Vidya Charan Shukla vs Purshottam Lal Kaushik on 15 January, 1981

Equivalent citations: 1981 AIR 547, 1981 SCR (2) 637, AIR 1981 SUPREME COURT 547, (1981) 2 SCR 637 (SC), 1981 2 SCR 637, (1981) 7 ALL LR 43, (1981) JAB LJ 277, 1981 (2) SCC 84

Author: Ranjit Singh Sarkaria

Bench: Ranjit Singh Sarkaria, P.N. Bhagwati, E.S. Venkataramiah

PETITIONER:
VIDYA CHARAN SHUKLA

Vs.

RESPONDENT:
PURSHOTTAM LAL KAUSHIK

DATE OF JUDGMENT15/01/1981

BENCH:
SARKARIA, RANJIT SINGH
BENCH:
SARKARIA, RANJIT SINGH
BHAGWATI, P.N.
VENKATARAMIAH, E.S. (J)

CITATION:
1981 AIR 547 1981 SCR (2) 637
1981 SCC (2) 84 1981 SCALE (1)159

ACT:
Disqualification from being closed as a candidate for election-Whether the election of a returned candidate whose appeal against the orders of his conviction and sentence exceeding two years' imprisonment, pending at the date of scrutiny of nomination papers is accepted by the appellate court, resulting in the acquittal, before the election petition against him becomes void under section 100(1)(a) of the Representation of People Act, 1951 on the ground that he was disqualified from being chosen as a candidate within the meaning of section 8(2) of the Act-Representation of the People Act, Section 7(b), 8(2), (3), 32, 36(2)(a), 53, 66, 67A. (1)(a); Constitution of India, 1950 Articles 84, 102, 173 and 191.

HEADNOTE:

The appellant had been convicted and sentenced to imprisonment exceeding two years by the Sessions Judge, Delhi, on February 26/27, 1979. By his Order dated February 27, 1979, passed under section 389(3) of the Code of Criminal Procedure, the Sessions Judge who had convicted the appellant suspended the execution of the sentence to afford the appellant time to file an appeal. On March 21, 1979 the High Court of Delhi admitted his appeal and by an order of the same date directed that his sentence shall remain suspended provided the appellant furnished a personal bond and surety in the amount of Rs. 5,000/- to the satisfaction of the Sessions Judge, which was complied with.

The respondent and the appellant contested the election as rival candidates to the Lok Sabha from No. 18 Mahasamund Parliamentary Constituency in Madhya Pradesh. The last date for filing nominations was December 7, 1979. The scrutiny of the nomination papers took place on December 11, 1979. The Returning Officer by his Order dated December 11, 1979 rejected the objection of the respondent that the appellant was disqualified from being chosen as a candidate in view of sub-section (2) of section 8 of the Representation of the People Act, 1951 and accepted the appellant's nomination as valid. The result of the election was declared on January 7, 1980. The election result was notified on January 10, 1980. The appellant was declared elected and the respondent was defeated. Thereafter, on February 18, 1980 the respondent filed an election petition 1 of 1980 in the High Court of Madhya Pradesh to get the election of the appellant declared void under section 100(1)(a) and 100(1)(b)(i) of the Act challenging that at the date of the election including the date of the scrutiny of the nomination papers the appellant was disqualified by virtue of section 8(2) of the Act from being chosen as candidate on account of his aforesaid conviction and sentence.

The appellant's appeal pending in the High Court was transferred to the Supreme Court under the Special Courts Act, 1979. The Supreme Court by its judgment dated April 11, 1980 allowed the appeal set aside the conviction and sentence of the appellant and acquitted him of charges against him. Subsequent
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to this decision of the Supreme Court, by its judgment dated September 5, 1980 the High Court of Madhya Pradesh allowed the election petition with costs and declared the appellant's election to be void on the ground contained in section 100(1)(d)(i) of the Act, hence the appeal.

Allowing the appeal, the Court
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HELD: (1). Abiding by the principle of stare decisis and following the ratio decidendi of Manni Lal's case, [1971] 1 SCR 798, the acquittal of the appellant in appeal

prior to the pronouncement of the judgment of the High Court in the election petition had the result of wiping out his disqualification as completely and effectively as if it did not exist at any time including the date of the scrutiny of the nomination papers and that his nomination paper was properly accepted by the Returning Officer. [660B-C]

Manani Lal v. Shri Parmai Lal & Ors. [1971] 1 SCR 798, applied

(2) An order of acquittal particularly one passed on merits wipes off the conviction and sentence for all purposes, and as effectively as if it had never been passed. An order of acquittal annulling or voiding a conviction operates from nativity. [654B]

Manni Lal v. Shri Parmai Lal & Ors., [1971] 1 SCR 798; Dilip Kumar Sharma & Ors. v. State of Madhya Pradesh, [1976] 2 SCR 289, followed.

(3) The ratio decidendi logically deducible from Manni Lal's case is that if the successful candidate is disqualified for being chosen, at the date of his election or at any earlier stage of any step in the election process on account of his conviction and sentence exceeding two years' imprisonment, but his conviction and sentence are set aside and he is acquitted on appeal before the pronouncement of judgment in the election-petition pending against him, his disqualification is annulled rendered non est with retroactive force from its very inception, and the challenge to his election on the ground that he was so disqualified is no longer sustainable. [656D-E]

(4) A plain reading of section 100(1) of the Act shows that it can be conveniently divided into two parts. Clauses (a), (b) and (c) of the sub-section fall in the first part and clause (d) along with its sub-clauses falls in the second part. The distinction between clauses (a), (b) and (c) in the first part and clause (d) in the second part lies in the fact that whereas on proof of any of the grounds mentioned in clauses (a), (b) and (c), the election has to be declared void without any further requirement, in a case falling under clause (d) the election cannot be declared void merely on proof of any of the grounds mentioned in its sub-clauses, unless it is further proved "that the result of the election in so far as it concerns the returned candidate has been materially affected". The expression "any nomination" occurring in sub-clause (i) of clause (d) in the second part may include nomination of a returned candidate as well; but in the case of a returned candidate whose nomination has been improperly accepted, the effect on the result of the election so far as it concerns him, is obvious. However, if the election is challenged on the ground that the nomination of a candidate, other than the returned candidate, has been improperly accepted, the petitioner in order to succeed will be required to prove under clause (d)(i) in addition to improper acceptance the further fact that thereby

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the result of the election so far as it concerns the returned candidate has been materially affected. [651H-652D]

Clause (a) of sub-section (1) requires that the disqualification or lack of qualification of the returned candidate is to be judged with reference to "the date of his election", which date, according to section 67A is "the date on which a candidate is declared by the returning officer under the provisions of section 53 or section 66, to be elected to a House of Parliament or of the Legislature of a State". But, the word "disqualified" used in clause (a) is capable of an expensive construction also, which may extend the scope of the inquiry under this clause to all the earlier steps in the election process. Section 7(b) defines "disqualified" to mean "disqualified for being chosen as and for being, a member of either House of Parliament etc." The words "for being chosen" in that definition have been interpreted by the Supreme Court in Chatturbhuj's case, [1954] SCR 817, to include the whole "series of steps starting with the nomination and ending with the announcement of the election. It follows that if a disqualification attaches to a candidate at any one of these stages he cannot be chosen." But this definition of "disqualified" is in terms of section 7(b) meant for Chapter III, in Part II of the Act; while section 100 falls in Chapter III of Part VI. If the expression "for being chosen" which is a central limb of the definition of "disqualified", is given such an extensive interpretation which will bring in its train the whole series of steps and earlier stages in the election process commencing with the filing of the nominations, it will be repugnant to the context and inconsistent with "the date of his election". Such a construction which will introduce disharmony and inconsistency between the various limbs of clause (a) has to be eschewed. In the context of clause (a), therefore, the ambit of the words "for being chosen" in the definition of "disqualified" has to be restricted to "the date of his election" i.e. declaration of the result of the election under section 53 or section 66, and such date is to be the focal point of time in an inquiry under this clause. [652H-653D]

In contrast with clause (a), in a case falling under clause (d)(i) of section 100, if an objection is taken before the Returning Officer against the nomination of any candidate on the ground of his being not qualified, or being disqualified for being chosen the crucial date as per section 36(2)(a) with reference to which the existence or non-existence of such disqualification is to be enquired into is the date of scrutiny of the nomination of the candidate. [653C]

Assuming that technically, the election-petitioner's case that survives is one under clause (d)(i), and not under clause (a) of section 100(1), Even so, the fact remains

that, in substance, the election of the appellant is being challenged on the ground that on account of his conviction and sentence exceeding two years, the appellant was under Article 102(1)(e) of the Constitution read with section 8(2) and 36(2)(a) of the Act, disqualified for being chosen to fill the seat concerned. Such being the real ground of challenge, apart from sub-clause (i), sub-clause (iv) of clause (d) of section 100(1) will also be attracted, because the phrase "non-compliance with the provisions of the Constitution or of this Act etc." according to the decision of this Court in Durga Shankar Mehta's case is wide enough to cover a case where the improper acceptance or rejection of the nomination is challenged on the ground of the candidate being disqualified for being chosen. [653E-G]
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Durga Shanker Mehta v. Thakur Raghuraj Singh & Ors. [1955] 1 SCR 267 and Chatturbhuj Vithaldas Jasani v. Nareshwar Parashram Ors., [1978] 2 SCR 272, followed.

(a) It is true that in order to adjudicate upon the validity of the challenge in the appellant's election under clause (d) (i) of section 100(1), what was required to be determined by the High Court was whether the nomination of the appellant was properly or improperly accepted by the Returning Officer. But, in order to determine this question, it was necessary for the High Court to decide, as a preliminary step, whether the appellant was disqualified, at the date of scrutiny of the nomination papers, for if he was disqualified, his nomination could not be said to have been properly accepted by the Returning Officer and if, on the other hand, he was not disqualified, his nomination would have to be regarded as properly accepted by the Returning Officer. The primary question before the High Court therefore, was whether or not the appellant was disqualified at the date of scrutiny of the nomination papers and it is difficult to see how the determination of this question could be made on any principle other than that governing the determination of a similar question under clause (a) of section 100(1). If, as laid down in Manni Lal's case, the returned candidate cannot be said to be disqualified at the date of the election, if before or during the pendency of the election petition in the High Court his conviction is set aside and he is acquitted by the appellate court, on the application of the same principle, that, in like circumstances, the returned candidate cannot be said to be disqualified at the date of scrutiny of the nomination papers. On this view, the appellant could not be said to be disqualified on the date of scrutiny of the nomination paper since his conviction was set aside in appeal by this Court and if that be so, the conclusion must inevitably follow that the nomination of the appellant was properly accepted by the Returning Officer. The position is analogous to that arising where a case is decided by a Tribunal on the basis of the law then prevailing and subsequently the law is

amended with retrospective effect and it is then held by the High Court in the exercise of its writ jurisdiction that the order of the Tribunal discloses an error of law apparent on the face of the record, even though having regard to the law as it then existed, the Tribunal was quite correct in deciding the case in the manner it did. [656C-H]

Venkatachalam v. Bombay Dyeing & Manufacturing Company Limited, 34 ITR 143, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2020 of 1980.

From the Judgment and Order dated 5-9-1980 of the Madhya Pradesh High Court in Election Petition No. 1 of 1980.

A. K. Sen, O. P. Sharma, Rajinder Singh, P. L. Dubey and P. N. Tewari for the appellant.

S. N. Kacker, Swaraj and Mrs. Sushma Swaraj for Respondent No. 1.

Y. S. Chitale (Dr.) and Miss Rani Jethmalani for the Intervener.

The Judgment of the Court was delivered by SARKARIA, J. This is an appeal under Sections 116(A) and 116(B) of the Representation of People Act, 1951 (hereinafter referred to as the Act) against a judgment dated September 5, 1980, of a learned Judge of the High Court of Madhya Pradesh, whereby the Election Petition 1 of 1980 filed by the respondent was accepted and the appellant's election to Lok Sabha was declared to be void.

The principal question that falls to be determined in this appeal is, whether the election of a returned candidate whose appeal against the orders of his conviction and sentence exceeding two years imprisonment, pending at the date of the scrutiny of nomination papers, is accepted by the appellate court, resulting in his acquittal, before the decision of the election-petition against him, can be declared to be void under Section 100(1) of the Act, on the ground that he was disqualified from being chosen as a candidate within the meaning of Section 8(2) of the Act. The material facts are as follow:

> The respondent and the appellant contested the election as rival candidates, to the Lok Sabha from No. 18 Mahasamund Parliamentary Constituency in Madhya Pradesh. The last date for filing nominations was December 7, 1979. The scrutiny of the nomination papers took place on December 11, 1979.
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> The respondent raised an objection to the validity of the appellant's nomination before the Returning Officer at the time of the scrutiny. The objection was that the appellant had been convicted and sentenced to imprisonment exceeding two years by

the Sessions Judge, Delhi on February 22/27, 1979, and, as such, the appellant was disqualified from being chosen as a candidate in view of sub-section (2) of Section 8 of the Act. The Returning Officer, by his order dated December 11, 1979, rejected the objection and accepted the appellant's nomination as valid. The result of the election was declared on January 7, 1980. The election result was notified on January 10. 1980. The appellant was declared elected, and the respondent was defeated. Thereafter on February 18, 1980, the respondent filed an Election Petition in the High Court to get the election of the appellant herein, declared void under Section 100(1) (a) and 100(1) (d) (i) of the Act, alleging that at the date of the election, including the date of the scrutiny of the nomination papers, the appellant was disqualified by virtue of Section 8(2) of the Act from being, chosen as a candidate on account of his aforesaid conviction and sentence.

The Session Judge who had convicted the appellant, had, by his order dated February 27, 1979, passed under Section 389 (3) of the Code of Criminal Procedure, suspended the execution of the sentence to afford the appellant time to file an appeal. On March 21, 1979, the High Court of Delhi admitted his appeal and by an order of the same date directed that his sentence shall remain suspended provided the appellant furnished a personal bond and surety in the amount of Rs. 5000/- to the satisfaction of the Sessions Judge.

The appellant's appeal pending in the High Court was transferred to the Supreme Court under the Special Courts Act, 1979. This Court by its judgment dated April 11, 1980, allowed the appeal, set aside the conviction and sentence of the appellant and acquitted him of the charges against him.

Subsequently, by its impugned judgment, dated September 5, 1980, the High Court of Madya Pradesh, allowed with costs, the election petition filed by the respondent, and declared the appellant's election to be void on the ground contained in Section 100(1) (d) (i) of the Act. Hence this appeal.

The contentions canvassed by Shri Asoke Sen, learned counsel for the appellant may be summarised as follows:

(1) The conviction and sentence of the appellant had been quashed by the Supreme Court in appeal. The acquittal of the appellant had the effect of wiping out the conviction with retrospective effect as if he had never been convicted and sentenced. In support of this proposition, reliance has been placed on Manni Lal v. Shri Parmi Lal & Ors.. Reference has also been made to Dilip Kumar Sharma & Ors. v. State of Madhya Pradesh.

(2) Conviction and sentence in Section 8(2) must mean the final and ultimate conviction and sentence. Reference has been made to Union of India v. R. Akbar Sheriff, and Dilbag Rai Jarry v Divisional Superintendent.

(3) Invalidity of the appellant's election, in the instant case, was to be tested under clause (a) and not under clause (d) (i) of Section 100(1) of the Act, because-

(a) (i) "Election" within the meaning of Section 100(1)

(a) connotes the entire process of election commencing with the filing of nominations and ending with the declaration of the result of the poll. The stage of the scrutiny of the nominations and their acceptance or rejection was an important step of the election process and, as such, was an integral part of the 'election'. Reliance on this point has been placed on the decisions of this Court in N. P. Ponnuswami v. Returning Officer, Namaklal Constituency; and M. S. Gill v. Chief Election Commissioner.

(ii) The term "disqualified" in clause (a) of Section 100(1), as defined in Section 7(b) means "disqualified for being chosen as, and for being, a member of either House of Parliament, etc.", and the expression "being chosen". (which is the language of Article 102 of the Constitution also) has been interpreted by this Court in Chatturbhuj Vithaldas Jasani v. Moreshwar Parashram & Ors., as embracing "a series of steps starting with the nomination and ending with the announcement of the election".

(b) In substance and reality, the election of the appellant has been challenged on the ground that both at the date of the scrutiny and acceptance of his nomination and at the subsequent stages of the election including the dates of poll and declaration of the election result, the appellant was disqualified for being chosen on account of his having been convicted and sentenced to imprisonment exceeding two years. This ground finds specific mention in clause (a) and not in clause (d) (i) which is a general and residuary clause and its application to the instant case will be excluded on the principle that the special excludes the general.

(c) The phrase "any candidate" in sub-clause (i) of clause (d) of Section 100 (1) does not include the returned candidate. (This point was not seriously pressed).

(4) (a) Even if it is assumed that clause (d) (i) or

(d) (iv) is applicable, then also, the instant case cannot be taken out of the ratio of Manni Lal's case (ibid), because the effect of the quashing of the appellant's conviction and sentence by the appellate court, during the pendency of the Election Petition before the High Court was, that the conviction and sentence were retrospectively wiped out, and the High Court could not at the date of deciding the Election Petition hold that in spite of the acquittal by the Appellate Court, the disqualification of the appellant "for being chosen" ever existed-even at the date of the acceptance of his nomination paper by the Returning Officer.

The proposition enunciated by this Court in Manni Lal's case must be taken to its logical end and the imagination must not be allowed to boggle down.

(b) Clause (a) and clause (d) (i) of Section 100 (1) of the Act should be construed harmoniously. If these clauses are construed differently, there will be serious contradictions and inconsistencies. Under Section 100 (1)

(a), the candidate whose conviction and sentence are quashed, is qualified to be chosen and elected on the principle of retrospective wiping out of conviction and sentence, and yet he remains disqualified for his nomination. Such an anomalous result should be avoided.

(5) The effect of suspension of the sentence made by the trial court and thereafter by the High Court pending the appeal, would be that the disqualification automatically stood eclipsed. (This point was also not pressed).

On the other hand Shri S. N. Kacker, learned counsel for the respondent, made these submissions:

> (1) Article 102 (1) (e) of the Constitution provides that "a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament _____" "if he is so disqualified by or under any law made by Parliament." Under Section 8(2) of the Representation of People Act, 1951,- which is a law made by Parliament the appellant on account of his conviction and sentence exceeding two years, was disqualified at the date of scrutiny of nominations and the Returning Officer was bound in view of Section 36(2) (a), of the Act, to take into account only such facts as they stood on the date of the scrutiny, which is an integral step in the process of election i.e., process of "being chosen". (Reference has been made in this connection to Chaturbhuj's case (ibid) and Chandan Lal v. Ram Dass and Another.
>
> (2) The phrase "date of such conviction" occurring in sub-section (2) of Section 8 of the Act means the date of the initial conviction and not the date of the final conviction. If this phrase was construed to mean the date of the final and ultimate conviction on termination of the entire judicial process in the hierarchy of courts, sub-

section(3) would be redundant. Sub-section (3) applies to a special category of persons mentioned therein, and its language makes it clear that in their case, conviction will not operate as disqualification unless it becomes final in the course of judicial process.

(3) The present case is governed by clause (d) (i) and not by clause (a) of Section 100(1). In the election- petition, both the grounds under Section 100(1) (d) (i) and under Section 100(1) (a) were taken, because-

(i) the appellant was disqualified on the date of scrutiny-a ground under Section 100(1) (d) (i); and

(ii) the disqualification also existed on the date of declaration of election result-affording ground under Section 100(1) (a).

Since the appellant was subsequently acquitted during the pendency of election-petition, the ground under Section 100(1) (a) become non-existent in view of the principle laid down by this Court in Manni Lal's case (ibid). but the ground under Section 100(1) (d) (i) still subsisted. Consequently, at the stage of arguments before the High Court, the ground under Section 100(1) (a) was given up and the petition was pressed only on the ground under Section 100(1) (d) (i).

(4) Section 100(1)(d)(i) is applicable to a returned candidate as well.

(5) The basic distinction between clauses (a) and (d)

(i) of Section 100(1) is that under the former clause the existence or non-existence of disqualification of the returned candidate is to be determined as "on the date of his election", which date in view of Section 67A. means the date on which he was declared elected under Section 53 or Section 66 of the Act; whereas under clause (d) (i), the enquiry is restricted to judging the propriety or otherwise of the action of the Returning Officer in accepting his nomination on the date of scrutiny; that is to say, for purposes of the latter clause all that has to be enquired into is whether the disqualification existed on the date of scrutiny.

(6) The proposition laid down in Manni Lal's case (ibid) to the effect that subsequent acquittal by the appellate court in a criminal matter has the effect of wiping out the conviction from the date of its very inception is not applicable to the case in hand because:-

> (a) Manni Lal's case was one under Section 100(1) (a); while the present case is under Section 100(1) (d) (i);
>
> (b) in Manni Lal's case the returned candidate was not disqualified on the date of the scrutiny; whereas in the instant case the disqualification of the appellant did, in fact exist on the date of the scrutiny, although the same may have ceased to exist in point of law due to his subsequent acquittal; and
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> (c) Section 36(2) (a) fixes a date for judging the qualification of a candidate and if the legal fiction of retrospective repeal is applied to the case of subsequent acquittal wiping out the disqualification which in fact existed on the date of scrutiny, Section 36(2) (a) could be rendered nugatory and several inconsistent situations could arise.
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> (7) In sum, the instant case being one under Section 100(1) (d) (i) falls within the ratio of this Court's decision in Amritlal Ambalal Patel v. Himatbhai Gumanbhai Patel & Anr. and Manni Lal's case is not in point.

Shri Chitale, appearing for the intervener, has elaborated contentions (5) and 6 (c) of Shri Kacker and stressed that the facts constituting the disqualification, as obtaining on the date of scrutiny, are

under Section 36 the decisive factor.

Before dealing with the contentions canvassed on both sides, it will be necessary to have a look at the relevant constitutional and statutory provisions.

Article 102 of the Constitution, so far as material, reads thus:

> "(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament-
>
> (a) to (d).....
>
> (e) if he is so disqualified by or under any law made by Parliament."

The words "for being chosen as, and for being, a member of either House of Parliament" have been lifted from Article 102 and incorporated in the definition of "disqualified" given in Section 7(b) of the Act. According to this definition, "disqualified" means "disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State."

Section 8 of the Act provides for disqualification on conviction for certain offences. Under sub-section (1), a person convicted of any of the offences specified in that sub-section shall be disqualified for a period of six years from the date of such conviction. The material part of sub-sections (2) and (3) reads as under:

> "(2) A person convicted by a court in India for any offence and sentenced to imprisonment for not less than two years shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of five years since his release:
>
> Provided .....
>
> (3) Notwithstanding anything in sub-section (1) and sub-section (2), a disqualification under either sub-section shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court."

Then there is an Explanation appended to this Section, which is not material for our purpose.

Chapter I of Part V includes Sections 30 to 39 under the main heading "Nomination of Candidates". Section 30 requires the Election Commission to appoint dates for making nominations, scrutiny of nominations, withdrawal by candidates, for poll and also to specify the date before which the

election shall be completed. The provision in clause (b) requires that the date for the scrutiny of nominations shall be the date immediately following the last date for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday. Section 32 lays down that any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat under the provisions of the Constitution and this Act, or under the provisions of the Government of Union Territories Act, 1963 (20 of 1963), as the case may be.

Section 36 deals with scrutiny of nominations. Sub- section (2) (a) of the Section is material. It reads thus:

> "(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:-
>
> (a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:-
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> Articles 84, 102, 173 and 191, Part II of this Act and..... "
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> Under sub-section (7), for the purposes of this Section, a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in Section 16 of the Representation of the People Act, 1950.
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> Before the amendment of 1956. clauses (a) and (b) of sub-section (2) of Section 36 read as under: "The returning officer shall then examine the nomination papers and.....refuse any nomination on any of the following grounds:
>
> (a) that the candidate is not qualified to be chosen to fill the seat under the Constitution or this Act; or
>
> (b) that the candidate is disqualified for being chosen to fill the seat under the Constitution or this Act....."

The Amendment Act 27 of 1956 recast clauses (a) to (e) of the old Section. It also combined clauses (a) and (b) and the recast clause read as follows:

> "(a) that the candidate is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, 'namely:....."

The Amendment Act 40 of 1961 substituted in Sub-section (2)(a), for the words "that the candidate" the words "that on the date fixed for the scrutiny of nominations the candidate". The same Amendment Act substituted in sub- section (5) the proviso for the words "an objection is made"

> the words "an objection is raised by the returning officer or is made by any other person". Thus, the amendment in sub- section 2(a) was only of a clarificatory character. It made it clear that the date of scrutiny of the nominations is a crucial date.
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> Next, we come to Section 100. The Section enumerates the grounds on which an election can be declared to be void. Before the Amendment of 1956, Section 100, so far as material, was as follows:
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> "(1) If the Tribunal is of opinion-
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> (a) .....
>
> (b) .....
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> (c) that the result of the election has been materially affected by the improper acceptance or rejection of any nomination, the Tribunal shall declare the election to be wholly void.
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> Explanation.....
>
> (2) Subject to the provisions of sub-section (1) if the Tribunal is of opinion -
>
> (a) .....
>
> (b) .....
>
> (c) that the result of the election has been materially affected by the improper reception or refusal of a vote or by the reception of any vote which is void or by any non-

compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act or of any other Act or rules relating to the election, or by any mistake in the use of any prescribed form, the Tribunal shall declare the election of the returned candidate to be void".

In Durga Shanker Mehta v. Thakur Raghuraj Singh & Ors. nominations were filed for a double member Legislative Assembly constituency in Madhya Pradesh. No objection was taken before the returning officer, that one of the candidates, Vasant Rao, was less than 25 years of age at the date of the nomination and, as such, was not qualified under Article 173 to be chosen to fill the seat. The Returning Officer accepted his nomination.

In the Election Petition, the election of the returned candidate, Vasant Rao, was challenged on the ground that his nomination had been improperly accepted by the Returning Officer within the contemplation of Section 100(1)(c) of the Act, as then in force, because he was 'not qualified to be chosen in view of Section 173 of the Constitution. The Tribunal held that the act of the Returning Officer in accepting the nomination of Vasant Rao, who was disqualified to be elected a member of the State Legislature under the Constitution, amounted to an improper acceptance of nomination within the meaning of Section 100(1)(c) of the Act, and as the result of the election was materially affected thereby, the whole election must be pronounced to be void.

The controversy centered round the question, whether on the facts proved and admitted the case was one under sub- section (1) (c) or Section 2(c) of the then extant Section

100. This Court held that the acceptance of the nomination paper of Vasant Rao by the Returning Officer could not be said to be improper acceptance "within the contemplation of Section 100 (1) (c) of the Act, and that the case was of a description which came under sub-section (2) (c) of Section 100 and not under sub-section (1) (c) of the Section as it really amounted to holding an election without complying with the provisions of the Constitution. The expression "non-compliance with the provisions of the Constitution" in clause (c) of sub-section (2) was held to be sufficiently wide to cover such cases where the question was not one of improper acceptance or rejection of the nomination by the Returning Officer, but there was a fundamental disability in the candidate to stand for election at all. There was no material difference between "non-compliance" and "non-observance" or "breach" and this item in clause (c) of sub-section (2) might be taken as a residuary provision contemplating cases where there had been infraction of the provisions of the Constitution or of the Act but which had not been specifically enumerated in the other portions of the clause.

After the decision in Durga Shanker Mehta's case (ibid), Parliament in 1956 amended Section 100 along with Sections 36, 123, 124 and 125 of the Act. By this Amendment, the various clauses of sub-sections (1) and (2) were rearranged and recast and simplified in accordance with the recommendations of the Select Committee of Parliament, "that sub-sections (1) and (2) of existing Section 100 should be suitably combined retaining the substance of the existing law and at the same time making the law simple and easily intelligible".

Now, Section 100, as amended, by the Amending Act of 1956 and subsequent Amendment Acts, 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 of 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.

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

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

(b) .....

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

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then the High Court may decide that the election of the returned candidate is not void".

A plain reading of Section 100(1) of the Act shows that it can be conveniently divided into two parts. Clauses (a),

(b) and (c) of the sub-section fall in the first part and clause (d) along with its sub-clauses falls in the second part. The distinction between clauses (a), (b) and (c) in the first part and clause (d) in the second part lies in the fact that whereas on proof of any of the grounds mentioned in clauses

(a), (b) and (c) the election has to be declared void without any further requirement, in a case falling under clause (d) the election cannot be declared void merely on proof of any of the grounds mentioned in its sub-clauses, unless it is further proved "that the result of the election in so far as it concerns the returned candidate has been materially affected". The expression "any nomination"

> occurring in sub-clause (i) of clause (d) in the second part may include nomination of a returned candidate as well, but in the case of a returned candidate whose nomination has been improperly accepted, the effect on the result of the election so far as it concerns him, is obvious. However, if the election is challenged on the ground that the nomination of a candidate, other than the returned candidate has been improperly accepted, the petitioner in order to succeed will be required to prove under clause (d) (i), in addition to improper acceptance the further fact that thereby the result of the election so far as it concerns the returned candidate has been materially affected.
>
> Clause (a) of sub-section (1) appears to require that the disqualification or lack of qualification of the returned candidate is to be judged with reference to "the date on his election", which date, according to Section 67A, is "the date on which a candidate is declared by the returning officer under the provisions of Section 53 or Section 66, to be elected to a House of Parliament or of the Legislature of a State". But, the word "disqualified" used in clause (a) is capable of an expansive construction also, which may extend the scope of the inquiry under this clause to all the earlier steps in the election process. As already noticed, Section 7(b) defines "disqualified" to mean "disqualified for being chosen as, and for being, a member of either House of Parliament etc." The words "for being chosen" in that definition have been interpreted by this Court in Chatturbhujs case (ibid) to include the whole "series of steps starting with the nomination and ending with the announcement of the election. It follows that if a disqualification attaches to a candidate at any one of these stages he cannot be chosen". But this definition of "disqualified" is in terms of Section 7(b) meant for Chapter III, in Part II of the Act; while Section 100 falls in Chapter III of Part VI. If the expression "for being chosen"

which is a central limb of the definition of "disqualified", is given such an extensive interpretation which will bring in its train the whole series of steps and earlier stages in the election process commencing with the filing of the nominations. it will be repugnant to the context and inconsistent with "the date of his election". Such a construction which will introduce disharmony and inconsistency between the various limbs of clause (a) has to be eschewed. In the context of clause (a), therefore, the ambit of the words "for being chosen" in the definition of "disqualified" has to be restricted to "the date of his election" i.e. declaration of the result of the election under Section 53 or Section 66, and such date is to be the focal point of time in an inquiry under this clause.

In contrast with clause (a), in a case falling under clause (d) (i) of Section 100, if an objection is taken before the Returning Officer against the nomination of any candidate on the ground of his being not qualified, or being disqualified for being chosen the crucial date as per Section 36 (2) (a)

with reference to which the existence or nonexistence of such disqualification is to be enquired into is the date of scrutiny of the nomination of the candidate.

The first question is whether on facts admitted or proved on record, the case falls under Section 100(1) (a) or Section 100(1) (d), or both? The burden of Shri Kacker's arguments is that the case falls under clause (d) (i) and not under clause (a) of Section 100(1). Learned counsel has conceded that if clause (a) were applicable, the case would have been within the ratio of Manni Lal's case and that was why at the stage of arguments before the High Court, the challenge under clause (a) of the sub-Section was given up. We will therefore, assume that technically, the election- petitioner's case that survives is one under clause (d) (i), and not under clause (a) of Section 100(1). Even so, the fact remains, that, in substance, the election of the appellant is being challenged on the ground that on account of his conviction and sentence exceeding two years, the appellant was under Article 102(1)(e) of the Constitution read with Sections 8(2) and 36 (2) (a) of the Act, disqualified for being chosen to fill the seat concerned. Such being the real ground of challenge, apart from sub- clause (i) sub-clause (iv) of clause (d) of Section 100 (1) will also be attracted. This is so, because the phrase, non- compliance with the provisions of the Constitution or of this Act etc.", according to the decision of this Court in Durga Shanker Mehta's case (ibid), is wide enough to cover a case where the improper acceptance of rejection of the nomination is challenged on the ground of the candidate being disqualified for being chosen.

The controversy thus narrows down into the issue:

> Whether on facts undisputed or proved on record, the present case falls within the ratio of Manni Lal v. Shri Parmai Lal & Ors., even if the challenge is considered to be one under clause (d) (i) and (iv) of Section 100(1).
>
> Before examining the facts and ratio of Manni Lal's case it will be worthwhile to notice here a general principle of criminal law bearing on this issue. This principle as reiterated by this Court in Dilip Kumar Sharma's case, ibid, (at page 289), is as follows:
>
> An order of acquittal particularly one passed on merits wipes off the conviction and sentence for all purposes, and as effectively as if it had never been passed. An order of acquittal annulling or voiding a conviction operates from nativity. As Kelson puts it, "it is a true annulment an annulment with retroactive force". So when the conviction (for the offence) was quashed by the High Court (in appeal)....."it killed the conviction not then, but performed the formal obsequies of the order which had died at birth'.
>
> In Manni Lal v. Parmai Lal (ibid), this Court applied this principle to the question of the disqualification of a candidate for being chosen to fill a seat in State Legislative Assembly. In that case, the last date for filing nominations from the U.P. Legislative Assembly Constituency, Hardoi was January 9, 1969. The returned candidate was convicted two days later on January 11, 1969 and sentenced, inter alia, to 10 years'

rigorous imprisonment under Section 304, Indian Penal Code. On January 16, 1969, he filed an appeal against his conviction in the High Court. Polling took place on February 9, 1969 and the result of the election was declared on February 11, 1969, and he was successful in the election. His election was challenged by an election-petition primarily on the ground that he was disqualified under Section 8(2) of the Representation of the People Act, because on the date of his election he stood convicted for an offence of imprisonment exceeding two years. Before the election-petition was decided, the returned candidate's appeal was allowed on September 30, 1969 by the High Court and his conviction and sentence were set aside.

The question for decision before the Court was: What was the effect of the acquittal in appeal of the returned candidate before the decision of the election-petition, on his conviction and sentence, which was the main ground on which he was alleged to be disqualified for being chosen ? The bench presided over by J. C. Shah, J. (as he then was) answered this question thus:

"...it is clear that, though the conviction of respondent No. 1 was recorded by the trial court on 11th January, 1969, he was acquitted on 30th September, 1969 in appeal which acquittal had the effect of completely wiping out the conviction. The appeal having once been allowed, it has to be held that the conviction and sentence were vacated with effect from the date on which the conviction was recorded and the sentence awarded. In a criminal case, acquittal in appeal does not take effect merely from the date of the appellate order setting aside the conviction; it has the effect of retrospectively wiping out the conviction and the sentence awarded by the lower court. The disqualification relied upon by the appellant was laid under s. 8(2) of the Act read with Article 102(1) (e) of the Constitution. The provision is that a person convicted by a court in India for any offence and sentenced to imprisonment for not less than two years shall be disqualified for a further period of five years since his release. The argument on behalf of the appellant was that, though respondent No. 1 was not disqualified at the time of filing of nomination, he was, in fact, disqualified on 9th February, 1969, the date of polling, as well as on 11th February, 1969, when the result was declared.....

The argument overlooks the fact that an appellate order of acquittal takes effect retrospectively and the conviction and sentence are deemed to be set aside with effect from the date they were recorded. Once on order of acquittal has been made, it has to be held that the conviction has been wiped out and did not exist at all. The disqualification, which existed on the 9th or 11th February, 1969 as a fact, was wiped out when the conviction recorded on 11th January, 1969 was set aside and that acquittal took effect from that very date. It is significant that the High Court, under Section 100(1) (a) of the Act, is to declare the election of a returned candidate to be void if the High Court is of opinion 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 the Act. It is true that the opinion has to be formed as to whether the successful candidate was disqualified on the date of his election; but this opinion is to be formed by the High Court at the time of pronouncing the judgment in the election petition. In this case, the High Court proceeded to pronounce the judgment on 27th October, 1969. The High Court had before it the order of acquittal which had taken effect retrospectively from 11th January, 1969. It was therefore, impossible for the High Court to arrive at the opinion that on 19th or 11th February 1969, respondent No. 1 was disqualified. The conviction and sentence had been retrospectively wiped out, so that the opinion required to be formed by the High Court to declare the election void could not be formed. The situation is similar to the one that could have come into existence if Parliament itself had chosen to repeal s.8(2) of the Act retrospectively with effect from 11th January, 1979."
>
> (emphasis added) The essence of the decision is in the sentences which have been underlined by us in the above extract. In sum, what was laid down in Manni Lal's case was that if the disqualification of the returned candidate, viz., his conviction and sentence exceeding two year's imprisonment which existed as a fact at the date of the election, is subsequently set aside by the Appellate Court, then a challenge to his election on the ground under Section 100(1)
>
> (a) of the Act, in an election-petition pending in the High Court at the date of such acquittal, must fail because the acquittal has the effect of retrospectively wiping out the disqualification as completely and effectively as if it never had existed.

In other words, the ratio decidendi logically deducible from the above extract, is that if the successful candidate is disqualified for being chosen, at the date of his election or at any earlier stage of any step in the election process on account of his conviction and sentence exceeding two years' imprisonment, but his conviction and sentence are set aside and he is acquitted on appeal before the pronouncement of judgment in the election-petition pending against him, his disqualification is annulled and rendered non est with retroactive force from its very inception, and the challenge to his election on the ground that he was so disqualified is no longer sustainable.

Learned counsel for the respondent has tried to distinguish Manni Lal's case from the one before us on three grounds. First, that in Manni Lal's case, the election was challenged under clause (a) or Section 100(1); whereas in the instant case, the challenge is only on the ground under clause (d) (i) of the Section, since the plea in the election-petition on the ground under said clause (a) of Section 100(1) was given at the time of arguments in the High Court. Second, in Manni Lal's case, the disqualification on account of conviction and sentence of the candidate concerned did not exist on the date of the scrutiny of the nomination papers, but was incurred subsequently to the acceptance of his nomination, whereas in the present case, such disqualification existed as a fact even at the date of the scrutiny of the nomination papers. Third, in view of the mandate in Section 36(2) (a), for the purpose of an enquiry under Section 100(1) (d) (i), the existence or non-existence of the disqualification is to be judged as on the date of the scrutiny of the nominations, whereas in Manni Lal, the legislative mandate of Section 36(2) (a) was inapplicable, the challenge to the election being

one under Section 100(1) (a) only.

It appears to us that this three-fold feature pointed out by the learned counsel amounts no more than to a distinction without a difference. The basic ground of challenge and material factual constituents thereof are common in both these cases. In both these cases what has been challenged is the election of the successful candidate. Although at the time of arguments in the High Court the ground under clause (a) of Section 100(1) was not pressed and no arguments were addressed with reference to that clause, it had been pleaded and proved by the election- petitioner that both at the date of the scrutiny of nominations and at the date of the election, the appellant's disqualification existed as a fact. Another undisputed fact apparent on the record is that the appellant was acquitted by the appellate court before the decision of election- petition in the High Court. As here, in Manni Lal also, such disqualification of the successful candidate existed not only at the date of his 'election' as defined in Section 67A, but also at the date of the poll, which was an earlier step in the process of "being chosen". As here, there also, such disqualification had been wiped out with retroactive force on account of his acquittal after the elections but before the decision of the election petition by the High Court. Similar to the third point raised here, in Manni Lal also, it was contended that under section 100(1) (a), the question whether the successful candidate was disqualified on the date of his election was to be determined with reference to the situation obtaining on that date only. This contention was repelled with the observation that such opinion had to be formed by the High Court at the time it proceeds to pronounce the judgment in the election-petition and High Court had at that time before it the order of acquittal which had taken effect retrospectively from the date on which the conviction had been recorded by the trial court. Although the Court did not specifically say so, this reasoning employed by the Court in negative the contention of the election-petitioner in that case, appears to have been spelled out from a construction of the phrase "if the High Court is of opinion" used by the Legislature in the opening part of Section 100(1). This phrase, be it noted, qualifies not only clause (a), but also clause (d) of the sub-section. Thus, the ratio of Manni Lal squarely and fully applies to the present case. On the application of that rule, the acquittal of the appellant herein by the appellate court, during the pendency of the election-petition must be held to have completely and effectively wiped out the disqualification of the appellant with retrospective effect from the date of the conviction, so that in the eye of law it existed neither at the date of scrutiny of nominations, nor at the date of the 'election' or at any other stage of the process of "being chosen".

In short, the acquittal of the appellant before the decision of the election-petition pending in the High Court, had with retrospective effect, made his disqualification non-existent, even at the date of the scrutiny of nominations. This being the position, the High Court could not at the time of deciding the election-petition form an opinion as to the 'existence' of a non-existent ground and sustain the challenge to the appellant's election under Section 100(1) (d) (i).

It is true that in order to adjudicate upon the validity of the challenge to the appellant's election under clause (d) (i) of Section 100(1), what was required to be determined by the High Court was whether the nomination of the appellant was properly or improperly accepted by the Returning Officer. But, in order to determine this question, it was necessary for the High Court to decide, as a preliminary step, whether the appellant was disqualified at the date of scrutiny of the nomination

papers, for if he was disqualified, his nomination could not be said to have been properly accepted by the Returning Officer and if, on the other hand, he was not disqualified, his nomination would have to be regarded as properly accepted by the Returning Officer. The primary question before the High Court, therefore, was whether or not the appellant was disqualified at the date of scrutiny of the nomination papers and it is difficult to see how the determination of this question could be made on any principle other than that governing the determination of a similar question under clause (a) of Section 100(1). If, as laid down in Manni Lal's case, the returned candidate cannot be said to be disqualified at the date of the election, if before or during the pendency of the election petition in the High Court his conviction is set aside and he is acquitted by the appellate court, it must be held, on the application of the same principle, that, in like circumstances, the returned candidate cannot be said to be disqualified at the date of the scrutiny of the nomination papers. On this view. the appellant could not be said to be disqualified at the date of scrutiny of the nomination paper since his conviction was set aside in appeal by this Court and if that be so, the conclusion must inevitably follow that the nomination of the appellant was properly accepted by the Returning Officer. The position is analogous to that arising where a case is decided by a Tribunal on the basis of the law then prevailing and subsequently the law is amended with retrospective effect and it is then held by the High Court in the exercise of its writ jurisdiction that the order of the Tribunal discloses an error of law apparent on the face of the record, even though having regard to the law as it then existed, the Tribunal was quite correct in deciding the case in the manner it did, vide Venkatachalam v. Bombay Dyeing & Manufacturing Company Limited.

Amritlal Ambalal Patel(ibid) cited by Shri Kacker is not a parallel case. It is clearly distinguishable. The facts therein were materially different from Manni Lal's case or the one before us. In that case, the election of Amritlal Ambalal Patel to Gujarat Legislative Assembly was challenged on the ground that he was on the date of scrutiny of nominations less than 25 years of age-which was the minimum age prescribed under Article 173(b) of the Constitution and, as such, not being qualified for being chosen, his nomination was wrongly accepted. The candidate attained the age of 25 years on the date of election. Notwithstanding this subsequent fact, it was held by the Court that the nomination of the candidate had been "improperly accepted" within the meaning of Section 100 (1)(d). The rationale of the decision was that the attainment of the prescribed age by the candidate after the date of scrutiny of nominations did not operate retrospectively to remove his disqualification for being chosen, with effect from the date of the scrutiny of the nominations. The disqualification on the date of the scrutiny remained unaffected. That was not a case like the present one where the disqualification of the candidate existing as a fact at the date of the nominations, due to his conviction and sentence exceeding two years, was retrospectively wiped out owing to his subsequent acquittal by the appellate court, during the pendency of the elections petition in the High Court.

It is possible that, difficult and anomalous situations may arise if the rule in Manni Lal v. Parmai Lal is applied to a converse hypothetical case wherein the candidate whose nomination is rejected on account of his disqualification, viz., conviction and sentence exceeding two years' imprisonment existing as a fact on the date of scrutiny of nominations, brings an election-petition to challenge the election of the returned candidate on the ground that his nomination was improperly rejected, as his disqualification had been, as a result of his subsequent acquittal by an appellate court, annulled and obliterated with retroactive force.

But we do not think it necessary to indulge in this hypothetical and academic exercise. Firstly, the instant case is not one where the election is being challenged under Section 100(1) (c) on the ground that the election- petitioner's nomination was improperly rejected. Secondly, it has not been urged before us by the learned counsel for the respondent, that Manni Lal's case was wrongly decided and that its ratio needs reconsideration by a larger Bench. All efforts of the learned counsel have been directed to show that the principle enunciated in Manni Lal's case is inapplicable to the present case because on facts, between these two cases, there is a difference and a distinction, where, in reality, none that matters, really exists. In this situation therefore, we would abide by the principle of stare decisis and follow the ratio of Manni Lal's case, and in the result, hold that the acquittal of the appellant in appeal prior to the pronouncement of the judgment by the High Court in the election-petition had the result of wiping out his disqualification as completely and effectively as if it did not exist at any time including the date of the scrutiny of the nomination papers and that his nomination paper was properly accepted by the Returning Officer. The challenge to the election of the appellant on the ground under clause 100(1) (d) (i) must, therefore, fail.

For all the foregoing reasons, we allow this appeal, set aside the judgment of the High Court and dismiss the election-petition of the respondent. In view of the law point involved, we will leave the parties to pay and bear their own costs throughout.

V.D.K. Appeal allowed.