Hari Shanker Jain vs Sonia Gandhi on 12 September, 2001

Equivalent citations: AIR 2001 SUPREME COURT 3689, 2001 (8) SCC 233, 2001 AIR SCW 3557, 2001 (9) SRJ 281, (2002) 1 JCR 119 (SC), 2001 (3) LRI 1047, 2001 (6) SCALE 233, (2001) 7 JT 629 (SC), 2001 (7) JT 629, (2001) 7 SUPREME 108, (2001) 6 SCALE 233, (2001) 3 SCJ 396, (2001) 4 CIVLJ 732, (2002) 1 CURLJ(CCR) 70

Author: R.C. Lahoti

Bench: Chief Justice, R.C. Lahoti, Doraiswamy Raju

CASE NO.:
Appeal (civil) 4400 of 2000

PETITIONER:
HARI SHANKER JAIN

Vs.

RESPONDENT:
SONIA GANDHI

DATE OF JUDGMENT: 12/09/2001

BENCH:
CJI, R.C. Lahoti & Doraiswamy Raju.

JUDGMENT:

WITH J U D G M E N T R.C. Lahoti, J.

General elections for constituting the 13th Lok Sabha took place in the months of September/October, 1999. In 25-Amethi Parliamentary Constituency there were 27 candidates in the fray out of whom Smt. Sonia Gandhi, the respondent was declared elected on 7.10.1999. The two appellants namely Hari Shanker Jain and Hari Krishna Lal had also contested the election but lost. Three election petitions were filed before the High Court of Allahabad laying challenge to the election of the respondent of which two were filed by the appellants before us. The two election petitions filed by Hari Shanker Jain and Hari Krishna Lal, the appellants before us, and a third election petition filed by an elector - Prem Lal Patel were respectively registered as Election Petition No.1 of 1999, 4 of 1999 and 5 of 1999. In all the three election petitions the respondent, without

filing written statement, moved applications under Order 6 Rule 16 read with Order 7 Rule 11 and Section 151 of the CPC supported by affidavit submitting that the respective election petitions did not raise any triable issue before the High Court; that the pleadings were lacking in precision and were vague, unspecific, ambiguous and irrelevant, to some extent also scandalous, and hence amounted to abuse of the process of the court; and that the pleadings did not disclose any cause of action worth being tried by the High Court and therefore the pleadings were liable to be struck off and the election petition liable to be dismissed. The applications were opposed by the election petitioners filing replies thereto. The learned designated Election Judge heard the applications filed by the respondent and formed an opinion that none of the three petitions disclosed any cause of action or triable issue and as such none was maintainable under Section 86 of the Representation of the People Act, 1951. By a common order all the three petitions were directed to be dismissed with costs. Prem Lal Patel, the petitioner in Election Petition No.5 of 1999, has accepted the order of the High Court and given up pursuing the challenge to the election of the respondent. However, Hari Shanker Jain and Hari Krishna Lal have filed these appeals under Section 116-A of the Representation of the People Act, 1951 (hereinafter, RPA, 1951, for short).

We will briefly set out the gist of the pleas raised by the two appellants in their respective election petitions to appreciate the nature of controversy arising for decision in these appeals. The details of the pleadings would be relevant but only a little later and at that stage we will revert back to the pleadings in such details as may be necessary. Suffice it to note for the moment that both the petitioners admit the respondent having acquired Indian citizenship by registration under Section 5(1)(c) of the Indian Citizenship Act, 1955 on the ground of her having married Shri Rajiv Gandhi, a citizen of India (later Prime Minister of India). Both the election petitioners dispute the validity of the certificate of citizenship issued to the respondent and submit that she, being an Italian citizen, did not satisfy the pre-requisites for entitlement to registration as a citizen of India and even otherwise, could not have become a citizen of India and is not a citizen of India. In addition, election petitioner Hari Shanker Jain has also laid challenge to the vires of Section 5(1)(c) of the Citizenship Act submitting that the provision is ultra vires of the Constitution. We are not referring here to other parts of the pleadings and details thereof as we propose to set out the same in the later part of the judgment where it would be necessary and apposite.

The learned designated Election Judge held that the challenge to citizenship cannot be adjudicated upon by the High Court in an election petition. So also the plea that the respondents name was wrongly entered in the voters list could be raised before the Election Commission and not before the High Court in an election petition. The respondent was holding a certificate of citizenship granted under Section 5(1)(c) of the Citizenship Act which was final and binding and unless cancelled by the Central Government, the same could not be called in question in an election petition. The learned designated Election Judge also held that question of vires of any law could not be raised before nor could be gone into by him within the limited jurisdiction conferred on High Court hearing an election petition under RPA, 1951. In the opinion of learned designated Election Judge the two election petitions did not raise any triable issue nor disclose any cause of action and hence were not maintainable under Section 86 of the RPA, 1951. The preliminary objections raised by the respondent were allowed and all the election petitions dismissed in limine.

At the hearing of these appeals, the two election petitioners, appellants in this court, appeared in-person and each of them addressed this court at length. Shri Milon Banerjee, the learned senior counsel ably assisted by Shri Gaurab Banerjee appearing for the respondent, supported the impugned order of the High Court assigning same additional reasons in support thereof. Following questions arise for decision in this appeal:

> (1) Whether a designated Election Judge of High Court can entertain and decide a plea relating to validity of any law?
>
> (2) Whether the plea that a returned candidate is not a citizen of India can be raised in an election petition before the High Court?
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> (3) Whether a plea questioning the citizenship of the returned candidate is entertainable by the High Court hearing an election petition in spite of the returned candidate holding a certificate of citizenship granted under Section 5(1)(c) of the Citizenship Act?
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> (4) Whether on the pleadings of the two election petitioners, a cause of action and a triable issue was raised which should have been put to trial calling upon the respondent to file her written statement?

We proceed to deal with these issues.

Question - 1 Article 329 of the Constitution provides as under:-

> 329. Bar to interference by courts in electoral matters.__ Notwithstanding anything in this Constitution
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> (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court.

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

Under Section 80-A of the RPA, 1951, the court having jurisdiction to try an election petition shall be the High Court. Such jurisdiction shall be exercised ordinarily by a single Judge of the High Court and the Chief Justice shall, from time to time, assign one or more Judges for that purpose. Grounds for declaring election to be void are enumerated in sub-section (1) of Section 100 of the Act, which reads as under:-

> 100. Grounds for declaring election to be void.__(1) Subject to the provisions of sub-section (2) if the High Court is of opinion __

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

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

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

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

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

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

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

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act.

the High Court shall declare the election of the returned candidate to be void.

Under Section 87, subject to the provisions of RPA, 1951 and of any Rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. The provisions of the Indian Evidence Act, 1872 are made applicable in all respects to the trial of an election petition unless otherwise provided by RPA, 1951. Who can be joined as parties to an election petition, is governed by Section 82 and contents of an election petition must satisfy the requirements of Section 83. What reliefs may be claimed by the petitioner are specified by Section 84. A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected. Under Section 98, the High Court is empowered, at the conclusion of the trial of an election petition, to dismiss the election petition or declare the election of all or any of the returned candidates to be void and may in addition declare the petitioner or any other candidate to have duly elected. Under Section 99, the High Court has been empowered to make certain other orders specially while deciding a case where any corrupt practice is alleged to have been committed and proved.

It is clear from a conspectus of the abovesaid provisions that jurisdiction to try an election petition has been conferred on the High Court. The grounds for declaring an election to be void must conform to the requirement of Section 100 and the operative part of the order of the High Court

must conform to the requirement of Sections 98 and 99 of RPA, 1951. The vires of any law may be put in issue by either party to an election petition before the High Court and the High Court can adjudicate upon such an issue if it becomes necessary to do so for the purpose of declaring an election to be void under Section 100 and for the purpose of making an order in conformity with Sections 98 and 99 of RPA, 1951. The only restriction on the power of the High Court, as spelled out by clause (a) of Article 329 of the Constitution, is that the validity of any law relating to the delimitation of constituency or allotment of seats to such constituencies, made or purporting to be made under Article 327 or Article 328, cannot be called in question and hence cannot be so adjudged. A Judge of the High Court can, therefore, while hearing an election petition, adjudicate upon the validity of any statutory provision subject to two limitations: (i) that it must be necessary to go into that question for the purpose of trying an election petition on any one or more of the grounds enumerated in Section 100 and for the purpose of granting any one or more of the reliefs under Sections 98 and 99 of the Act, and (ii) a specific case for going into the validity or vires of any law is made out on the pleadings raised in the election petition.

In Bhagwati Prasad Dixit Ghorewala Vs. Rajeev Gandhi (1986) 4 SCC 78 this Court has observed that while trying an election petition under the RPA, 1951 the High Court does not stand derogated from its plenary powers. In T. Deen Dayal Vs. High Court of Andhra Pradesh - 1997 (7) SCC 535 (to which one of us, Dr. A.S. Anand, J, as His Lordship then was is also a party) this Court has held that the High Court hearing an election petition is not an authority and that it remains a High Court while trying an election petition under RPA 1951. The contention that the High Court while exercising its such power can pass orders as contemplated by Section 98 only and nothing more was rejected as being without substance. A Full Bench of the Rajasthan High Court in Ramdhan Vs. Bhanwar Lal - 1983 RLW 507 held that the conferral of jurisdiction on High Court to try an election petition is not by way of constituting a special jurisdiction and conferring it upon the High Court; it is an extension of the ordinary jurisdiction of the High Court to hear and decide election disputes. The designated Election Judge functions as a High Court and not as a Special Tribunal or as a Special Court or as persona designata. We find ourselves in agreement with the view so taken as it is consistent with the view taken by this Court in T. Deen Dayals case. Incidentally, we may also refer to the case of National Sewing Thread Co.Ltd. Vs. James Chadwick and Bros. Ltd. - (1953) SCR 1028 wherein this Court held that when power to hear a dispute under an Act is conferred on the High Court then the dispute has to be determined according to rules of practice and procedure of that Court and in accordance with the provisions of the Charter under which that Court is constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction. We are, therefore, of the opinion that the designated Election Judge while hearing an election petition can exercise the jurisdiction vesting in the High Court, accepting such limits on its power as can be spelled out expressly or by necessary implication from the provisions of the RPA 1951 to examine the validity of any law or rule or order. There is nothing in RPA 1951 which may take away jurisdiction of the High Court to adjudicate upon the validity of any law which comes up for its consideration to decide the election petition. In Smt. Indira Nehru Gandhi Vs. Shri Raj Narain - 1975 SCR (Sup.) 1 the Constitution Bench has adjudicated upon the validity of Constitution (39th Amendment) Act, 1975 though the question whether the High Court trying an election petition or the Supreme Court hearing an appeal under Section 116A of RPA 1951 can examine the vires of any legislation was neither raised nor decided.

The learned designated Election Judge was not, therefore, right in laying down as a wide and general proposition of law, that in an election petition question of validity of a statute cannot be gone into at all.

Questions - 2 & 3 Can the validity of a certificate of citizenship issued under Section 5(1)(c) of Citizenship Act, 1955 at all be gone into during trial of an election petition? The learned designated Election Judge has taken the view that certificate of citizenship issued by the Central Government is valid and binding and cannot be called in question before a court of law unless cancelled or annulled by the Central Government itself. A perusal of the relevant provisions and the scheme of the Citizenship Act would show that here again the High Court was not right in taking such a broad view which it has taken. Citizenship Act, 1955 is an Act to provide for the acquisition and determination of Indian citizenship. Acquisition of citizenship can be by birth (Section 3), by descent (Section 4), by registration (Section

5) and by naturalisation (Section 6). Clause (c) of sub-section (1) of Section 5, as amended by Act No. 51 of 1986, provides that persons who are, or have been, married to citizens of India and are ordinarily resident in India and have been so resident for five years immediately before making an application for registration, may, subject to satisfying other provisions including procedural ones, be registered as a citizen of India by the prescribed authority of the Central Government. Citizenship Act does not provide for cancellation of a certificate of registration issued under Section 5. Section 9 speaks of termination of citizenship upon acquisition of the citizenship of another country which event entails cessation of citizenship of India. Sub- section (2) of Section 9 provides that if any question arises as to where, when and how any person has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence as may be prescribed in this behalf. Section 13 is another provision, which provides for issuance of certificate of citizenship in case of doubt. The Central Government has been empowered, in such cases as it thinks fit, to certify that a person, with respect to whose citizenship of India a doubt exists, is a citizen of India. Such certificate is conclusive evidence except when it is proved that it was obtained by means of fraud, false representation or concealment of any material fact. Section 15 provides remedy of revision to a person aggrieved by an order made under the Act by the prescribed authority or any officer or an authority other than the Central Government. It is not the case of any of the election petitioners that the citizenship of India granted to the respondent was liable to be terminated on account of her having voluntarily acquired the citizenship of another country subsequent to her having acquired citizenship of India by registration, a question which, if raised, would have been within the exclusive jurisdiction of the Central Government to determine. The election petitioners are laying challenge to the correctness of the grant of citizenship to the respondent and her entitlement to be registered as a citizen of India under Section 5(1)(c) of the Act. Such a question is not immune, by the scheme of the Citizenship Act, 1955, from being adjudicated upon by an appropriate forum other than Central Government. However, the case of the petitioners, as the pleadings will bear out, is that citizenship was granted to the respondent on 30th April, 1983. Thus, the grant of citizenship of India to the respondent is admitted by both the petitioners - it is the correctness of that grant which is challenged. In Hari Shanker Jains petition it is clearly stated that respondent acquired Indian citizenship on 30.4.1983 and it is further averred that respondent was granted Indian citizenship. The substance of the case is that it was wrongly granted for a variety of

reasons. It is not the case of either of the petitioners that the certificate of citizenship granted to respondent has ever been cancelled or that her citizenship has been terminated.

It would be appropriate to have a brief survey of judicial opinion. In Bhagwati Prasad Dixit Ghorewala Vs. Rajeev Gandhi, (1986) 4 SCC 78, the question raised in the election petition laying challenge to the election of the respondent was that in view of the respondent having married a foreign national, he had lost the citizenship and the respondents citizenship, therefore, stood terminated under Section 9 of the Citizenship Act. This Court held that the question of citizenship could be gone into by the High Court hearing an election petition and the High Court, trying an election petition, can declare an Indian citizen having become disqualified because of his having acquired the citizenship of a foreign State. But in view of the scheme of Section 9, which is a complete code as regards the termination of Indian citizenship on the acquisition of the citizenship of a foreign country, the High Court trying an election petition, could give such declaration only on the basis of a declaration made by the Central Government as to termination of citizenship being produced before a High Court, which shall have to be given effect to by the High Court. So long as such a declaration is not forthcoming, the High Court should proceed on the ground that the candidate concerned had not ceased to be an Indian citizen. This is a harmonious way in which the two types of issues, namely, the issue relating to the validity of an election to either House of Parliament or of a State Legislature and the issue relating to loss of Indian citizenship on the acquisition of citizenship of a foreign country, which are both vital, can be resolved. The Court drew a distinction between two situations: (i) a person may not be citizen of India because he has not acquired the citizenship of India at all, and (ii) a person may not be a citizen of India because having acquired citizenship, he may have lost it by voluntarily acquiring citizenship of another country as provided in Section 9(1) of the Citizenship Act.

In Akbar Khan Alam Khan & Anr. Vs. Union of India & Ors., (1962) 1 SCR 779, it was held by Constitution Bench that a question whether a person had never been an Indian citizen as distinguished from question of any person having acquired the citizenship of another country (and consequent thereupon his Indian citizenship having been terminated) can be examined by a Civil Court. So is the view taken by another Constitution Bench in The State of Andhra Pradesh Vs. Abdul Khader, (1962) 1 SCR 737. In Sejal Vikrambhai Patel & etc. Vs. State of Gujarat & Ors., AIR 1993 Gujarat 150, a learned single Judge has held that the question whether a person is or is not a citizen of India can be decided by a Court. So is the view taken by Calcutta High Court in Ali Ahmad Vs. Electoral Registration Officer & Ors., AIR 1965 Calcutta 1 and by the High Court of Andhra Pradesh in Mohammed Kamal Khan & Ors. Vs. The State of Andhra Pradesh & Anr., AIR 1962 Andhra Pradesh 247. In Sultan Khan Vs. Sailesh Chandra Nundy, AIR 1963 Calcutta 527, a Division Bench of Calcutta High Court has held that in spite of the persons name having been included in roll of voters prepared under Part III of the Representation of the People Act, 1950, the Election Tribunal can enquire and decide whether the person had at all acquired citizenship of India. In Mangal Sain Vs. Shanno Devi, AIR 1959 Punjab 175, a Division Bench of Punjab High Court has held that where a person is not a citizen of India, the order of the Returning Officer accepting the nomination papers for election to a seat in the State Legislature is no bar to challenge his election by an election petition in spite of his being enrolled in the voters list. An appeal preferred against the decision of High Court was dismissed by this Court. [See Smt. Shannodevi Vs. Mangal Sain, (1961) 1 SCR 576] In

Ghaurul Hasan & Ors. Vs. State of Rajasthan & Anr.

(1962) 1 SCR 772, a certificate of registration of citizenship granted under Section 5(1)(c) of the Citizenship Act was sought to be cancelled by the prescribed authority. A Constitution Bench of this Court held that the prescribed authority granting the registration could not cancel the same except under Section 10 of the Act and power to cancel the certificate issued under Section 5 of the Citizenship Act could not be derived from Section 21 of the General Clauses Act as the orders of the kind contemplated in Section 5 of the Citizenship Act do not fall within the scope of Section 21 of the General Clauses Act.

Article 84 of the Constitution provides inter alia that a person shall not be qualified to be chosen to fill a seat in Parliament unless he is a citizen of India. Article 102 of the Constitution provides that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament inter alia if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State. That a returned candidate was not qualified or was disqualified to be chosen on the date of his election, is specifically a ground for declaring his election void under clause (a) of sub-section (1) of Section 100 of RPA, 1951.

Preparation and revision of electoral rolls is governed by the Representation of the People Act, 1950 (RPA, 1950, for short). Section 16 of RPA, 1950 provides, inter alia, a person shall be disqualified for registration in an electoral roll if he is not a citizen of India. In Shyamdeo Pd. Singh Vs. Nawal Kishore Yadav, (2000) 8 SCC 46, a subtle distinction was drawn between disqualification for registration and not being qualified for enrolment in electoral roll and the consequences flowing from the two concepts while deciding the question of finality and conclusiveness attaching to the electoral roll. This Court held:-

> The electoral roll is to be deemed final and conclusive as far as the fulfilment of qualification of a voter is concerned but it is not to be deemed final and conclusive by the Election Tribunal so far as the disqualifications attaching to such persons are concerned. An entry in the electoral roll has to be taken to be conclusive proof of the fact that the person fulfils the requisite conditions as to age and residence in the constituency; finality has been given to the decision of the officer preparing the roll insofar as the fulfilment of conditions of registration is concerned but it has not been considered desirable to extend the same finality to the decision on the subject of disqualification as the latter is a more serious matter.
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> In Hari Prasad Mulshanker Trivedi Vs. V.B. Raju, (1974) 3 SCC 415), the election of the returned candidate was sought to be challenged on the ground that the names of the returned candidates were illegally entered in the electoral roll of the respective constituency though they were not ordinarily resident in the area covered by any Parliamentary constituency in the State of Gujarat. The returned candidates defended themselves, inter alia, by objecting to the jurisdiction of the High Court to decide whether the entries in the electoral roll were valid or not. The High Court held

that it had jurisdiction to try the issue. This decision was challenged by filing an appeal before this Court. The Constitution Bench held that Article 326 of the Constitution expresses eligibility for registration as a voter in a positive way. Article 327 gives full power to Parliament subject to the provisions of the Constitution to make laws with respect to all matters relating to or in connection with elections including the preparation of electoral rolls. RPA, 1950, enacted in exercise of such power vesting in the Parliament, is a complete code so far as the preparation and maintenance of electoral rolls are concerned. By Section 30 of RPA, 1950, jurisdiction of Civil Court to entertain or adjudicate upon any question as to entitlement to be registered in an electoral roll for a constituency has been taken away. By implication, the jurisdiction of the Court trying an election petition to go into the question of eligibility of a voter enrolled in an electoral roll is also taken away. However, such issue is different from the question whether a candidate was not qualified or was disqualified to be chosen to fill the seat under the Constitution or the RPA, 1950 or the RPA, 1951. As there was no case of disqualification having been taken up in the election petition, the Constitution Bench set aside the decision of the High Court.

In Durga Shanker Mehta Vs. Thakur Raghuraj Singh & Ors., (1955) 1 SCR 267, the returned candidate was duly enrolled in the electoral roll meaning thereby that prima facie he was not of less than the qualifying age on the date of election. His nomination paper was accepted by the Returning Officer. An election petition was filed raising a ground, amongst others, that the returned candidate was at all material times under 25 years of age and was consequently not qualified to be chosen to fill a seat in the Legislative Assembly of a State under Article 173 of the Constitution. The Constitution Bench held that it would have been an improper acceptance, if the want of qualification was apparent on the electoral roll itself or on the face of the nomination paper and the Returning Officer overlooked that defect or if any objection was raised and enquiry made as to the absence of qualification in the candidate and the Returning Officer came to a wrong conclusion on the materials placed before him. When neither of these things happened, the acceptance of the nomination paper by the Returning Officer must be termed to be an appropriate acceptance. However, the decision of Returning Officer is not final and the Election Tribunal may, on evidence placed before it, come to a finding that the candidate was not qualified at all. But in such case, the election should be held to be void on the ground of the constitutional disqualification of the candidate and not on the ground that his nomination was improperly accepted by the Returning Officer. The case would be covered under sub-section (2)(c) of Section 100 and not under sub-section (1)(c) of the Section. The Constitution Bench held ___ The expression non-compliance with the provisions of the Constitution is in our opinion sufficiently wide to cover such cases where the question is not one of improper acceptance or rejection of the nomination by the Returning Officer, but there is a fundamental disability in the candidate to stand for election at all.

Sub-section (7) of Section 36 of RPA, 1951 dealing with scrutiny of nomination paper by the Returning Officer itself provides that for the purpose of this section, a certified copy of an entry in the electoral roll shall be conclusive evidence of the person being an elector for that constituency unless it is proved that he is subject to a disqualification mentioned in Section 16 of the Representation of the People Act, 1950. It is, therefore, clear that if a person is alleged to be not a citizen of India and, therefore, suffering from absence of qualification under Article 84 as also a positive disqualification under Article 102 of the Constitution, then the case is one which attracts applicability of Section 100(1)(d)(iv) of RPA, 1951 and such an issue can be tried by the High Court in an election petition inspite of the returned candidate being enrolled in the voters list for it will be a case of alleged non- compliance with the provisions of Constitution.

Thus, looking at the scheme of the Citizenship Act, as also the judicial opinion which has prevailed ever since the enactment of Citizenship Act, 1955, we are unhesitatingly of the opinion that in spite of a certificate of registration under Section 5(1)(c) of Citizenship Act, 1955 having been granted to a person and in spite of his having been enrolled in the voters list, the question whether he is a citizen of India and hence qualified for, or disqualified from, contesting an election can be raised before and tried by the High Court hearing an election petition, provided the challenge is based on factual matrix given in the petition and not merely bald or vague allegations.

A certificate of citizenship issued under Section 5 of the Act is a statutory certificate issued by a statutory authority. A presumption of validity and regularity attaches with such certificate. Under Section 114 illustration (e) of the Evidence Act, 1872 the Court may presume that official acts have been regularly performed. A presumption attaching with the certificate is available to be drawn to the effect that the prescribed authority issuing the certificate was competent to do so and that it had satisfied itself as to the existence of such facts as would entitle the applicant (that is, the respondent herein) to issuance of such certificate and that the application for the issuance of certificate filed by the applicant was in order. The presumption exists though it is rebuttable and not conclusive.

Question - 4 We now proceed to examine whether the pleadings of any of the two election-petitioners disclose any cause of action and raise a triable issue which should have been put to trial.

Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well-settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression cause of action has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in

order to support his right to the judgment of the Court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See Samant N. Balakrishna etc. Vs. Geroge Fernandez and Ors. etc. - (1969) 3 SCR 603, Jitender Bahadur Singh Vs. Krishna Behari - (1969) 2 SCC 433. Merely quoting the words of the Section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In V.S. Achuthanandan Vs. P.J. Francis & Anr., (1999) 3 SCC 737, this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead material facts is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.

It is the duty of the Court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. To enable a Court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings.

There are two features common to both the election petitions. Firstly, both the petitions are verified as true to personal knowledge of the two petitioners respectively which is apparently incorrect as the very tenor of pleadings discloses that any of the petitioners could not have had personal knowledge of various facts relating to the respondent personally and during the course of hearing we had put this across to the two petitioners and they responded by submitting only this much that the verification if incorrect was capable of being cured. The second common feature in the two petitions is that there are bald assertions made about the Italian law without stating what is the source of such law as has been pleaded by the election-petitioners or what is the basis for raising such pleadings. These averments also have been verified as true to my knowledge of each of the election-petitioners a position, wholly unacceptable.

The two election petitioners/appellants have at several places in their election petitions made certain averments relating to Italian law based whereon they have tried to build a case that the respondent could not have renounced the Italian citizenship and become a citizen of India when she applied for and was issued a certificate of citizenship under Section 5(1)(c) of Citizenship Act. We have carefully perused the averments made in the two election petitions in this regard and we are definitely of the opinion that the averments are bald allegations without any basis thereof and do not amount to pleading material facts which may warrant any enquiry into those allegations..

Italian law is a foreign law so far as the courts in India are concerned. Under Section 57(1) of Indian Evidence Act, 1872, the Court shall take judicial notice of, inter alia, all laws in force in the territory of India. Foreign laws are not included therein. Sections 45 and 84 of Evidence Act permit proof being tendered and opinion of experts being adduced in evidence in proof of a point of foreign law. Under Order VI Rule 2 of the Code of Civil Procedure, 1908, every pleading shall contain a

statement in concise form of the material facts relied on by a party but not the evidence nor the law of which a Court may take judicial notice. But the rule against pleading law is restricted to that law only of which a Court is bound to take judicial notice. As the Court does not take judicial notice of foreign law, it should be pleaded like any other fact, if a party wants to rely on the same (See Moghas Law of Pleadings, 13th Edition, Page 22). In Guaranty Trust Company of New York Vs. Hannay & Co., 1918 (2) KB 623, it was held that, Foreign law is a question of fact to an English Court the opinion of an expert on the fact, to be treated with respect, but not necessarily conclusive. In Beatty Vs. Beatty, 1924 (1) KB 807, it was held that the American law in English courts must be proved by the evidence of experts in that law. In Lazard Brothers and Company Vs. Midland Bank, Limited, 1933 AC 289, their Lordships of Privy Council observed that what the Russian Soviet law is, is a question of fact, of which the English court cannot take judicial cognizance, even though the foreign law has already been proved before it in another case. The Court must act upon the evidence before it in that actual case. The statement of law by Halsbury in Laws of England (Third Edition, Vol.15, Para 610, at page 335) is that the English courts cannot take judicial notice of foreign law and foreign laws are usually matters of evidence requiring proof as questions of fact.

There is, thus, no manner of doubt that in the courts in India, a point of foreign law is a matter of fact and, therefore, a plea based on a point of foreign law must satisfy the requirement of pleading a material fact in an election petition filed before the High Court. The two election petitions do not satisfy this requirement. The averments made in the two election petitions do not go beyond making bald assertions. The pleadings do not give any indication of such Italian law on which are based the averments made in the election petitions- whether it is any statutory enactment or any other provision or principle having the force of law in Italy. During the course of hearing we asked the two appellants if they could show us any book, authority or publication based whereon we could form an opinion, even prima facie, in support of the averments relating to Italian law made in the election petitions. The two appellants regretted there inability to show us anything.

In election petition no.1 of 1999 filed by Hari Shanker Jain the respondent is alleged to be an Italian national and a citizen of Italy without stating on what facts and other acceptable material the petitioner is drawing such inference as to foreign citizenship of the respondent. It is alleged that the respondent was born on 9.12.1946 in village Luciana in Italy. Her name was Ms. Antonia Maino. The petition states that she was allegedly married to Shri Rajiv Gandhi, an Indian citizen on 25.2.1968 but the marriage was null and void. The respondent acquired Indian citizenship on 30.4.1983 under Section 5(1)(c) of the Indian Citizenship Act, 1955 on the ground of her having married a citizen of India. As her marriage itself was null and void the respondent could not have been registered as a citizen under Section 5(1)(c) of Citizenship Act. She should have renounced her citizenship of Italy which she did not. No basis or source of knowledge of all such averments is stated. A major part of the election petition sets out a plea raising a contention that in the constitutional scheme of citizenship a distinction has been drawn between citizen of India and being an Indian citizen. Developing the plea, Hari Shanker Jain submitted at the hearing that in Part II of Constitution, while dealing with Citizenship, Articles 5 to 10 use the expression Citizen of India. Article 11 which empowers Parliament to make law with respect to the acquisition and termination of citizenship and all other matters relating to citizenship speaks of Citizenship only and not of Citizenship of India. Parliament cannot, therefore, make any law conferring status of Citizen of India on anyone and if it

does so the Parliamentary enactment shall be ultra vires the Constitution, submitted Hari Shanker Jain at the hearing. He went on to enlarge his plea by submitting that under the Constitution of India human beings have been dealt with and categorised into three classes: (i) persons, (ii) citizens, and (iii) citizens of India. He urged that the rights and privileges conferred on citizen of India are not available to Indian citizens and persons and asserted that the provisions of Citizenship Act which confer the status of citizen of India, as distinguished from Indian Citizen, on a person other than one in whom the citizenship vests by right i.e. by birth or by descent are ultra vires the Constitution. According to the petitioner Articles 84 and 102 of Constitution use the expression Citizen of India and not just an Indian Citizen. Right to contest an election is conferred only on a Citizen of India as defined in Part II of Constitution. The respondent could not have been and is not a citizen of India ___ in the sense of the expression sought to be assigned by the petitioner, and she could not have acquired the status and quality of citizen of India solely by virtue of registration under Section 5 of the Citizenship Act. She could neither have been enrolled as a voter nor could have been a candidate for membership of Parliament.

While we appreciate the forensic ability of the learned petitioner-in-person, but regret we must, in view of settled law, that the plea so raised can neither be entertained nor adjudicated upon. There are two hurdles staring at the petitioner. Firstly, the manner and the enlarged dimension in which the plea has been projected before this Court does not find reflected in the election petition. No foundation has been laid in the pleadings by stating all relevant material facts enabling the Court to enter into examining such a plea of far reaching consequences and implications. Secondly, the challenge so sought to be laid to the constitutional validity of the provisions of the Citizenship Act is very wide and cannot be adjudicated upon without impleading the Central Government as party to the proceedings and affording an opportunity of joining the pleadings and adducing evidence. In our opinion the issue raised by the petitioner, insofar as vires of the Act is concerned, cannot conveniently be tried in an election petition on the basis of vague and indefinite pleas raised in the election petition. We find force in the submission of Mr. Milon Banerjee that since the petitioner himself has admitted that respondent was granted Indian citizenship on 30th April, 1983, and the respondent has in her affidavit filed in the High Court in support of her application under Order Vi Rule 16 and Order VII Rule 11 read with Section 151 CPC submitted that she is a citizen of India and there was no illegality in her enrolment in the electoral rolls and acquiring citizenship of India and that the challenge to her citizenship of India was misconceived. Yet the petitioners in their reply did not improve upon their pleas and rest contended by re-asserting that there was no legal impediment in filing the election petition and the facts and pleas are reiterated. It must be held that respondent by virtue of the certificate granted to her under Section 5(1)(c) of the Citizenship Act, which certificate has not been cancelled, withdrawn or annulled till date, is a citizen of India. The petitions are filed nearly two decades after the grant of citizenship to the respondent. At no point of time did the petitioners even challenge the inclusion of her name in the electoral roll. Making vague and bald allegations, without giving any material facts, after losing the elections, go to show that proper care even was not taken before filing the petitions by gathering and stating all material facts. So far as the pleadings as to Italian law are concerned, we have already expressed our opinion that the pleadings are infirm and deficient. The challenge laid to the validity of respondents marriage with Shri Rajiv Gandhi not only suffers from deficiency in pleadings but is also scandalous. It is interesting to note that while Hari Shanker Jain disputes the validity of marriage of respondent with Rajiv Gandhi,

Hari Krishna Lal, the petitioner in Election Petition No.4 of 1999, admits, in the pleading itself, the respondent to be wife of Shri Rajiv Gandhi and states her as resembling an ideal Indian woman bearing an excellent and good exemplary character. Hari Shanker Jain, in fairness to petitioner we must say, did not press and pursue this allegations at the hearing before us.

In Election Petition no.4 of 1999 filed by Hari Krishna Lal it is alleged that the respondent is a citizen of Italy and has not renounced the same without stating on what facts or material the petitioner has drawn that inference. It is alleged that the respondent was at the material time under acknowledgement of allegiance and adherence to Italy, a foreign State, which is a disqualification within the meaning of Article 102 of the Constitution. The material part of the averment is an expression picked up and reproduced as a ritual from Article 102 of the Constitution but the material facts wherefrom such inference may follow have not been stated. The petition then alleges that the respondent did not reside in India for a period of 12 months immediately before her having applied for citizenship by registration on 7th April, 1983 which was granted to her on 30th April, 1983. However, the petition itself alleges that the respondent came to India from Italy some time after the year 1971 and was in India in the year 1977, 1980 and 1983. When did the respondent then go away from India and the exact period of time when the respondent was or must have been away from India so as to infer her having not resided in India for the requisite period of 12 months before 30th April, 1983, as averred, are not stated. Factual matrix for the bald assertion is completely missing from the election petition. There is no overt act relating to adherence and allegiance after the grant of citizenship to the respondent, even alleged, let alone supported by through any material facts.

In both the election petitions there are averments made touching the contents of respondents application filed for grant of certificate of citizenship so as to point out alleged infirmities in the application and the proceedings taken thereon but without disclosing any basis for making such averments. None of the petitioners states to have inspected or seen the file nor discloses the source of knowledge for making such averments. Clearly such allegations are bald, vague and baseless and cannot be put to trial.

Without further burdening this judgment by dealing with each and every other averment made in the two election petitions, it would suffice to say that we have carefully read each of the two election petitions and heard each of the two election-petitioners (appellants) in very many details specially on the aspect of the election petitions suffering from the vice of not satisfying the mandatory requirement of pleading material facts as required by Section 82(1)(a) of RPA 1951 and we are satisfied that the two election petitions do not satisfy the requirement statutorily enacted and judicially explained in umpteen number of decisions. The petitions are hopelessly vague and completely bald in the allegations made, most of which could not possibly be within the personal knowledge of the petitioners but still verified as true to their knowledge, without indicating the source. Such pleadings cannot amount to disclosing any cause of action and are required to be rejected/dismissed under Order VII Rule 11 IPC.

To sum up, we are of the opinion that a plea that a returned candidate is not a citizen of India and hence not qualified, or is disqualified for being a candidate in the election can be raised in an

election petition before the High Court in spite of the returned candidate holding a certificate of citizenship by registration under Section 5(1)(c) of the Citizenship Act. A plea as to constitutional validity of any law can, in appropriate cases, as dealt with hereinabove, also be raised and heard in an election petition where it is necessary to decide the election dispute. The view of the law, stated by the learned designated Election Judge of the High Court of Allahabad cannot be sustained. To say the least, the proposition has been very widely stated in the impugned order of High Court. However, in spite of answering these questions in favour of the appellants yet the election petitions filed by them cannot be directed to be heard and tried on merits as the bald and vague averments made in the election petitions do not satisfy the requirement of pleading material facts within the meaning of Section 82(1)(a) of RPA 1951 read with the requirements of Order VII Rule 11 CPC. The decision of the High Court dismissing the two election petitions at the preliminary stage, is sustained though for reasons somewhat different from those assigned by the High Court. The appeals are dismissed but without any order as to the costs.

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September 12, 2001.