of the following matters including all subsidiary works and buildings connected therewith: XI. Non-conventional Energy Sources- (1) Promotion and Development of non-conventional energy schemes. (2) Maintenance of community non-conventional energy devices, including bio-gas plants and windmills. (3) Propagation of improved *chulhas* and other efficient devices. XXI. Social Welfare including Welfare of the Handicapped and Mentally Retarded- (1) Participation in the implementation of the social welfare programmes including welfare of the handicapped, mentally retarded and destitute. (2) Monitoring of the old age and widows pension scheme."

nexus with the object sought to be achieved. This view is premised on the following counts:

(i) The proclaimed object of such classification is to ensure that those who seek election to Panchayats have some basic education which enables them to more effectively discharge various duties which befall the elected representatives of the Panchayats, and this objective cannot be said to be irrational or illegal or unconnected with the scheme and purpose of the Act or provisions of Part IX of the Constitution.[201]

(ii) It is only education which gives a human being the power to discriminate between right and wrong, good and bad, and therefore, prescription of an educational qualification is not irrelevant for better administration of the Panchayats.[202]

(iii) Moreover, if it is constitutionally permissible to debar certain classes of people from seeking to occupy the constitutional offices, numerical dimension of such classes, should make no difference for determining whether prescription of such disqualification is constitutionally permissible unless the prescription is of such nature as would frustrate the constitutional scheme by resulting in a situation where holding of elections to these various bodies becomes completely impossible.[203]

In view of the above, the challenge to clause (v) to section 175(1) on ground of its being in violation of the fundamental right to equality under article 14 of the Constitution has been rejected.[204]

There has not been much difficulty in dealing with the constitutionality of clauses (t), (u) and (w) of section 175(1) of the Act of 1994. Clauses (t) and (u) are taken together as the two clauses disqualify persons who are in arrears of amounts, in one

201 See *Rajbala* at 66 (para 85), per Jasti Chelmeswar J. See also, *id.* at 72 (para 104), per Abhay Manohar Sapre, J (concurring): "In fact, keeping in view the powers, authority and the responsibilities of Panchayats as specified in Article 243G so also the powers given to Panchayats to impose taxes and utilization of funds of the Panchayats as specified in Article 243H, it is necessary that the elected representative must have some educational background to enable him/her to effectively carry out the functions assigned to Panchayats in Part IX."

202 *Ibid*, per Jasti Chelmeswar J. See also, *id.* at 72 (para 105), per Abhay Manohar Sapre, J. (concurring): "No one can dispute that education is must for both men and women as both together make a healthy and educated society. It is an essential tool for a bright future and plays an important role in the development and progress of the country."

203 *Id.* at 66 (para 87).

204 *Ibid*, per Jasti Chelmeswar J. See also, *id.* at 73 (para 108), per Abhay Manohar Sapre J (concurring): "In the light of the foregoing discussion agreeing with my learned brother, I also hold that Section 175(v) is intra vires the Constitution and is thus constitutionally valid."

case payable to cooperative bodies specified in clause (t), and in the other case electricity bills as mentioned in clause (u). Recognizing that 'indebtedness' is a constitutionally identified factor, which is incompatible in certain circumstances with the right to hold an elected office,[205] and that the State Legislature has the legislative competence concurrently with the Centre to make laws declaring people ineligible to seek election to various public offices if they are indebted to cooperative bodies or in arrears of electricity bills,[206] the clauses (t) and (u) of section 175(1) of the Act of 1994 (as amended) has been held as perfectly constitutional.[207]

Clause (w) disqualifies a person from contesting an election to the Panchayat if such a person has no functional toilet at his place of residence. On this count the plea to be considered is, whether such a ground for disqualifying a person, who simply cannot afford to have toilet at his residence due to sheer poverty and is otherwise eligible for contesting elections to the Panchayats, would be unreasonable.[208] Such a plea stands negated by the Supreme Court in the light of its following reasoned-observations:

(i) The salutary statutory provision of functional toilet contained in Clause (w) has been conceived as a measure of public policy,[209] which seeks to eliminate from rural India the unhealthy practice of defecating in public.[210]

205 *Supra* note 178, art. 102(1)(c) and art. 191(1)(c) declare that an undischarged insolvent is disqualified from becoming a Member of Parliament or the State Legislature respectively, and that by virtue of art. 58(1)(c) and 66(1)(c) the same disqualification extends even to the seekers of the offices of the President and the Vice-President. See *id.* at 66-67 (para 89).

206 See, Entry 9, List III of the Seventh Schedule to the Constitution.

207 See *Rajbala* at 69 (para 92), per Chelmeswar J. The argument is raised before the court that there could be a genuine dispute regarding the liability falling under cl. (t) and (u) of the Act of 1994 (as amended), and, therefore it would be unjust to exclude such persons from the electoral process even before an appropriate adjudication. This has been counteracted on two counts: one, the Court does not sit in judgment over the issue of 'justness' of a situation and question "the wisdom of the legislation"; two, even in such a situation there is nothing in law that prevents an aspirant to contest an election to the Panchayat to make payments under protest of the amounts claimed to be due from him and seek adjudication of the legality of the dues by an appropriate forum. See *ibid*. See also, *id*. at 72 (para 106), per Abhay Manohar Sapre J. (concurring): "In my view, therefore, s. 175(v) of the Act is intra vires the Constitution and is thus constitutionally valid."

208 See, *id.* at 70 (para 92).

209 See *id.* at 72 (para 107), per Abhay Manohar Sapre, J. (concurring):"…. This provision in my view is enacted essentially in the larger public interest and is indeed the need of the hour to ensure its application all over the country and not confining it to a particular State."

210 See *id*. at 71 (para 95). Though such a practice is found in other parts of the world as well, yet they seem to have overcome much earlier. In England, for instance, "this habit existed till 15th Century at least," and, thus, "poor sanitation made London a death-trap," citing Niall Ferguson, *Civilization: The West and the Rest*, (First Edition, Penguin Press, 2011)] page 23. See *ibid*.

(ii) Recognizing that poverty may be one of the main reasons for preventing people to go in for 'functional toilets', the State of Haryana since the year 1985 has floated a scheme to provide financial assistance specially to the families falling below poverty line (BPL) who are desirous of constructing a toilet at their residence.[211]

(iii) As per the data available with the State, out of 8.5 lakhs households, classified to be below the poverty line, approximately 7.2 lakhs households had availed the benefit of the above scheme.[212]

(iv) One of the primary duties of any civic body is to maintain sanitation within its jurisdiction, and, therefore, those who aspire to get elected to those civic bodies and administer them must themselves set an example for others.[213]

Accordingly, if the legislature stipulates that those who are not following basic norms of hygiene are ineligible to become administrators of the civic body and disqualifies them as a class from seeking election to the civic body, such a policy perspective can neither be said to create a class based on unintelligible criteria nor can such classification be said to be unconnected with the object sought to be achieved by the Act.[214] In view of the above, the Supreme Court has not found any merit in this writ petition on any of the four counts as underlined above, and, thus, dismissed the same,[215] and thereby "interim order stands vacated."[216]

VIII CONCLUSION

We may abstract the following conclusions flowing from the six issues that have been dealt with in our survey. In the first issue, dealing with how to determine in the given fact-matrix whether any cause of action for setting aside the election of the returned candidate has been made out, the division of allegations into three sets and

211 See, *id*. at 70 (para 94), per Jasti Chelmeswar J.: Initially, under such a scheme Rs. 650/- was given by the State, and from time to time the amount was revised and at present Rs. 12000/- is provided by the State to any person desirous of constructing a toilet, ibid. See also, *id.*, 72 (para 107), per Abhay Manohar Sapre, J. (concurring):"…. Moreover, the State having provided adequate financial assistance to those who do not have toilet facility for construction of toilet, there arise no ground to challenge this provision as being unreasonable in any manner."

212 *Ibid*.

213 See *id*. at 71 (para 95).

214 *Ibid,* per Jasti Chelmeswar J. See also, *id*. at 72 (para 106A), per Abhay Manohar Sapre, J. (concurring):"…. In my view, this provision too has reasonable nexus and does not offend any provision of the Constitution."

215 *Id.,* at 71 (para 96), per Jasti Chelmeswar J.

216 *Id.*, at 73 (para 109), per Abhay Manohar Sapre, J. (concurring).

their analysis by the apex court is instructive, both in terms of brevity and specificity.[217] It shows which one of the issues should not fall within the domain of consideration of 'cause of action' by reason of becoming simply infructuous; which one needs to be critically probed through 'regular trial' without the need of close scrutiny; and which one is required to be critically evaluated by the Court in order to decipher whether or not the petitioner has met the mandatory requirements of establishing a 'cause of action' by making a concise statement of the material facts and setting forth full particulars of any alleged corrupt practice.[218] In the latter case, the court is obligated to ensure if the petitioner has complied with requirement of filing the requisite affidavit in support of the allegations of corrupt practice and the particulars thereof. In the second issue,[219] while differentiating the genus of sections 100(1)(a) and 100(1)(d) of the Act of 1951,[220] the Supreme Court has shown how deciding the case on first principles obviates the need to digress and examine the plethora of case law unnecessary to decide the relevant issue before the court.[221] In the resolution of the third issue[222] relating to striking out any matter in any pleading, which is found to be vague, unnecessary, scandalous, frivolous, vexatious, *etc*., the approach of the Supreme Court is significant. It has systematically examined the "scheme," "scope," and "purpose," of Order VI, Rule 16 of CPC, and showed how the averments in the election petition, which are deemed to be 'factually correct,' need to be differentially examined in terms of the provisions of the said Rule.[223] Besides, the apex court has also deprecated the practice that tends to delay the adjudication of the election petition, which are otherwise mandated by the Parliament to be decided within a period of six months, by filing applications under Order VII Rule 11 of CPC. Such delaying tactics should be overcome by considering preliminary objections, if any, (in cases where there is more than one) in an election petition "at the earliest point of time and in one go."[224]

The fourth issue,[225] whether a person, born into a Muslim family belonging to a lower caste, which is identified, recognized and enumerated as a Scheduled Caste in the State of Punjab, is qualified to contest the election from a constituency exclusively reserved for Scheduled Castes under section 5(a) of the Representation of the People Act, 1951, has been answered rightly but somewhat in an ambivalent or circumvent manner in our view. The predicament before the Supreme Court was, how to reconcile the proposition that on the one hand the caste of a person is determined by his birth

217 See, *supra* note 2 generally.
218 See, *supr*a notes 14, 15, and 16, and the accompanying text.
219 See, *supra* note 3 generally.
220 See, *supra* notes 52 and 53, and the accompanying text.
221 See, *supra* note 65, and the accompanying text.
222 See, *supr*a note 4 generally.
223 See, *supra* notes 68-71, and the accompanying text.
224 See, *supra* notes 107-109, and the accompanying text
225 See, *supra* note 5 generally.

and it does not change with the change of religion, and on the other the categorical statement in the Presidential Order of 1950, which, inter alia, mandates that "no person who professes a religion different from the Hindu or the Sikh religion shall be deemed to be a member of a Scheduled Caste."[226] This seemingly irreconcilable position has been reconciled by the Supreme Court by construing that the said reference to the Presidential Order of 1950 does not mean that the person claiming reservation benefit must be a Hindu or Sikh by birth, and that it should suffice to determine if that person was Hindu or Sikh, even by conversion, at the time of claiming the benefit.[227] The fifth issue[228] is not really a legal issue. It shows concern of the Supreme Court, how the high court had processed the election disputes in an extremely 'casual' manner, which is lamented by the apex court as "a wholly unsatisfactory way of dealing with any issue in a judicial proceeding and more so with election petitions."[229] Such an approach had led the Election Court eventually on a deviant course:[230] It had unnecessarily examined the "various authorities of the Supreme Court" prompting it to reach a wrong conclusion, namely "at the most it was a non-compliance of Section 83(1) of the Act of 1951 and same is curable....."[231] This, indeed, is not the way in which the high court, acting as an election court, should decide the election disputes involving the basic rights of the citizens. Response of the Supreme Court to the sixth and the last issue[232] in the present survey, which involves the mixed questions of social, political and economic nuances, is clearly positive and progressive. Keeping in mind the various functions and duties of Gram Panchayat that are required to be performed by its elected members,[233] the apex court has held that all the added clauses[234] are perfectly constitutional and cannot be said either based on un-intelligible differentia or without a reasonable nexus with the object sought to be achieved.[235]

226 See, *supra* note 119 and the accompanying text.
227 See, *supra* note 126 and the accompanying text.
228 See, *supra* note 6 generally.
229 See *supra* note 156 and the accompanying text.
230 See *supra* notes 157-158 and the accompanying text
231 See *supra* note 160 and the accompanying text.
232 See *supra* note 7 generally.
233 See *supra* note 200.
234 See *supra* note 197.
235 See *supra* notes 204, 207, and 214 and the accompanying text.