

Delhi High Court

Bharat Bhushan vs Ved Prakash on 10 February, 1978

Equivalent citations: AIR 1978 Delhi 199

Bench: S Chadha

ORDER

1. The election petition under S. 81 of the Representation of the People Act, 1951 calls in question the election of Shri Ved Prakash to the Metropolitan Council for Delhi from Constituency No. 33, Rohtas Nagar and is based on two broad facts. The first is the improper rejection of the nomination papers of Shri Devinder Kumar and the second is the illegal inclusion and exclusion of certain areas from constituency No. 33 after the publication of order No. 40 dated April 28, 1975 issued under S. 10(1) read with S. 2 of the Delimitation Act, 1972.

2. The total number of seats in the Metropolitan Council for Delhi as provided in S. 3 of the Delhi Administration Act, 1966 to be filled by persons chosen by direct election from territorial constituencies is 56. By virtue of S. 9 of the said Act, the provisions contained in Parts Iii to Xi of the Representation of the People Act, 1951 (hereinafter referred to as the Act) and of any rules and orders made there under, for the time being in force, have been made applicable to the election of the members of the Metropolitan Council of Delhi (hereinafter referred to as the Metropolitan Council). S. 10 of the said Act provides that the Metropolitan Council, unless sooner dissolved, shall continue for five years, from the date appointed for its first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Metropolitan Council. The last election of members to the Metropolitan Council took place in 1972 for the term of 5 years and the same expired in 1977 which necessitated the elections for 56 members to the Metropolitan Council from 56 territorial constituencies. The election programme as notified by the Election Commission was as under. Last date of filing the nomination papers 18-5-1977 Date of scrutiny of nomination papers 19-5-1977 Last date of withdrawal 21-5-1977 Date of Polling 12-6-1977 Date of counting 14-6-1977

3. Shri Ashok Kumar, Sub-Divisional Magistrate, Shahdara was appointed as the Returning Officer in respect of constituency No. 33, the constituency in dispute. Twelve candidates filed their nomination papers before the Returning Officer. Two nomination papers filed by Shri Devinder Kumar were rejected. Eight candidates later withdrew their nominations or candidature. Consequently there remained in election contest, three candidates, namely Shri Bharat Bhushan, petitioner herein, Shri Ved Prakash, respondent herein and one Shri Joginder Nath. Polling took place on 12-6-1977. Counting took place on 14-6-1977. As a result of the counting, the Returning Officer declared the respondent as having been elected. The votes secured by the respondent were 23,963. The votes secured by the petitioner were 22,975. The votes secured by Shri Joginder Nath were 1978. The petitioner thus lost to the respondent by a margin of 988 votes.

4. It is pleaded in the Election Petition that Shri Devinder Kumar who was qualified to be chosen to fill a seat in the Metropolitan Council, filed his nomination papers before the Returning Officer; that he was voter at serial No. 1021 Part 416-C pertaining to the relevant East Delhi Parliamentary Constituency Electoral Roll and that without verifying this fact and in spite of Shri Devinder Kumar

and his agent stating this fact to the Returning Officer, the nomination papers were improperly rejected by the Returning Officer without giving even an opportunity to the said candidate to substantiate this fact. The election of the respondent is averred as liable to be vitiated and held void on the ground enumerated in S. 100(1)(c) of the Act. The illegal inclusion and exclusion of certain areas is based on these facts alleged in the Election Petition. The Metropolitan Council Constituency in question is No. 33 Rohtas Nagar. The delimitation of constituencies was carried out from time to time and it was completed on April 28, 1975 as contained in Delimitation Order No. 40 issued under S. 10(1) read with S. 9(2) of the Delimitation Act, 1972. Mandoli village in the Union Territory of Delhi was not included in the said delimitation order in constituency No. 33, but was included in another constituency namely, 34 Ghonda Metropolitan Council Constituency. It is averred that unauthorisedly and illegally this village Mandoli has been included in constituency No. 33 thus including 22 polling stations of Nand Nagri and Mandoli having more than 19 thousand votes. Similarly polling station No. 15 (though mentioned as polling station No. 55 in the Election Petition) Jagjiwan Nagar, Gali Nos. 1 to 9 which contains 1287 votes and 392 voters belonging to Jyoti Nagar Colony, Loni Road, in polling station No. 26 are stated to have been illegally excluded from constituency No. 33, in non-compliance or in contravention of the provisions of the Constitution, the Act, the Representation of the People Act, 1950 and the rules made there under. It is also pleaded that by this inclusion and exclusion the electoral roll which related to constituency No. 33 stood disturbed and that had the wrongful reception of unauthorised and void votes not taken place and had the refusal of eligible voters not taken place the petitioner would have succeeded in the election in question. The election of the respondent is alleged to be void under Ss. 100(1)(d)(iii) and 100(1)(d)(iv) of the Act.

5. The defense of the respondent in the written statement is that in the nomination papers filed by Shri Devinder Kumar it was stated that his name was entered at serial No. 956 in Part No. 329 of the electoral roll for Chandni Chowk Parliamentary Constituency; that he was required under S. 33(5) of the Act to produce at the time of scrutiny a copy of the electoral roll of the constituency in which he was an elector or the relevant part thereof or a certified copy of the relevant entries in such roll, unless it had been filed along with the nomination Papers; that he had not filed the requisite copy along with the nomination papers; that he was absent when the scrutiny of nomination papers took place on May 19, 1977 and did not produce the requisite copy and that the Returning Officer rightly rejected the nomination papers under the mandatory provisions of S. 36(2)(b) of the Act. The respondent has also controverted the petitioner's allegations about the presence of Shri Devinder Kumar or any representation to the Returning Officer. It is further pleaded that the Delimitation Order No. 40 was published in the Delhi Gazette Extraordinary of April 28, 1975; that there occurred an inadvertent slip in the description of "No. 33 Rohtas Nagar" and "No. 34 Ghonda" Metropolitan Constituency in table B of the Delimitation Commission Order No. 40 of 28-4-1975 and that the Election Commissioner in exercise of the powers conferred by S. 11 of the Delimitation Act, 1972 made the correction in the said order by deleting the word "Mandoli" against "34-Ghonda" and inserting the words "and Mandoli village" against "33-Rohtas Nagar" It is averred that village Mandoli was part of No. 33-Rohtas Nagar Constituency and the voters of 22 polling stations of Nand Nagri and Mandoli rightly exercised their right in constituency No. 33. It is denied that polling stations Nos. 55 and 26 were ever forming part of constituency No. 33.

6. The issues arising out of the pleadings of the parties were framed by me on 19-10-1977 and I set down the Election Petition for day to day trial. The parties went to trial on the following issues:

1. Whether the nomination paper of Shri Devinder Kumar was improperly rejected by the Returning Officer? If so, to what effect? O.P.P.

2. Whether the inclusion of the village Nand Nagri and village Mandoli or exclusion of polling stations 15 and 26 in the constituency in question was illegal after the completion of the constituencies as contained in Delimitation Order No. 40 issued under Section 19 (1) read with S. 9(2) of the Delimitation Act, 1972?

O. P. P.

3. Whether the list of voters for a constituency is final and not open to objection? O. P.R.

4. If issue No. 2 is held in favor of the petitioner and issue No. 3 against the respondent.

5. Relief.

Note: Under issue No.2

(Polling station No 55 is corrected to No. 15 and issue is re-cast as there is no real dispute)

I may recall the petitioner's case which is that Shri Devinder Kumar was a voter at serial No. 1021 Part 416-C pertaining to the relevant East Delhi Parliamentary Constituency Electoral Roll and the Returning Officer without verifying this fact and in spite of Mr. Devinder Kumar and his agent stating this fact to the Returning Officer, Shri Devinder Kumar's nomination papers were improperly rejected without giving even an opportunity to substantiate this fact. It is argued that the rules relating to the filling up of the nomination forms are not mandatory but are merely directory. Attention is invited to proviso to sub-section (4) of S. 33 of the Act regarding the checking of and allowing corrections in regard to the electoral roll numbers in the nomination paper and in respect of the names. According to the counsel strict compliance could not be insisted in respect of the electoral roll numbers as well as the names of the persons. It is urged that a nomination paper could not be rejected at the time of scrutiny for any error in these matters, if the identity and the eligibility of the candidate are not in doubt and nobody has been misled about the same. The petitioner does not and cannot deny that in the nomination paper, Ext. PW-1/4, the electoral roll number given by Shri Devinder Kumar is "Serial No. 956 in Part No. 329 of the electoral roll for Chandni Chowk Parliamentary Constituency". To the similar effect are the entries in the other nomination paper, Ext. PW-1/5, except Chandni Chowk is missing. What is contended is that a wrong electoral roll number of Shri Devinder Kumar was given in the nomination papers and this defect was sought to be removed at the time of scrutiny. According to the counsel, the Returning Officer has to perform his duties of scrutinising the nomination papers in a quasi-judicial manner. He is not precluded from making and in fact, is enjoined upon to make a summary enquiry and for that, purpose can

grant adjournment up to the next day, in order to clear up any doubt or obscurity that might arise on account of the defect, It is submitted that this Court can go into the question and decide the propriety or otherwise of the order of rejection passed by the Returning Officer.

8. Section 33 of the Act prescribed for presentation of nomination papers and requirements for a valid nomination. Amongst others the nomination is to be completed in the form prescribed and subscribed by the candidate, himself as assenting to the nomination and another person as the proposer. The, form is prescribed by R. 4 of the Conduct of Election Rules, 1961 which lays down that every nomination paper presented under sub-section (1) of S. 33 shall be completed in such one of the Form 2A to 2E as may be appropriate. In the prescribed form, particulars are required to be furnished to establish the identity of the proposer and that of the candidate. Both for the proposer as well as for the candidate it is a necessary condition to prove for a valid nomination that they are registered voters. For that purpose correct particulars of their electoral roll numbers are required to be furnished. Under R. 2 (f) of the Conduct of Election Rules 1961, the electoral roll number of a person means:

- (i) the serial number of the entry in the electoral roll in respect of that person;
- (ii) the serial number of the part of the electoral roll in which such entry occurs; and
- (iii) the name of the constituency to which the electoral roll relates;

Thus the nomination papers should include insertion of the serial number, part number of the electoral roll and the name of the electoral constituency. The requirements as to the mentioning of their full names as well as their electoral roll numbers is to enable the Returning Officer to satisfy himself on the presentation of a nomination paper that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls. This is also intended to furnish evidence at the time of preliminary examination of the nomination paper to see whether the candidate or the proposer are registered voters. Under the administrative rules, electoral rolls of a particular constituency are only supplied to the Returning Officer of that constituency. Earlier S. 33(6) of the Act provided that if at the time of the presentation of the nomination paper, the Returning Officer finds that the name of the candidate is not registered in the electoral rolls of the constituency for which he is the Returning Officer, he shall require the person presenting the nomination paper to produce either a copy of the electoral roll in which the name of the candidate is included or a certified copy of the relevant entries in such roll. This provision was, however, amended in 1956 and now under the corresponding S. 33(5) of the Act it is the duty of the candidate to produce. Section 33(5) reads as under: "Where the candidate is an elector of a different constituency, a copy (if the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the Returning Officer at the time of scrutiny."

9. Two nomination papers, Exts. PW-1/4 and PW-1/5 have been filed nominating Shri Devinder Kumar as a candidate for the election to the Metropolitan Council of Delhi from the constituency of Rohtas Nagar-33. In Ext PW-1/4, the postal address of Shri Devinder Kumar is given as C-3/543,

Nand Nagri, Shahdara, Delhi-32. It is then mentioned that "his name is entered at serial No. 956 in Part No. 329 of the electoral roll for Chandni Chowk Parliamentary Constituency." In the second nomination paper, Ext. PW-1/5, the particulars are identical except the word "Chandni Chowk" is missing. Shri Ashok Kumar, S. D. M Shahdara who was the Returning Officer with respect to constituency No. 33, was produced by the respondent as RW-1. He deposes in cross-examination that he must have told Shri Devinder Kumar on the date of the filing of the nomination papers to produce the certified copy of the relevant entries of the electoral roll at the time of scrutiny, and that his record does not show that on 19-5-1977 Shri Devinder Kumar appeared in the morning. In the examination-in-chief the Returning Officer deposes that Shri Devinder Kumar must not have been present at the time of scrutiny of the nomination papers as his record shows that none was present; that he kept waiting for Shri Devinder Kumar till 3 P. M. and he had noted that fact on the record and that no copy of the electoral roll or any relevant part thereof or a certified copy of the entries accompanied any of the two nomination papers. The order of the Returning Officer on nomination paper Ext. PW-1/4 is Ext. PW-1/6 and is to this effect:

"I have waited for the candidate till 3 P. M. today but he has not produced the certified copy or any other documentary evidence of his electoral roll number which is outside the constituency from which he is contesting. In view of his failure to this I reject his nomination paper.

Sd/- Ashok Kumar R. O."

The order on the nomination paper Ext. PW-1/5 is Ext. PW-1/7 and reads as follows:

"I have waited for the candidate till 3 P.M. today but he has not produced any documentary evidence (viz.) certified copy etc. of his electoral roll (since he is contesting from a different constituency). In these circumstances I reject his nomination paper.

Sd/- Ashok Kumar 19-5-1977 R. O."

It is clear that Shri Devinder Kumar did not produce either a copy of the electoral roll of that constituency particulars of which- are given in the nomination papers or a relevant part thereof, or certified copy of the relevant entries of such roll either along with the nomination papers or produced the same before the Returning Officer at the time of scrutiny. Under the old S. 33 it was for the Returning Officer to require the production of the copy at the time of presentation of the nomination paper, but now the Returning Officer is not under any such obligation. A statutory obligation is now imposed on the candidate to produce the same before the Returning Officer at the time of scrutiny if it was not done earlier along with the nomination papers. Mr. R. P. Bansal, learned counsel for the petitioner relied upon para. 6 (g) of Chap. 11 of the Hand Book for Returning Officers issued by the Election Commission of India in 1977 to urge that the attention of the candidate should have been drawn when his nomination paper is presented and examined and a memorandum in the form prescribed should have been issued. The memorandum has not been issued but the unrebutted statement on oath of the Returning Officer is that he must have told Shri Devinder Kumar on the date of filing of the nomination papers to produce the certified copy of the relevant entries of the electoral roll at the time of scrutiny. There is thus substantial compliance of

even the administrative instruction. The candidate is now required by law to produce a copy of the electoral roll of that constituency or of the relevant part thereof, or a certified copy of the relevant entries in such roll at the time of scrutiny on his own. The law does not require any memorandum to be issued to the candidate for this purpose. The object of S. 33(5) obviously is to enable the returning officer to check whether the person standing for election is qualified for the purpose, The electoral roll of the, constituency for which the returning officer is making scrutiny would be with him, and it is not necessary for a candidate to produce the copy of the roll of that constituency. But where the candidate belongs to another constituency the returning officer would not have the roll of that other constituency with him and therefore, the provision contained in S. 33(5) has been made by the legislature to enable the returning officer to check that the candidate is qualified for standing for election, For that purpose the candidate is given the choice either to produce a copy of the electoral roll of that other constituency, or of the relevant part thereof or of a certified copy of the relevant entries in such roll before the returning officer at the time of the scrutiny, if he has not already filed such copy with the nomination paper. (see *Ranjit Singh v. Pritam Singh*,). When the certified copy of the electoral roll is not produced, then there is noncompliance of the provisions of Section 33(5) of the Act and the nomination paper was rightly rejected by the Returning Officer on 19-5-1977.

10. In *Khyali Ram v. Harlal Singh*, 2nd (1967) 17 Raj 938 relied upon by Shri D. D. Chawla, learned counsel for the respondent, the fact of the case was that the Returning Officer before whom the nomination papers were filed was also the Returning Officer of the constituency in the roll of which the candidate's name was entered as a voter; even then it was held that it should not render the rejection of the nomination paper as improper as the provisions of S. 33(5) of the Act require that where a candidate who files the nomination is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof, or certified copy of the relevant entries in such roll shall be produced before the Returning Officer at the time of the scrutiny. It was further held that S. 33(5) was not directory but mandatory in its nature and a nomination paper can be properly rejected if the said provision is not complied with.

11. In *Narbada Prasad v. Chhagan Lal*, , a candidate who was an elector of a different constituency a certificate from a tehsildar stating that the candidate was an elector of a different constituency. The Supreme Court held that there was no compliancy with the provisions of S. 33(5) of the Act and there was no power in the Court to dispense with this requirement; that it is a well understood rule of law that if a thing is to be done in a particular manner it must be done in that manner or not at all and that other modes of compliance are excluded. Shri Devinder Kumar not having complied with the provisions of S. 33(5), the rejection of his nomination papers cannot be held as improper.

12. But the case of the petitioner does not rest on the records of the Returning Officer but goes beyond. It is, therefore, necessary to sift and evaluate the oral evidence which has been placed on the record, and as to the weight to be attached to that evidence. PW-3 Shri Gopal Krishan, proposed the name of the petitioner for election to the constituency No. 33 and was also his election agent. He deposes that Shri Devinder Kumar orally pleaded before the Returning Officer that the voter's number given in the nomination papers is his old one and that Shri Devinder Kumar is a voter in constituency No. 33; that Shri Devinder Kumar further pleaded that he does not know the voter

number in constituency No. 33 but it is at the address given in the nomination papers; that the Returning Officer orally told Shri Devinder Kumar that the Returning Officer is concerned with the voter number as given in the nomination papers and that Shri Devinder Kumar should produce the certified copy of that voter's list by 3 P. M. that date. He further deposes that he and Shri. Hari Om, Kapur requested the Returning Officer to see the voter's list of the constituency No. 33, at the address of Shri Devinder Kumar given in the nomination papers, but they were told by the Returning Officer that it was none of their business. PW-5 Shri Hari Om Kapur, another candidate deposes that the Returning Officer orally told Shri Devinder Kumar that he should bring the certified copy of the electoral roll of the voter's number given in the nomination papers, that Shri Devinder Kumar told the Returning Officer that he could verify the voter number from the records available with him; that he and Shri Gopal Krishan told the Returning Officer to verify the voter's number of Shri Devinder Kumar from the records and that they were told that they could speak only when their turn comes. In the cross-examination, however, Shri Hari Om Kapur states that he is not aware as to which serial number of the voter was given by Shri Devinder Kumar in his nomination papers. Shri Bharat Bhushan, petitioner as PW-8 deposes that the Returning Officer told Shri Devinder Kumar to produce the certified copy of the voter's list in regard to the voting number as given in the nomination papers; that Shri Devinder Kumar showed the voter list printed in Hindi of the area of Nand Nagri where the name of Shri Devinder Kumar was entered as a voter; that Shri Devinder later on showed the same to him and that the Returning Officer told Shri Devinder Kumar that he is not concerned with that list and directed the production of a certified copy of the voter's list of the voter number given in the nomination Papers. A suggestion is put in the cross examination to all above said three witnesses but denied that Shri Devinder Kumar was not Present before the Returning Officer on the date of scrutiny of the nomination Papers.

13. As against this evidence of the petitioner, the respondent has himself entered in the witness box stating that Shri Devinder Kumar was not present at the time of scrutiny. The respondent has also produced Shri Ashok Kumar, Sdm, Shahdara who was the. Returning Officer in respect of Metropolitan Council constituency No. 33. He deposes that when he took up the nomination papers of Shri Devinder Kumar he called for the name of Shri Devinder Kumar, that Shri Devinder Kumar must not have been present at the time of scrutiny of the nomination papers as his record shows that none was present; that he does not orally (sic) (personally?) remember if any person made any representation to him on behalf of Shri Devinder Kumar; that if any other person had made any such representation it would have been recorded by him in the records; that he kept waiting for Shri Devinder Kumar till 3 P. M. on that date and as no one appeared till 3 P. M. he noted the fact on the record and that no copy of the electoral roll or any relevant part thereof, or a certified copy of the entries accompanied any of the two nomination papers. In the cross-examination, he admits that he did not specifically record the absence of Shri Devinder Kumar at 11 A. M. when the process of scrutiny commenced, but according to him he had mentioned in the order dated 19-5-1977 that he waited for the candidate till 3 P.M. and this by implication means that Shri Devinder Kumar was not present on that day at all. He states that he did not record the presence or absence of the candidates at 11 A. M. as he did not think it necessary in the absence, of specific rules. He further states that he does not think if any other person at the time of scrutiny suggested that Shri Devinder Kumar was a voter in constituency No. 33 at the address given in the nomination papers and if any one suggested so, this would have been mentioned in his orders of the nomination papers. A suggestion was put to

the Returning Officer and he deposes that he does not remember if Shri Devinder Kumar had shown him a voter's list in Hindi showing the name of Shri Devinder Kumar, 4/C-3/ 543 Nand Nagri as a voter. This raised an ambiguity and the counsel for the respondent had it clarified by inviting the attention of the witness to the orders on Exts. PW-1/6 and PW-1/7, when the witness stated that "since I have recorded that Shri Devinder Kumar was waited till 3 P.M., it means that Shri Devinder Kumar was not present at all on 19-5-1977."

14. The Returning Officer is of the rank of a Sub Divisional Magistrate and is enjoined in law to scrutinise the nomination papers in accordance with the provisions of Ss. 33 and 36 of the Act and evidence is also that he chocked the particulars of Shri Devinder Kumar and other candidates given in the nomination papers at the time of presentation. His evidence is that he did not check up the electoral roll number of Shri Devinder Kumar as it related to a different constituency and he was not in possession of the electoral roll of that constituency. The orders on the nomination papers do record that the Returning Officer had waited for the candidate till 3 P. M. The Returning Officer is categorical in his statement that Shri Devinder Kumar was not present at all on 19-5-1977 and thus there could be no representation by Shri Devinder Kumar that he was a voter having electoral roll number other than that which was mentioned in the nomination papers Ext. PW-1/4 and Ext. PW-1/5. The object of the particulars required to be given on the nomination form is to ensure, a ready source of information to the Returning Officer as well as to other candidates/voters who might be interested in checking up the identity and eligibility of the candidate. The nominations are assented to by Shri Devinder Kumar on 18-5-1977, and it is highly improbable that he would have been in possession of his correct electoral roll number in constituency No. 33 on that day and yet gave his name as entered at S. No. 956 in Part No. 329 of the electoral roll for Chandni Chowk, Parliamentary Constituency. Again if the correct electoral roll number had been brought to the notice of the Returning Officer, I see no apparent or hidden reason why the Returning Officer should not have mentioned this fact in his orders on the nomination papers. The Returning Officer is conscious and says that if any one suggested so, this would have been mentioned in his orders. Cross-examination was directed to the inexperience of the Returning Officer being S.D. M. from July 1976 and to the lack of the knowledge, of the Act and the Rules framed there under. The Returning Officer claims that he must have gone through the provisions of Ss. 33 and 36 of the Act at the time of Elections. The Returning Officer says that he was not expected to find out from the electoral rolls, if a candidate was a voter in that constituency, but was supposed to verify the particulars as mentioned in the nomination paper. A suggestion was put to the Returning Officer by the counsel for the petitioner and the Returning Officer admitted that if he had tried to see the, electoral rolls of the address as given by Shri Devinder Kumar, he would have found that Shri Devinder Kumar was a voter at serial No. 1021. From this part of the evidence a capital is sought to be made that the Returning Officer completely misdirected himself in law in confining the scrutiny to the particulars as mentioned in the nomination papers and ignoring the Electoral Roll of the constituency No. 33. The part of the statement has not to be looked into in isolation. This evidence is the indication towards frank and truthful testimony of the Returning Officer. He is a Sub-Divisional Magistrate and disinterested. He has no notice (sic) (motive?) to make any false statement. In the absence of a correct electoral roll number, it is not possible for the returning officer to readily locate in the electoral roll the candidate's name. When the electoral roll number is missing or wrong, it will entail laborious search to find out the eligibility from the list of voters and in this case there were about 50

thousand entries. Thus in law the Returning Officer is not expected, in the absence of electoral roll number, to search the electoral rolls to check up the identity or eligibility of the candidate. The Returning Officer was fully justified in confining the scrutiny to the particulars in the nomination papers, when nothing else was brought to his notice. The positive evidence of the Returning Officer is consistent with the orders Ext. PW-1/6 and Ext. PW-1/7 and goes to establish that neither Shri Devinder Kumar was present nor any one represented that he was a voter at serial No. 1021 page 416-C of East Delhi Parliamentary Constituency. Apart from it there is a presumption in favor of the performance of Judicial and official acts. The law presumes '*Ominia Praesumuntur Bite Esse Acta*' i.e. all acts are presumed to have been rightly and regularly done. So it is presumed that the Returning Officer on 18th of May, 1977 on the presentation of the nomination papers wanted to satisfy himself that the name and electoral roll number of the candidate and his proposer is as entered in the nomination papers are the same as those entered in the electoral roll. The law will presume that Shri Devinder Kumar did not seek permission to correct inaccurate description in the electoral roll number as given in the nomination papers. Otherwise under proviso to S. 33(4) either the correction would have been allowed or the Returning Officer may have (rightly or wrongly) directed that the inaccurate description in the nomination papers shall be over-looked. It is presumed that the Returning Officer discharged his duty and directed Shri Devinder Kumar who was entered as an elector of a different constituency, to produce a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll at the time of scrutiny. As the orders of the Returning Officer made on 19-5-1977 do not record, the law will presume that no representation was made by Shri Devinder Kumar or his agent that Shri Devinder Kumar was a voter at serial No. 1021 Part 416-C of East Delhi Parliamentary Constituency electoral roll. If such a representation had been made, the record would not have been silent.

15. The question then is whether the presumption in favor of the official acts is destroyed or it is established that the Returning Officer has not acted in accordance with the form and procedure prescribed and has clearly made false statement in this Court. For this the evidence of the petitioner may now be scrutinised. The task of extracting the truth is not very difficult in this case.

16. I may recall the case set up in the Election Petition viz., that Shri Devinder Kumar and his agent stated that Shri Devinder Kumar was a voter at serial No. 1021 page 416-C pertaining to the relevant East Delhi Parliamentary Constituency. Electoral Roll. The burden to prove this rests very heavily on the petitioner when he is seeking to set aside an election. Shri Gopal Kishan deposes that Shri Devinder Kumar pleaded that he does not know voter number in constituency No. 33, but it is at the address given in the nomination papers. The petitioner improves upon this statement and says that Shri Devinder Kumar showed the voter's list printed in Hindi of the area Nand Nagri where the name of Shri Devinder Kumar was entered as a voter. The evidence of the petitioner and his election agent is partisan and has to be assessed with great caution. Interest or partisanship is a strong element that weans one away unconsciously from the truth. The testimony of the petitioner and his election agent is not convincing and is discarded for these reasons. Shri Hari Om Kapur does not support at all the petitioner in his version as the witness admits that he is not aware as to which serial number of the voter was given by Shri Devinder Kumar in his nomination papers. He states that Shri Devinder Kumar told the Returning Officer that he could verify the voter's number from the records available with him. Beyond that Shri Hari Om Kapur is not willing to support the

petitioner's case. The Returning Officer could not locate the voter number from the records available with him when the electoral roll number of constituency No. 3 had not been mentioned in the nomination papers. It is not the petitioner's case that the Electoral Roll of Chandni Chowk Parliamentary Constituency was available with the returning officer. The testimony of the petitioner and his agent in this regard is also against the normal human behavior. Shri Devinder Kumar is a rival candidate. The normal human conduct is that they would be interested in seeking that there are less number of persons in the field of contest. Shri Devinder Kumar, though claimed as a candidate set up by the Congress for Democracy, yet he had shown preference for the symbol of Lion and thus was against the petitioner who was a Janata party candidate. In the election petition the making of the statement of fact before the returning officer is attributed to Shri Devinder Kumar and his agent Shri Devinder Kumar and his agent have not been produced. There is no explanation why they could not be produced by the petitioner. Best evidence rule which governs the Production of evidence in Courts, requires that the best evidence of which the case in its nature is susceptible should always be presented. When better evidence is withheld it is only fair to presume that the petitioner had some motive for not producing it and that, if offered, his design would be frustrated. The petitioner and his agent mention in their evidence the presence of Shri Inder Singh Azad, Shri Chinta Mani, Shri Gyaneshwar and Shri Gurdial at the time of scrutiny of the nomination. papers Shri Inder Singh Azad and Shri Chinta Mani are not mentioned in the list of witnesses and I will not draw any adverse inference for their non-production. Though Shri Gurdial is mentioned in the list of witnesses at serial No. 8, yet he is withheld from the Court. Shri Gyaneshwar has been examined as PW-4, but not a single question is asked as to what transpired at the time of scrutiny. It is, therefore, reasonable to infer that Shri Gyaneshwar as well as Shri Gurdial are not supporting the version of the petitioner as is set up in the election petition. Another significant factor is the contradiction in the stand of the petitioner In the Election Petition. On the one hand the petitioner says that Shri Devinder Kumar showed the voter list printed in Hindi of the area of Nand Nagri where the name of Shri Devinder Kumar was entered as a voter. On the other hand the petitioner says that Nand Nagri was not Included in the constituency No. 33, on the basis of list Ext. PW-8/1 which was given to him by the Returning Officer, and the petitioner canvassed on that basis and fought the elections. The entire evidence of the petitioner does not destroy the presumption In favor of the official acts. His evidence cannot persuade any reasonable mind to hold that the Returning Officer clearly made a false statement in this Court when he stated that Shri Devinder Kumar was not present at all On 19th May 1977. The cumulative effect of all the above factors leads me in ascertaining the truth and I hold that Sh. Devinder Kumar was not present at the time of scrutiny and it was later on discovered by the Petitioner that the name of Shri Devinder Kumar was given in the voter's list of constituency No. 33 in the area of Nand Nagri at house No. C-3/543 Nand Nagri thus giving a ground to the petitioner to base, his election petition on the improper rejection of the nomination papers.

17. The arguments of the counsel for the parties also proceed in the extreme. Mr. R. P. Bansal submits that the object of information as to the electoral roll numbers of the candidate to be given in the nomination paper is merely an aid to the Returning Officer in the mechanical operation of locating a name in the electoral roll. He contends that in the nomination papers, Exts. PW-1/4 and PW-1/5, the candidate's name and address were given as "Devinder Kumar, C-3/543, Nand Nagri, Shahdara, Delhi-32" and the Returning Officer's statement is also that had he tried to see the electoral roll of the address as given by Shri Devinder Kumar from the electoral rolls in his

possession, the Returning Officer would have found that Shri Devinder Kumar was a voter at Serial No. 1021. Thus in spite of the fact that the electoral roll number was wrongly given, the name of Shri Devinder Kumar could be easily located in the electoral roll of constituency No. 33 which was in the possession of the Returning Officer. The requirement as to the filing of a copy of the electoral roll of the constituency or of the relevant part thereof or a certified copy of the relevant entries in, such roll as provided in S. 33(5) of the Act is only when the candidate is an elector of a different constituency. According to the counsel, Shri Devinder Kumar was duly qualified to stand as a candidate because his name was borne on the electoral rolls in the possession of the Returning Officer and in such case there was no requirement of law to produce the certified copy of the electoral roll. The nomination was, therefore, good and improperly rejected. Reliance is placed by the counsel on the principles, relating to nomination papers, which have generally been recognised and stated in "Gurnam Singh v. Partap Singh" Elr 238 (of Election Tribunal Ludhiana). Reliance was placed specifically on the following:

"Right to contest an election is a very valuable right and a candidate should not be deprived of it on mere technicalities, if he is otherwise qualified and has in substance complied with the provisions of law.

The names and electoral numbers of the candidate, the proposer and the seconder, as given in the nomination form need not literally agree with the description in the electoral roll.

In view of the special provisions regarding the checking of, and allowing corrections in respect of names and electoral numbers, at the time of filing of the nomination papers, strict compliance should not be insisted in respect of names, and numbers at the time of the scrutiny, and a nomination paper should not be rejected for any error in these matters, if the identity and the eligibility of the subscribers are not in doubt and nobody has been misled about the same."

Reliance is also placed on "Om Prabha Jain v. Gian Chand", 22 Elr 242: (A Division Bench of Punjab High Court) where it was contended that the nomination paper ought to have been rejected on the ground that the nomination paper did not contain her electoral roll number and there was thus failure to comply with the provisions of the Act. This contention was repelled in that case. Reliance is also placed on "Dahu Sao v. Ranglal Chaudhary", and on appeal "Rangi Lal Chaudhary v. Dahu Sahu", where it was held that the defect in filing the nomination form would not be of a substantial character, if the nomination form discloses the constituency for which the nomination is being made even though the form may not have been filled in that respect. The counsel argues there could be no doubt about the identity of Shri Devinder Kumar on a comparison of the address given in the nomination papers and the serial No. 1021, Part 416-C pertaining to East Delhi Parliamentary Constituency Electoral Roll which was in constituency in dispute. Reliance is also placed on "Godha Ram v. State of Punjab", 1966 D.E.C. Case No. 28: to urge that the Returning Officer should have allowed to correct the entries in the nomination papers at the time of scrutiny to correspond with the entry in the electoral roll.

18. On the other hand Mr. D. D. Chawla, urges that there is no cogent and convincing evidence on record to show that either Shri Devinder Kumar or any one else on his behalf was present before the

Returning Officer at the time of scrutiny. It cannot, therefore, be held that the relevant entries in the electoral roll relating to Shri Devinder Kumar could be pointed out to the Returning Officer. He contends that the failure to furnish particulars (if reliance is placed on Electoral Roll of Constituency No. 33) in each of the nomination papers constitutes a defect of substantial character within the meaning of S. 36(4) of the Act because the Returning Officer could not ascertain the relevant entries owing to the omission of the candidate in furnishing any particulars of Constituency No. 33 and the failure of the can other person on his behalf to point out those entries. He submits in the extreme that the case is not of an inaccurate description, but a total omission of the furnishing of the particulars of the electoral roll number in Constituency No. 33 which is one of the statutory requirements by S. 33 of the Act and the omission is fatal to the validity to the nomination papers, not curable at all on the date (if scrutiny even if it is assumed that Shri Devinder Kumar produced the copy of the electoral roll in Hindi containing his voter number at S. No. 1021 Part 416-C of the East Delhi Parliamentary Constituency. The first aspect of the submission has already been dealt with and that takes me to the second.

19. S. 36(2)(b) of the Act empowers the Returning Officer to reject a nomination paper if there has been a failure to comply with any of the provisions of S. 33 of the Act. Sub-section (4) of S. 36, however, provides that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. As already pointed out S. 33(1) requires that a nomination paper should be completed in all respects in the Prescribed form giving the electoral roll number of the candidate which includes the name of the constituency, the serial number of the part and the serial number of the entry in that part. The candidate's name cannot be located in the roll unless these particulars are furnished. Under S. 35, the Returning Officer shall cause to be affixed a notice of the nomination containing description similar to those contained in the nomination paper, both of the candidate and of the proposer. Under R. 7 of the Conduct of Election Rules, 1961 the notice of nomination under S. 35 shall be in such one of the forms 3-A to 3-C as may be appropriate. Each of these forms require the tabulation of the electoral roll number of the candidate as well as of the proposer under separate columns. Mr. Bansal is not right in his submission that it is to be in Form 4 which does not require the particulars of electoral roll number. Form 4 is for the preparation of list of validly nominated candidates after the decision of scrutiny and is to be affixed under S. 36(8) as per R. 8. The list of nominated candidates prepared under Para 11 of Chap. II of the Hand Book for Returning Officers is only for the purpose of sending it to the Chief Electoral Officer and Superintendent of State Government Press. Para 9 of the same chapter provides for the publication on the notice board a notice of nominations in Form 3-A (S. 35). This notice is to be affixed after 3 P. M. each day and also on the last day of, the filing of the nomination papers. The object of this information displayed at the notice board is to enable the other candidates/electors who might be interested in checking up the identity and eligibility of the candidates and proposers and to given them time to scrutinize and be ready to raise objections against the nomination papers. The legislature does not expect from the other candidates/electors to entail laborious search in the roll to find out the eligibility. It is humanly impossible to search the electoral rolls in a day or two, especially when the elections relate to a parliamentary constituency where the voters run into lakhs. The giving of a wrong electoral roll number in this case which is not in the nature of an inaccurate description, is the same as omission of the electoral roll number. In this case the other candidates would have come to know from the notice displayed on that Shri Devinder Kumar is an elector of a

different constituency and he may have either filed along with the nomination papers or may produce at the time of scrutiny the requisite certified copy. The other candidates are only put to notice to check up whether that candidate is subject to a disqualification mentioned in S. 16 of the Representation of the People Act, 1950, otherwise the, certified copy of an entry in the electoral roll has been made conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency. The objections can be raised only on the date of scrutiny before the Returning Officer. On the date, of scrutiny, the intention of, the legislature is that the other candidates/electors should be in a position to raise all possible objections before the scrutiny of a particular nomination starts. The legislature, therefore, required under S. 35 of the Act to affix a notice of nomination containing description similar to those contained in the nomination papers, both of the candidate and of the proposer. The Returning Officer can give the facilities for examining the nomination papers of all the candidates only on the date of scrutiny. For these reasons the completion of the nomination form in the prescribed form giving the name of the constituency the serial number of the part and the serial number of the entry in that part is not any empty formality. The object of the details to be mentioned in the nomination papers is to ensure the identity and eligibility of the candidate. Inaccuracies, discrepancies and irregularities in the nature of those specified in proviso to sub-me (4) of S. 33 do not matter, for they do not mislead. But if in the nomination papers and consequently 'in the notice under S. 35 of the Act, the electoral roll number of Shri Devinder Kumar is given as entered at serial No. 956 in Part 329 of the. Electoral Roll for Chandni Chowk Parliamentary constituency, and not the one in which he is an elector, then it is obvious that the other candidates are misled and are not in a position to raise all possible objections before the scrutiny starts.

20. Godha Ram's case (supra) relied upon by the petitioner had arisen out of elections to the Panchayat Samiti. There the voter number of the proposer was given as 28 (6), whereas it should have been 26 (3) according to the electoral roll and a prayer was made at the time of scrutiny to permit correction of this error. Rule 9 of the Punjab Panchayat Samiti Primary Members (Election) Rules provides that the Returning Officer shall examine Papers at the time appointed in this behalf, hear objections, if any, to the eligibility of any candidate and determine those objections. Proviso to the said rule empowers the Returning Officer to permit corrections of clerical errors, in the nomination papers at the time of scrutiny. The Court, therefore, held that the corrections should have been allowed in order to bring it in conformity with the corresponding entry in the electoral roll. It is clear that all other particulars were identical except serial number of the voter which is entitled to be corrected under proviso even at the time of scrutiny. The decision of the case rests that it was a clerical error.

21. Om Prabha Jain's case (supra) is peculiar on its own facts. Her name was not entered on the electoral roll of the constituency on the last date of filing of the nomination papers (i.e. 29-1-1957) but an application had been made by her to the Chief Election Officer for inclusion of her name in the electoral roll of another constituency. In the column for filing the electoral roll number she mentioned that she had applied for her name being entered on the roll, but of course she could not mention any roll number. After her name was included on 31-1-1957, she obtained a certified copy and presented it on the date of scrutiny. The main question raised there was whether the, qualification of a candidate to stand for election must be determined with reference to the date of

nomination alone and not with reference to the date fixed for scrutiny of the nominations and it was held that relevant date is the date of scrutiny. An observation was made that the omission of the electoral roll number from the nomination paper would in no sense be a substantial defect. In that case it is obvious that she could not possibly have mentioned her electoral roll number at the time of filing her nomination, papers, and she. Indicated it in the nomination paper itself to put other candidates/electors to notice that this information will be furnished on the date of scrutiny. In Rangi Lal Chaudhary's case (supra) the mistake occurred in the printing form which did not exactly conform to the Hindi printed form in the Rules framed under the Act and the candidate filled in the name of the constituency in the blank space in the heading, but it was quite clear that the nomination was for the Dhanbad Constituency. The nomination paper clearly showed the constituency from which the nomination was being made though there was some defect in filling up the form. Even then the Supreme Court observed that generally speaking if the nomination does not disclose at all the name of the constituency for which the nomination has been made, the defect would be of a substantial character for there would be no way of knowing the constituency for which a candidate is being nominated.

22. It may be conceded to the petitioner that the provisions relating to filling up of nomination papers are not absolute and need not, therefore, be fulfilled exactly. Proviso to sub-section (4) of S. 33 is a pointer in that direction. The filling up of the particulars of the electoral roll number could, therefore, be complied with substantially. The criterion of substantial compliance is for the establishment of the eligibility and identity. In this case the nomination papers contained the electoral roll number as "Serial No. 956 in. Part 329 of the Electoral Roll for Chandni Chowk Parliamentary Constituency". Shri Devinder Kumar or his proposers have not come forward to depose that there was a mistake in the nomination paper or it had occurred due to any valid or good grounds. The information supplied is no information at all, as it would entail laborious search in the roll of Constituency No. 33 to establish the identity and eligibility of Shri Devinder Kumar. No provision of the Act and the Rules has been brought to my notice and in my opinion none exists conferring power on the Returning Officer to allow amendments in the nomination papers on the date of scrutiny. The power to allow amendments can be exercised on the presentation of the nomination papers and can be exercised only in the matter of clerical error in regard to the names and numbers to be corrected in order to bring them into conformity with the corresponding entries in the electoral rolls. When the stage of scrutiny comes, under S. 36(4) only a technical defect which is not of a substantial character can be overlooked. The requirement to the filling up of the particulars of the electoral roll numbers is vital, as it is on their basis that the eligibility and identity is established. Even if they are directory, the breach of them can be over-looked, provided there is a substantial compliance with the rules. On the facts of this case, I am of the considered opinion that there has been no substantial compliance and the nominations were bad in law.

23. In *Dharam. Singh Rathi v. Hari Singh*, the Returning Officer rejected the nomination paper on the ground, inter alia, that the name of the constituency of the proposer was not given in the nomination papers and the Supreme Court held that this defect pointed out by the Returning Officer was of a substantial character and it made it obligatory for him to reject the nomination paper. The constituency was part of the electoral roll number of the proposer. If the electoral roll number, that is, the name of the constituency, the serial number of the part and the serial number of the entry of

that part, of Shri Devinder Kumar on the basis of which the petitioner claims that Shri Devinder Kumar was qualified to be chosen to fill the seat in the Metropolitan Council, it is not given at all in the nomination papers, then this defect is of a substantial character. The fact that the nomination was rejected on some other ground is of no consequence. If in truth there existed a defect of a substantial character in the matter of compliance of Act, the nomination paper be rejected, and if it was so rejected, rejection would be proper whatever may have been the reason given by the Returning Officer. (See *Ranjit Singh v. Pritam Singh* Air 1966 Sc 1926).

24. To sum up I hold that Shri Devinder Kumar did not produce either a copy of the electoral roll of that constituency particulars of which are given in the nomination papers, Exts. PW-1/4 and PW-1/5, or a relevant part thereof, or a certified copy of the relevant entries of such roll either along with the nomination papers or produced the same before the Returning Officer at the time of scrutiny. There is thus non-compliance of the provisions of S. 33(5) of the Act and the nomination papers were rightly rejected by the Returning Officer by virtue of the powers conferred under S. 36(2)(b) of the Act. The rejection of the nomination papers cannot be held as improper. I further hold that Shri Devinder Kumar was not present at the time of scrutiny before, the Returning Officer and neither Shri Devinder Kumar nor any one else on his behalf pointed out to the Returning Officer that Shri Devinder Kumar's name is entered as a voter at serial No. 1021 Part 416-C pertaining to the East Delhi Parliamentary Constituency electoral roll. As the electoral roll numbers, that is, the name of the constituency, the serial number of the part and the serial number of the entry of that part of Shri Devinder Kumar on the basis of which the petitioner claims that Shri Devinder Kumar was qualified to be chosen to fill seat in the Metropolitan Council is not given at all in the nomination paper then this defect is of a substantial character and the rejection was proper. I, therefore, hold issue No. 1 against the petitioner.

25. Issues Nos. 2 & 3: Order No. 40 dated April 28, 1975 was made by the Delimitation Commission, India under S. 9(2)(d) of the Delimitation Act, 1972 in respect of the delimitation of parliamentary and metropolitan council constituencies in the Union Territory of Delhi The order was published in the (Contd. on Col. 2) Name of Constituency, 33-Rohtas Nagar Delhi Gazette Extraordinary dated April 28, 1975 in pursuance of sub-section (1) of S. 10 of the Delimitation Act, 1972. A copy of the gazette is Ext. PW-1/10. The Delimitation Commission determined the territorial constituencies into which the Union Territory of Delhi was divided for the purpose of elections to the House of the People and the extent of each such constituency and also the territorial constituencies into which the Union Territory of Delhi was divided for the purpose of election to the Metropolitan Council and the extent of each such constituency shall be as shown in Table B. Entry relating to Constituency No. 33 reads as follows:

(See table below) Delhi Gazette Extraordinary dated 9th of February 1976, copy Ext. PW1/10-A records that the Government of the Union Territory of Delhi intimated to the Election Commission of India an inadvertent slip in the description of 33-Rohtas Nagar and 34, Ghonda Metropolitan Council Constituencies in Table B of the Delimitation Commission's Order No. 40 of 28th April 1975 in respect of the Union Territory of Delhi The notification further records that the Election Commission considered it necessary and expedient to make amendments in the description of those constituencies so as to bring the order correct and up to-date. In exercise of the powers conferred by

S. 11 of the Delimitation Act, 1972 the Election Commission made the corrections in the said order in Table B Metropolitan Council Constituencies. Correction made against 33-Rohtas Nagar in the description of the extent of the constituency was to the effect that after the words and figures "Charge No. V the words "and Mandoli village" were inserted. Accordingly, the word 'Mandoli' was deleted against 34-Ghonda in the description of the extent of constituency.

26. In exercise of the powers conferred by S. 5 of the Delhi Municipal Corporation Act, 1957, as amended by the Delhi Municipal Corporation (Amendment) Act, 1974 read with the Government of India, Ministry of Home Affairs notification No. 3/6/66 Delhi dated the 20th April, 1967 and in super session of all previous orders on the subject, the Lt. Governor, Delhi made the Delhi Municipal Corporation (Delimitation of Wards) Order, 1975. The notification dated Feb. 23, 1975 was published in the Delhi Gazette Extraordinary, copy Ext. RW-5/1. The wards into which Delhi was divided for purposes of election of Councillors to the Municipal Corporation of Delhi and the extent of each such ward shall be shown in the schedule to this Order. Ward No. 55-Rohtas Nagar, Ward 56-Navin Shahdara and Ward No. 58, Usman Pur are relevant for purposes of this election petition.

Extent of Metropolitan Council Constituencies Block Nos. 53 to 117 and 157 to 165 in Census Charge No. 2 and Block Nos. 1 to 52 in Census Charge No. 1 in Delhi Municipal Corporation.

27. By notification dated 12th Aug. 1976 published in the Delhi Gazette Extraordinary dated Aug. 30, 1976, copy Ext. PW-8/3, the Election Commission made corrections in the Delimitation Commission's Order 40 of 28th April, 1975. The notification states that whereas the Government of the Union Territory of Delhi have intimated alterations in the name and extent of wards of Delhi Municipal Corporation mentioned in the Metropolitan Council Constituencies in Table B of the Delimitation Commission's Order 40 of 28th April 1975 and whereas the Commission considers it necessary and expedient to make amendments in the description of the extent of those Constituencies so as to bring the order correct and up-to-date, the Election Commission in exercise of the powers conferred by S. 11 of the Delimitation Act, 1972 made corrections in the said Order as follows:

In Table B for the existing entries the following entry was substituted relating to Constituency No. 33, Rohtas Nagar. "33-Rohtas Nagar-Wards 55-Rohtas Nagar and 56 Navin Shahdara and Villages Saboli and Mandoli included in ward 58-Usmanpur, in Delhi Municipal Corporation."

28. The preamble to the Delimitation Commission Act, 1972 contains that it is an Act to provide for the readjustment of the allocation of seats in the House of the People to the States, the total number of seats in the Legislative Assembly of each State, the division of each State and each Union Territory having a Legislative Assembly and the Union Territory of Delhi into territorial constituencies for elections to the House of the People and Legislative Assemblies of the states and Union Territories and Metropolitan Council of Delhi connected therewith. Section 3 of the said Act enjoins upon the central Government to constitute a commission to be called the delimitation Commission. Section 4 of the said Act provides that it is the Commission to readjust on the basis of the latest census figures the allocation of seats and the division of each State into territorial

constituencies. Under the proviso it is not necessary for the Commission to readjust the total number of seats in the Metropolitan Council of Delhi. The delimitation of the constituencies is provided for in S. 9 of the said Act. Under sub-section (2) of S. 9, the Delimitation Commission has to publish its proposals for the delimitation of the constituencies to consider all objections and suggestions and thereafter its duty is by one or more orders to determine the delimitation of constituencies. Publication is to be given to the orders of the Delimitation Commission under S. 10(1) of the said Act. The legal effect of the order is given in sub-section (2) of S. 10 of the Act. Under sub-section (2) "upon publication in the Gazette of India, every such order shall have the force of law and shall not be called in question in any Court." Section 11 of the said Act empowers the Election Commission, inter alia, to correct any error in any of the orders of Delimitation Commission under S. 9 arising therein from an inadvertent slip or omission. It further empowers the Election Commission where the boundaries or name of any district or any territorial division mentioned in any of the said orders are or is altered, to make such amendments as appear to it to be necessary or expedient for bringing the orders up-to-date. The notification dated Feb. 9, 1976 made corrections by virtue of powers conferred by Section 11 of the said Act when village Mandoli was inserted against Constituency No. 33 Rohtas Nagar. The notification dated 12th Aug. 1976, Ext. PW-8/3, made amendments in the description of the extent of constituency so as to bring the delimitation order: go 40 as correct and up to-date. The objections to the delimitation of constituencies are entertained when the proposals are published. After the consideration of all objections and suggestions, the Delimitation Commission determines by order the delimitation of the constituencies. Its orders are then published in the Gazette of India and in the official gazette of the States concerned. The law is well settled that the Delimitation Commission's orders upon publication are final and cannot be called in question in any court.

29. An argument was advanced by the counsel for the petitioner that the condition precedent for the exercise of jurisdiction under S. 11 of the said Act was lacking as there was no error arising in the Delimitation commission's Order No. 40 from any inadvertent slip omission. It was also urged that it was not expedient to bring out the description of the extent of the constituency up-to-date. Besides finality attached to the orders of the Delimitation Commission as brought up to date by the Election Commission, this argument is not open to be advanced in this Election Petition. The arguments for declaring election to be void are set out in S. 100 of the Act. Section 100(1)(d)(iv) empowers the High Court to set aside the election if it is of the opinion that the result of the election, in so far as it concerns the returned candidate has been materially affected by any noncompliance with the provisions of the Constitution or of the Act or of any rules or orders made under the Act. Even if there is any non-compliance of the provisions of S. 11 of the Delimitation Act, 1972, the High Court while trying an election petition has no jurisdiction to pronounce upon the non-compliance of S. 11. The election dispute is a statutory proceedings unknown to the common law. It is not an action at common law or in equity. The election can only be set aside and declared void on the grounds which have been mentioned in S. 100 of the Act and not on any ground outside it. Issue No. 3 is thus held in favor of the respondent.

30. The case on facts as set up in the election petition is that 22 polling stations of Nand Nagri and Mandoli having more than 19,000 votes have been illegally included in Constituency No. 33 after the delimitation of the constituencies was carried out and completed on 28th of April, 1975 as

contained in Delimitation Order No. 40. Oral evidence has been led by the petitioner in his own statement that he started his canvassing on the basis of the list of 71 polling stations of constituency No. 33 given to him by the Returning Officer and that list is Ext. PW-8/1; that he continued his canvassing on the basis of the list Ext. PW-8/1 during the elections; and that in this list of polling stations the locality of Nand Nagri and Mandoli are not included. In the examination in-chief itself the petitioner admits that the colony of Nand Nagri was established in the end of the year 1976; that Nand Nagri was established in the village Mandoli; that Nand Nagri colony is within boundaries of village Mandoli and that in the plan Ext. PW-1/8 the colony of Mandoli, is mentioned. Shri R. S. Gautam, General Assistant in the office of the Chief Electoral Officer, Delhi appeared as P.W. 1 and brought the plan of East Delhi Parliamentary Constituency. Constituency No. 33 was indicated and encircled red in the plan Ext. PW-1/8. He stated that Mandoli is shown in Constituency No. 33. The Metropolitan Constituency No. 33 was indicated in the plan Ext. PW-1/8 by the use of words A, B, C, D, E and F by P.W. 1. The plan clearly mentions that village Saboli and Mandoli are included in Metropolitan Council Constituency No. 33. If the description of the extent of the wards as mentioned in the notification dated Feb. 23, 1975, Ext. RW-5/1, is placed on the plan Ext. PW-1/8, then Saboli and Mandoli are included in ward No. 58. P.W. 2 Shri Akhey Singh, Patwari Babar Pur, Delhi also deposed in examination-in-chief that he had seen Nand Nagri and that is on the east of Shahdara Saharanpur. Railway Line in the revenue estate of Mandoli. On the basis of this material or the record, I have no hesitation in identifying Nand Nagri as having been established in village Mandoli may be sometime after the aforesaid four notifications. Both Nand Nagri and village Mandoli are, therefore, included in Ward No. 58 Usman Pur and are included in the Metropolitan Council Constituency No. 33, as notified in the notification dated 12th Aug., 1976, Ext. PW-8/3.

31. The ignorance of the petitioner is deposed as on the basis of list Ext. PW-8/1 which is stated to have been supplied by the Returning Officer. This statement of the petitioner cannot be accepted as correct. P.W. 1 brought the list of polling stations of constituency No. 33 and produced it as Ext. PW-1/9. List Ext. PW-8/1 was not put to this witness. P.W. 1 admits in the cross-examination that a list of polling stations is prepared, that the tentative list of polling stations was sent to all the candidates and after receiving objections certain corrections were made; that the list of polling stations of Metropolitan Constituency No. 33 is Ext. PW-1/9 (collectively); that certain corrigendum notifications were made making amendments in the polling stations and the notification is Ext. R-1. Ext. PW-1/9 includes in it polling stations 77 and 78 of village Mandoli and polling stations Nos. 79 to 98 of Nand Nagri. The petitioner deposes in the examination-in-chief itself that a final list of polling stations was supplied to him on June 3, 1977 along with a forwarding letter. The forwarding letter is Ext. PW-8/2 and the list of polling stations is Ext. PW-8/2-A. List Ext. PW-8/2-A is the same as Ext. PW-1/9 but does not carry the corrections in ink. Polling stations 77 and 78 of village Mandoli and polling stations Nos. 79 to 98 of Nand Nagri are contained in the list Ext. PW-9/2-A. The forwarding letter dated May 30, 1977, Ext. PW-8/2, gives the subject as "General Elections to Metropolitan Council of Delhi-1977 publication of list of polling stations in final", and in the body of the letter it is stated that this list is sent in pursuance of the Provisions of S. 25 of the Act by Shri Ashok Kumar, Returning Officer for constituency No. 33 providing for the said constituency with the Previous approval of Election Commission of India, the polling stations specified in the appended list in respect of the polling area of group of voters as noted against each. The handbook for the Returning Officers which was relied upon by the counsel for the petitioner for another

purpose in Chap. 1, Group B provide for the publication of the list of polling stations in draft, inviting objections and suggestions for consideration, finalising the list of polling stations for the constituency, forwarding it to the Election Commission and obtaining its approval. Under Section 25 of the Act, the District Election Officer is required with the previous approval of the Election Commission to provide a sufficient number of polling stations for every constituency and also a publication of the list of polling stations for that constituency. This is what is done by the Returning Officer in the notification dated May 30, 1977 Ext. PW-8/2, forwarding the final list of polling stations. This final, list contains polling stations Nos. 77 and 78 of village Mandoli and polling stations 79 and 98 of Nand Nagri Thus there is no illegal inclusion of the 22 polling stations of Nand Nagri and village Mandoli in Constituency No. 33. This relieves me of appreciating the directly opposite oral evidence of the parties whether in petitioner was canvassing or the area of Nand Nagri or whether the petitioner had knowledge of the fact or not that Nand Nagri and village Mandoli, eluded in constituency No. 33.

32. The second part of the issue is about the exclusion of polling station No. 15, jagiwan Nagar, Gali Nos. 1 to 9 containing 1287 votes and 292 votes belonging to Jyoti Nagar Colony an Loni Road (Jyoti Colony) in polling station No. 26. At the stage of arguments, however, the petitioner sought to enlarge the scope of the enquiry for exclusion, of polling station No. 14, voters Nos. 1605 to 2294 (690 votes); polling station No. 48, voters numbers 1234 to 1384-A (151 votes); polling station No. 71, voters Nos. 351/1055-1422 (368 votes) and polling station No. 72. voters Nos. 959-1066-A (108 votes). For this exclusion reliance is placed on. Ext. R-1, Est. R-1 was Produced Preliminary for exclusion of Polling Station No. 15, otherwise the evidence would have been confined within he scope of the pleadings. The Petitioner" cannot be allowed to go beyond his pleadings. Courts are to decide the case as set up in the election petition. No amount of evidence can be looked upon a plea which was never put forward.

33. The issue arising out of the pleadings of the parties is confined to Polling Stations Nos. 15 and 26 only. In pursuance of the provisions of S. 25 of the Act, Shri Ashok Kumar, Returning Officer for 33 Metropolitan Constituency provided for the said constituency with the previous approval of Election Commission of India the polling stations specified in the list appended to the Order dated May 30, 1977. The order dated May 30, 1977 is Ext. PW-8/2. The list of polling stations is Ext. PW-8/2-A. Para 14 of Chapter I of the Hand Book of Returning Officers provide that the District Election Officer/Returning Officer can correct printing and clerical mistakes, if any, after such publication. The Chief Election Officer by his letter dated June 5, 1977 issued a corrigendum to the list of polling stations for election to the Metropolitan Council of Delhi, inter alia, deleting from 33 Rohtas Nagar polling station No. 15. The corrigendum notification is Ext. R-1. According to Mr. Bansal by making amendments in the polling stations after the dead line of the date of inviting the nomination papers as provided in sub-section (3) of S. 23 of the Representation of the People Act, 1950 has the effect of deletion in the electoral roll of constituency No. 33. Reference was invited to Ss. 13-D or 23 of the Representation of the People Act, 1950. This argument is attractive but cannot stand scrutiny. A violation purely of the Representation of the People Act, 1950 is outside the purview of S. 100(1)(d)(iv) of the Act as such an Election Court which derives its jurisdiction from the Act is not entitled to look into the violation of 1950 Act. Section 23(3) of 1950 Act assumes importance in the Election Court because of the provisions of S. 62 of the Act where the electoral, roll has to be

understood as the electoral roll that was in force on the last day for making the nominations for elections.

34. Under S. 62 of the Act, no person who is not, and except as expressly provided by the Act, every person who is for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency. Thus, if a person is not entered in the electoral roll of any particular constituency, he is prohibited from voting in that constituency. Polling Station No. 15 as included in the list of polling stations notified on May 30, 1977 under S. 25 of the Act. Section 25 of the Act empowers the District Election Officer to provide for a sufficient number of polling stations for every constituency. The area of Jagjivan Nagar, Gali Nos. 1-9 containing a serial number of voters "347/485-970, 971-1604 (A), 347/2206-2471 (A)" was erroneously included in 33, Rohtas Nagar, Metropolitan Constituency. Jagjivan Nagar does not fall in constituency No. 33 in view of the material placed on the record. This was sought to be included in 55 Rohtas Nagar Municipal Corporation Ward. The Municipal Wards are given in notification Ext. RW-5/1. If we trace the line according to the extent of the ward as given in this notification on the plan Ext. PW-1/8, then Jagjivan Nagar falls outside that line. Statement of the petitioner himself is that the colonies of Jyoti Nagar, Jyoti Colony, Jagjivan Nagar and Durga Puri are side by side and they are located on the northern side of the Nala. The evidence of PW-2, Patwari Babar Pur is that the colonies known as Durgo Puri, Jyoti Nagar, Jyoti Colony and Jagjivan Nagar are situated in the revenue estates of Sikdar Pur, Gokal Pur and Babar Pur. The revenue estates of Gokal Pur, Sikdar Pur and Babar Pur are indicated in the plan Ext. PW-1/8 and they are on the northern side of the boundary line ABCD. Constituency No. 33 is on the eastern side of the boundary line Abcd and constituency No. 34 is on the northern line of ABCD. P.W. 2 says that the colonies known as Durga Puri, Jyoti Nagar, Jyoti Colony and Jagjivan Nagar are on the north of boundary of Metropolitan Constituency No. 33 near about Loni Road. P.W. 3 also states that Jyoti Nagar and Jagjivan Nagar are on the north of the Nala. P.W. 7 also states that the colonies known as Jagjivan Nagar, Nathu Colony, Durga Puri, Jyoti Nagar and Jyoti Colony are situated on the northern side of the Nala and this Nala is indicated at point A to B in the plan Ext. Pw 1/8. Thus I have no hesitation in holding that the area of Jagjivan Nagar, Gali Nos. 1 to 9 was not forming part of constituency No. 33. No person who is not for the time being entered in the electoral roll of any constituency, is entitled to vote in that constituency. The electoral rolls Exts. PW-1/1 to PW-1/3 of Constituency No. 33 produced by P.W. 1 do not include the voter's numbers mentioned above of Jagjivan Nagar, Gali Nos. 1 to 9. Voters of Jagjivan Nagar, Gali Nos. 1 to 9 were assigned to polling station No. 15 and were wrongly included in 33 Rohtas Nagar in the list of polling stations notified on May 30, 1977. By issue of the corrigendum notification dated 5th June 1977, that clerical mistake was rectified and polling station No. 15 was deleted from Rohtas Nagar-33 Constituency. Section 23(3) of the Representation of the People Act, 1950 contains a prohibition for amendment, transposition or deletion of any entry in the electoral roll of a constituency after the last date for making nomination for an election in the constituency. The petitioner has not led evidence that the said voters of Jagjivan Nagar, Gali Nos. 1 to 9 were included in the electoral roll of Constituency 33 and their names were existing in it as on 18th May 1977. On the other hand the voters list Exts. PW-1/1 to PW-1/3 filed at the instance of the petitioner by the Election Office does not contain the electoral roll numbers of Jagjivan Nagar. Section 25 of the Act which makes provision for providing the polling stations in the constituency, does not lay down any limitation of time for publishing a list showing the polling stations. It does not contain any

of making any amendments or corrigendums in the list of published or any restriction of time to make amendments. Power conferred on the District Election Officer was exercisable from time to time, unless a different intention appears, as and when an occasion arises. The amendment in the list of Polling Station became inevitable when it was brought to the notice of the District Election Officer that polling station No. 15, containing the votes of Jagjivan Nagar was erroneously included in constituency No. 33. In the absence of a prohibition of law, the power inheres in the District Election Officer to correct clerical mistakes or printing errors by issuing and publishing corrigendums to the list of polling stations of any constituency, as has been done by Ext. R-1. The Handbook also notices the power to correct printing and clerical mistakes, if any, after publication of the list of polling stations. The power is exercisable also by virtue of S. 14 of the General Clauses Act, 1897.

35. Another part of the issue is that 392 voters belonging to Jyoti Nagar Colony on Loni Road (Jyoti Colony) in polling station No. 26 were illegally excluded. While discussing the disputed votes of Jagjivan Nagar, I have also discussed the situation of Jyoti Nagar Colony which is outside constituency No. 33 and in fact falls in constituency No. 34. Factually the voters of Jyoti Nagar Colony are not electors of constituency No. 33 and by virtue of S. 62 of the Act have no right to vote in that constituency. In Ext. PW-1/2, serial Nos. 359 to 735 (total votes 377) are printed in the list of constituency No. 33, but they have been deleted in the list itself. It is clear that, there was error in printing the voters serial Nos. 359 to 735 of Jyoti Nagar Colony in the list of constituency No. 33 and deletion must have been made before the lists were supplied to the petitioner or issued. These serial numbers of voters have not been assigned to any of the polling stations of constituency No. 33. Polling Station No. 26 mentioned in Ext. PW-8/2-A (or Ex PW-1/9) does not include in it the serial numbers of voters from 359 to 735. They were, however, included in the tentative list Ext. PW-8/1 in polling station No. 24 but that tentative list is not final. The final list is Ext. PW-8/2-A. Thus I hold factually the voters of polling station No. 15, Jagjivan Nagar, Gali No. 1 to 9, voters Nos. 347/485-970, 971-1604 (A), 347/2306-2471-A as well as voters No. 359 to 735 of Jyoti Colony earlier included in polling station No. 24 (later on renumbered as 26) were not electors of constituency No. 33 and had no right to vote in constituency No. 33.

36. There has been thus no improper reception or refusal of any vote. Issue No. 2 is held against the petitioner. For the reasons already recorded, Issue No. 3 is held in favor of the respondent.

37. Issue No. 4: An election is not to be declared void under Section 100(1)(d) of the Act unless there is proof that the result of the election, so far as it concerns the respondent was materially affected. The correlation between the improper reception or refusal of the votes and securing by the returned candidate has to be established. In view of my findings on Issues Nos. 2 and 3, I do not intend to give a decision on hypothetical basis. The frame of the issue is also indicative in this direction. Issue No. 4, therefore, does not arise for determination.

38. Issue No. 5: In the result the Election Petition No. 1 of 1977 is dismissed with costs. Counsel fee Rupees 1,000/-

39. Petition dismissed.