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LAXMI KANT BAJPAI

v.

HAZI YAQOOB & ORS.

(Civil Appeal No. 4201 of 2008)

DECEMBER 15, 2009

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[D.K. JAIN AND H.L. DATTU, JJ.]

Election Laws – Election to State Assembly – Challenged on the ground that electoral roll containing names from 21 localities were in contravention of order of delimitation – Election petition dismissed by High Court – On appeal, held: Election not liable to be declared void – Electoral roll was prepared on the basis of delimitation order – Courts cannot decide any issue relating to issuance or revision of an electoral roll – The remedy lies in the procedure laid down in the prescribed rules – In absence of a fresh order of delimitation issued by delimitation Commission, Election Commission had no power to change the electoral roll for the constituency – Election petition also did not disclose any material facts – Representation of the People Act, 1951 – ss. 100 (10)(d) (iii) and (iv); 9(1)(b), 30 and 80 – Delimitation Act, 1972 – s. 11(1)(b) – Uttar Pradesh Municipalities Act, 1994 – ss. 11-B and 11-C – Registration of Electors Rules, 1960 – rr. 22 and 24 – Constitution of India, 1950 – Article 325.

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Respondent No. 1 was elected to U.P. Legislative Assembly, from Meerut Assembly Constituency. Appellant (the defeated candidate) challenging his election, filed election petition before High Court. The plea of the election petitioner was that the election should be declared void u/s. 100(1)(d) (iii) and (iv) of Representation of the People Act, 1951, as votes had been cast from 21 localities which were included in the constituency, in contravention of the published order of delimitation. High Court dismissed the petition holding that the petition did

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not disclose any cause of action. Hence the present appeal. A

Dismissing the appeal, the Court

HELD: 1.1. Once an electoral roll is published, it becomes the final electoral roll of the constituency. Therefore, the electoral roll containing the names of people residing in the 21 localities, is the final and valid electoral roll for the Meerut assembly constituency. The only alteration to the electoral roll can be brought about by following the procedure prescribed in the relevant rules. [Para 17] [541-A-B] B C

1.2. Comparing Section 11(1)(b) of the Delimitation Act and Section 9(1)(b) of the Representation of the People Act, 1950, makes it amply clear that Section 11 (1)(b) of the Delimitation Act further qualifies Section 9 (1)(b) of the Representation of the People Act, 1950 and provides for a clear restriction on the powers of the Election Commission in as much as the power of the Election Commission shall not extend to changing the boundaries or areas or extent of any constituency. The power of the Election Commission as envisaged in the above mentioned Sections, flows from the order published by the Delimitation Commission. Therefore, it is clear that the power of delimitation of constituencies vests in the Delimitation Commission and the preparation of electoral rolls vests in the Election Commission. The communication dated 24.3.2007 by the Under Secretary of the Election Commission of India to the Chief Electoral Officer, Uttar Pradesh, is merely a reiteration of the above provision. In the absence of a fresh order of delimitation issued by the Delimitation Commission, the Election Commission had no power to change the electoral roll for the constituency. [Paras 23 and 24] [544-F-H; 545-H; 546-A-B] D E F G

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A *Election Commission of India v. Mohd. Abdul Ghani* **1995) 6 SCC 721, relied on.**

1.3. Section 11-B of Uttar Pradesh Municipalties Act, 1994 reveals that the State Government has the power to break up every municipality into territorial constituencies B to be called 'wards'. Section 11-C of the Act clearly empowers the State Government to alter or amend the delimitation carried out earlier. There is no bar on the State Government to increase the area of a ward. Hence it cannot be said that delimitation is to be carried out only C by the Delimitation Commission as the notifications issued by the Delimitation Commission in 1973 and 1976 specify that the extent of 381 Meerut constituency shall be the same as the Meerut municipality. Had the intention of the Commission been to restrict the extent of the D constituency to as it existed on the date of publication of such notification, it should have been clearly specified. There has been no subsequent amendment to the notifications and there has been no fresh delimitation carried out. The notification is still in force in its original E form. Therefore the natural corollary to be derived is that the territory of 397 Meerut Assembly constituency (now 381 Meerut Assembly constituency) shall comprise all that area falling in the different wards mentioned in the Delimitation Order as it exists on the date of making of F the nomination for the election in question. Therefore contention of the appellant concerning Article 325 of the Constitution is nullified in the light of the power vested in the State Government under the U.P Municipalities Act. [Para 27] [547-H; 548-A-E]

G **2. The courts cannot decide any issue relating to issuance or revision of an electoral roll. The remedy lies in the procedure laid down in the prescribed rules. There is scope for challenging the contents of the electoral roll. However, once an electoral roll is finally published, it H becomes final and then no court can interfere with the**

said publication of the electoral roll and it shall be the electoral roll of the constituency. [Para 19] [541-A-B; 542-A] A

B.M Ramaswamy v. B.M Krishnamurthy and Ors. **AIR 1963 SCR479;** *Shyamdeo Pd. Singh v. Nawal Kishore Yadav* **(2000) 8 SCC 46, relied on.** B

Nripendra Bahadur Singh v. Jai Ram Verma and Ors. **(1978) 1 SCC 208, followed.**

3.1. An election petition must clearly and unambiguously set out all the material facts which the appellant is to rely upon during the trial, and it must reveal a clear and complete picture of the circumstances and should disclose a definite cause of action. In the absence of the above, an election petition can be summarily dismissed. In the present case, the averments of the appellants in the election petition do not disclose any definite cause of action. [Paras 35 and 38] [553-C-D; 554-C] C D

Samant v. George Fernandez **AIR 1969 SC 1201;** *Virender Nath Goutam v. Satpal Singh and Ors.* **(2007) SCC 617;** *Hari ShankarJain v. Sonia Gandhi* **AIR 2001 SC 3689;** *Mahadeorao Slukaji Shivankar v. Ramaratan Bapu and Ors.* **2004 (7) SCC 181;** *V.S. Achutanandan v. P.J Francis* **(1999) 2 SCR 99;** *Azhar Hussain v. Rajiv Gandhi* **AIR 1986 SC 1253, relied on.** E F

3.2. There has been no default on the part of any of the authorities, so as to render any votes void. There has been no violation of any of the provisions of the Act or the rules framed thereunder. The communication issued by the Election Commission of India dated 24.3.2007 cannot be construed as any direction on the part of the Commission. The averments also do not disclose any material facts. The main concern of the appellant in effect G H

A **is the addition of the 21 colonies into the Meerut constituency and not in relation to addition or deletion of names in the electoral roll. But yet there has been no specific pleading in this regard in the election petition. The pleading should have been with respect to the said** B **inclusion of the 21 colonies into the Meerut municipality constituency which was later incorporated into the 381 Meerut Municipality constituency. In the absence of such pleadings, it can safely be said that the election petition does not disclose any material facts and, therefore, High** C **Court was right in summarily dismissing the election petition. [Para 38] [554-F-H; 555-A-C]**

Shyamadeo Parsad Singh **vs**. *Nawal Kishore Yadav* **(2000) 8 SCC 46, relied on.**

D *Shankar Babaji Sawant v. Sakharam Vithoba Salunkhe* **1965 (2) SCR 403;** *Baidyanath Panjiar v. Sitanath Mahato* **(1969) 2 SCC 447;** *KabulSingh v. Kundan Singh and Ors.* **(1969) 2 SCC 452;** *Rampakavi Rayappa Belagali v. B.D Jatti and Ors.* **(1970) 3 SCC 147;** *Hari Prasad Mulshanker* E *Trivedi v. V.B Raju and Ors.* **(1974) 3 SCC 415;** *Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors.* **(1978) 1 SCC 405;** *Lakshmi Chandra Sen and Ors. v. A.K.M. Hassan Uzzaman and Ors.* **(1985) 4 SCC 689;** *Indrajit Baruah and Ors. v. Election Commissioner of* F *India and Ors.* **AIR 1986 SC 103, distinguished.**

Case Law Reference:

AIR 1963 SCR 479	**Relied on.**	**Para 18**
(2000) 8 SCC 46	**Relied on.**	**Para 20**
(1978) 1 SCC 208	**Followed**	**Para 21**
1995) 6 SCC 721	**Relied on.**	**Para 23**
AIR 1969 SC 1201	**Relied on.**	**Para 28**
(2007) SCC 617	**Relied on.**	**Para 29**

2004 (7) SCC 181	**Relied on.**	**Para 31**	A
AIR 2001 SC 3689	**Relied on.**	**Para 32**	
(1999) 2 SCR 99	**Relied on.**	**Para 33**	
AIR 1986 SC 1253	**Relied on.**	**Para 34**	B
1965 (2) SCR 403	**Distinguished.**	**Para 40**	
(1969) 2 SCC 447	**Distinguished.**	**Para 41**	
(1969) 2 SCC 452	**Distinguished.**	**Para 41**	C
(1970) 3 SCC 147	**Distinguished.**	**Para 42**	
(1974) 3 SCC 415	**Distinguished.**	**Para 43**	
(1978) 1 SCC 405	**Distinguished.**	**Para 44**	
(1985) 4 SCC 689	**Distinguished.**	**Para 45**	D
AIR 1986 SC 103	**Distinguished.**	**Para 46**	
(2000) 8 SCC 46	**Distinguished.**	**Para 47**	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4201 of 2008. E

From the Judgment & Order dated 12.5.2008 of the High Court of Judicature at Allahabad in Civil Misc. Application No. 283769 of 2007 in Election Petition No. 8 of 2007. F

Ravi Shanker Prasad, Abhay Prakash Sahay, Puja Priyadarshani, Chander Shekhar Ashri for the Appellant.

The Judgment of the Court was delivered by

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H.L. DATTU, J. 1. Mr. Hazi Yaqoob-respondent is the elected candidate in the elections held from 381 Meerut Assembly Constituency to the U.P. Legislative Assembly. His elections had been called in question before the Allahabad High Court by the defeated candidate by filing Election Petition under

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A the provisions of Representation of People Act, 1951. Petition is rejected by the Allahabad High Court by its order dated 12.5.2008.

2. We may now briefly state the material facts : The Delimitation Commission of India under Section 10(1) of the B Delimitation Act, 1972, had issued an order in respect of the delimitation of Parliamentary and Assembly constituencies of the State of Uttar Pradesh and published the same by issuing a notification dated 8th December, 1973. Table B in the notification provides the territorial constituencies into which the C State of Uttar Pradesh was divided for the purpose of election to the Legislative Assembly and the extent of each such constituency. Table B also shows the extent of 397 Meerut assembly constituency (now 381 Meerut constituency) to be the same as Meerut Municipality (excluding wards 1 to 3, 14 and D 15). This order was also a part of the Delimitation of Parliamentary and Assembly Constituencies Order, 1976, issued by the Election Commission of India.

3. On 17.3.2007, notification for electing a member to the E U.P Legislative Assembly from 381 Meerut Assembly constituency was issued. The polling for the constituency was held on 13.4.2007 and the results were declared on 11.5.2007. Respondent no.1 , Hazi Yakoob was declared elected by a margin of 1089 votes.

F 4. *Election Petition before the High Court.*

The appellant had challenged the election of respondent no.1 by filing an election petition before the Allahabad High Court. The appellant mainly relied on the following grounds in G support of the prayer in the election petition. They are :

(i) The result of the election in favour of the elected candidate was materially affected by the improper reception of 23,431 void votes as they were from 21 localities/colonies/mohallas outside the territorial

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boundaries of the constituency. A

(ii) The aforesaid 21 localities, did not form part of 381 Meerut constituency as delimited by the 1973 Delimitation Order and yet were included within the constituency and the voters from these colonies were included in the electoral roll of the constituency. B

(iii) The delimitation can be carried out only by the Delimitation Commission and yet in contravention of the published order of delimitation, the 21 colonies have been included in the constituency. Therefore the elections is liable to be declared void on the grounds of Section 100 (1)(d) (iii) and (iv) of the Representation of Peoples Act, 1951. C D

(iv) The communication dated 24.3.2007 by the Under Secretary of the Election Commission of India to the Chief Electoral Officer, Uttar Pradesh, was that the geographical boundaries delimited during the previous delimitation cannot undergo any change, unless the new delimitation order is implemented. It is further stated that, on 26.3.2007 the Officer on Special Duty, Chief Electoral Officer, U.P forwarded the aforesaid letter to the District Election Officer, Meerut, informing him that there cannot be any change in the territorial boundaries of the Legislative Assembly constituency until the implementation of the new delimitation order and this amounts to a direction on the part of the Election Commission of India, and despite such direction the names of the voters from the 21 localities continued to be included in the electoral roll of 381 Meerut Assembly constituency and were permitted to vote in the elections. Therefore, the election of returned candidate should be declared as void on the ground that the result of the election E F G H

A insofar as it concerns the returned candidate has been materially affected by improper reception of votes and by non-compliance of the provisions of the Constitution and the Rules made under the 1951 Act.

B 5. After service of notice of election petition, the respondent no.1 did not choose to file written statement, but filed an application under Order VII Rule 11 of the Code of Civil Procedure to reject the election petition, primarily on the ground, that no cause of action has been made out on the C basis of the averments made in the election petition and therefore the election petition is liable to be dismissed. Further, according to respondent No.1, the averments made by the appellant cannot be ground for declaring an election to be void under Section 100 (1) (d) (iii) and (iv) of the Representation of D Peoples Act, 1951.

6. *Order passed by the High Court :*

The High Court after a detailed discussion of the E pleadings of the parties has come to the conclusion that election petition does not disclose any cause of action. The material fact to be included in the election petition should have been in relation to the non-inclusion of the 21 localities in the Meerut municipality constituency. Accordingly, the High Court has dismissed the election petition for non-disclosure of cause of F action. Hence, the appeal. It may be mentioned that there was no appearance on the side of the respondents. However, after the matter was heard and reserved for judgment, the learned counsel Sri Praveen Jain has entered appearance and with the permission of the court, has filed his written submissions. The G same are taken on record.

7. *Contentions on behalf of the appellant :*

Mr. Ravi Shankar Prasad, the learned senior counsel for H the appellant submitted that in the election petition filed, the

appellant has sufficiently indicated the cause of action and the material facts, though the provision of the Act is not mentioned and therefore, it is futile to contend that the appellant has not spelt out the cause of action in the pleadings. In aid of his submission the learned senior counsel has placed reliance on the observations made by this Court in the case of *Shri Shankar Babaji Savant v. Shri Sakharam Vithoba Salunkhe and Ors.*, 1965 (2) SCR 403. It is further submitted that if the electoral roll was prepared in violation of Article 173 of the Constitution of India, the same is a nullity and, therefore, the result of the election in so far as it concerns the elected candidate has been materially affected. It is further contended that Section 2(b) of the Representation of People Act, 1950 provides that "Assembly Constituency" means a Constituency provided by law for the purpose of election to the legislative Assembly of a State. It shall be filled by persons chosen by direct election from Assembly Constituencies and Section 7(3) of the Act provides that the extent of each Assembly Constituency shall be as determined by the orders of the Delimitation Commission made under the provisions of Delimitation Act, 1972 and therefore, the electoral roll for elections to the State Legislative Assembly must relate only to the extent of the territorial division as determined by the Delimitation Commission. The geographical extent of the Assembly Constituency cannot be changed nor can any area be added therein or excluded therefrom by any authority except the Delimitation Commission. The learned senior counsel would submit, that, the electoral roll of an Assembly Constituency must be confined to the area or extent of the concerned Assembly Constituency and cannot include any area outside the territorial limits of that Assembly Constituency nor can voters of any such other area vote in that Assembly Constituency and in the instant case, voters from outside the territorial boundaries of 381 Meerut Assembly Constituency were permitted to vote in the elections held and though their votes were void, they were improperly and illegally received as valid votes and the same

A has materially affected the result of the election in so far as it concerns the returned candidate, and therefore, his election is liable to be declared void under Section 100(1)(d)(iii) and (iv) of Representation of the People Act, 1951.

B 8. *Contentions on behalf of respondent:*

The learned counsel Shri Praveen Jain for the respondent submitted that the Election Petition is liable to be dismissed as it does not disclose any cause of action. It is further submitted, that, the election petition is based on the ground that C certain areas outside the territory of 381 Meerut Assembly Constituency were not only included in this constituency but the voters of these areas were also allowed to vote in the elections and this has materially affected the result of the election insofar as it concerns the returned candidate and thus the dispute in D the present election petition is about the addition of some area in the territorial constituency and not about any addition or deletion of names in the electoral roll and this cannot be a ground for declaring the election of the returned candidate to be void under Section 100(i)(d)(iii) and (iv) of the E Representation of Peoples Act, 1951. It is further contended that the election petition can be filed only if some illegality contemplated under Section 100 of the Act is found to have been committed during the process of the election but in the present case, the alleged illegality that has been pointed out F relates to a stage prior to the commencement of the process of election. It is submitted that the court trying an election petition has no jurisdiction to go behind the electoral roll and find out whether the name of any person was illegally entered and any entry in the electoral roll of a constituency cannot be amended G or deleted after the last date of making nomination for the election in that constituency. In aid of his submission, reliance is placed on several decisions of this Court. The reference will be made to those decisions while considering the contentions canvassed by the learned counsel for the parties.

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9. *Discussion:* A

Section 83 of the Representation of Peoples Act, 1951 deals with the contents of an election petition. Section 83 (1) of the Act reads:-

"An election petition:- B

(a) shall contain a concise statement of the material facts on which the appellant relies;

(b) shall set forth full particulars of any corrupt practice that the appellant alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and C D

(c) shall be signed by the appellant and verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings."

10. Sub-section (d) of Section 100 of the Representation of Peoples Act, 1951 which deals with grounds for declaring election to be void reads:- E

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

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

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

(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 H

A Constitution or of this Act or of any rules or orders made under this Act."

11. The power to carry out delimitation of the constituencies has been vested with the Delimitation Commission constituted under the Delimitation Act, 2002. The B object of the Act is to provide for the re-adjustment of the allocation of seats in the House of 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 in to territorial constituencies for elections C to the House of People and legislative assemblies of the States and Union Territories and for matters connected therewith. Section 8 of the Act provides for re-adjustment of number of seats, Section 9 of the Act provides for Delimitation of constituencies, Section 10 of the Act provides for publication D of orders and their date of operation by Commission in the Gazette of India and in the official Gazettes of the State concerned and on such publication, every such order shall have the force of law and shall not be called in question in any court. Section 11 of the Act mandates that the Election Commission E shall maintain delimitation orders up-to-date.

12. The appellant relies on the purported communication dated 24.3.2007 by the Under Secretary of the Election Commission of India to the Chief Electoral Officer, Uttar F Pradesh. The effect of the communication was that the geographical boundaries delimited during the previous delimitation cannot undergo any change, unless the new delimitation order is implemented. On 26.3.2007 the Officer on Special Duty, Chief Electoral Officer, U.P forwarded the G aforesaid letter to the District Election Officer, Meerut informing him that there cannot be any change in the territorial boundaries of the Legislative Assembly constituency until the implementation of the new delimitation order. The contention of the appellant is that this amounts to a direction on the part of the Election Commission of India, and despite such direction H

the names of the voters from the 21 localities continued to be included in the electoral roll of 381 Meerut Assembly constituency. The appellant further contends that if the total number of votes received by respondent no.1 from these localities were to be excluded, the results of the election would have been different, and hence the results of the election have been materially affected.

13. The process and procedure of preparing electoral rolls is governed by the Registration of Electors Rules, 1960. Rule 24 of the said rules reads:-

> "24. Special provision for preparation of rolls on re-delimitation of constituencies.--
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> (1) If any constituency is delimited a new in accordance with law and it is necessary urgently to prepare the roll for such constituency, the Election Commission may direct that it shall be prepared--
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> (a) by putting together the rolls of such of the existing constituencies or parts thereof as are comprised within the new constituency; and
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> (b) by making appropriate alterations in the arrangement, serial numbering and headings of the rolls so compiled.
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> (2) The roll so prepared shall be published in the manner specified in rule 22 and shall, on such publication, be the electoral roll for the new constituency."

14. The Rule provides that if any constituency is delimited a new in accordance with law and if it is necessary to prepone the roll for such constituency, the election commission may direct that it shall be prepared by putting together the rolls of such of the existing constituencies or parts thereof as are comprised within the new constituency. The rolls so prepared requires to be published in the manner provided in Rule 22 of the Rules. On such publication of the rolls, the same shall be

A the electoral roll for the new constituency.

15. In the present case, there has been no re-delimitation of the Meerut constituency carried out by the Delimitation Commission under the auspices of the Delimitation Act. The earlier order published by the Commission is still in force. As B stated above, delimitation of parliamentary and assembly constituencies is the exclusive domain of the Delimitation Commission. The Election Commission's power with respect to delimitation of constituencies extends to correcting any mistakes which might have crept in the delimitation order.

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16. In other circumstances, however, once an electoral roll is published, it becomes the final electoral roll of the constituency. This is also specified in Rule 22 of the specified rules which reads:-

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"22. Final publication of roll.–

(1) The registration officer shall thereafter--

(a) prepare a list of amendments to carry out his decisions E under rules 18, 20, 321 and 21A and to correct any clerical or printing errors or other inaccuracies subsequently discovered in the roll;

(b) publish the roll, together with the list of amendments, F by making a complete copy thereof available for inspection and displaying a notice in Form 16 at his office; and

(c) subject to such general or special directions as may be given by the Election Commission supply, free of cost, two copies of the roll, as finally published, with the list of G amendments, if any, to every political party for which a symbol has been exclusively reserved by the Election Commission.

(2) On such publication, the roll together with the list of H amendments shall be the electoral roll of the constituency."

17. Hence, the electoral roll published becomes the electoral roll of the constituency, and therefore the electoral roll containing the names of people residing in the 21 localities, is the final and valid electoral roll for the Meerut assembly constituency. The only alteration to the electoral roll can only be brought about by following the procedure prescribed in the relevant rules. In this context it is also pertinent to mention Section 30 of the Representation of Peoples Act, 1950. The section reads:-

> "No civil court shall have jurisdiction--
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> (a) to entertain or adjudicate upon any question whether any person is or is not entitled to be registered in an electoral roll for a constituency; or
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> (b) to question the legality of any action taken by or under the authority of an electoral registration officer, or of any decision given by any authority appointed under this Act for the revision of any such roll."

18. The wordings of the section are very clear and it conveys the meaning that a High Court cannot set aside an election on the ground that though the name of a candidate is in the list, it had been included therein illegally. This court in the case of *B.M Ramaswamy v. B.M Krishnamurthy and others* (AIR 1963 SCR 479), has stated that "the terms of the section are clear and the action of the electoral registration officer in including the name of the appellant in the electoral roll, though illegal, cannot be questioned in a civil court : but it could be rectified only in the manner prescribed by law, i.e., by preferring an appeal under rule 24 of the Rules, or by resorting to any other appropriate remedy."

19. It is clear from the above discussion that the Courts cannot decide any issue relating to issuance or revision of an electoral roll. The remedy lies in the procedure laid down in the prescribed rules. There is scope for challenging the contents

A of the electoral roll. However, once an electoral roll is finally published, it becomes final and then no court can interfere with the said publication of the electoral roll and it shall be the electoral roll of the constituency.

B 20. In this regard, reference can be made to the observations made by this Court in the case of *Shyamdeo Pd. Singh v. Nawal Kishore Yadav*, [(2000) 8 SCC 46]. The Court has observed that inclusion of person or persons in the electoral roll by an authority empowered in law to prepare the electoral rolls though they were not qualified to be so enrolled C cannot be a ground for setting aside an election of a returned candidate under Sub-clause (iii) or (iv) of Clause (d) of Sub-section (1) of Section 100 of the Representation of Peoples Act, 1951. The court has observed:-

D "The electoral rolls may contain error and they may remain to be corrected or the appeals in respect thereof may be pending, the electoral roll effective for the ensuing election must achieve a finality at a given point of time (such as the last date prescribed for filing the nominations). It has E to be remembered that right to contest an election, a right to vote and a right to object to an ineligible person exercising right to vote are all rights and obligations created by Statute. They are not the rights in common law. Bringing into existence Houses or Institutions responsible F for functioning of a democracy have a vital constitutional objective to achieve as they are so essential for the functioning of a democracy. A breach of any statutory right or obligation should not come in the way of the process directed towards fulfilling the high objective of bringing into G existence of a House or Institution contemplated by Constitution as enabling democratic functioning of the country."

The Court has further observed:

H "To sum up we are of the opinion that inclusion of person

or persons in the electoral roll by an authority empowered in law to prepare the electoral rolls, though they were not qualified to be so enrolled, cannot be a ground for setting aside an election of a returned candidate under sub-clause (iii) or (iv) of clause (d) of sub-section (1) of Section 100 of the Representation of the People Act, 1951. A person enrolled in the electoral list by an authority empowered by law to prepare an electoral roll or to include a name therein is entitled to cast a vote unless disqualified under sub-sections (2) to (5) of Section 62 of the Representation of the People Act, 1951. A person enrolled in the electoral roll cannot be excluded from exercising his right to cast vote on the ground that he did not satisfy the eligibility requirement as laid down in Section 19 or 27(5) of the Representation of the People Act, 1950."

21. The Constitution Bench of this court in the case of *Nripendra Bahadur Singh v. Jai Ram Verma and ors.*, [1978] 1 SCC 208, wherein it was held that the finality of the electoral roll cannot be challenged in an election petition even if certain irregularities had taken place in the preparation of the electoral roll or if subsequent disqualification had taken place and the electoral roll had on that score cannot be corrected before the last hour of making nominations. The court further stated that after that dead line the electoral roll of a constituency cannot be interfered with and no one can go behind the entries except for the purpose of considering disqualification under Section 16 of the 1950 Act.

22. Section 11 of the Delimitation Act, 2002 reads:-

"11. Power to maintain delimitation orders up-to-date.– (1) The Election Commission may, from time to time, by notification in the Gazette of India and in the Official Gazette of the State concerned,--

(a) correct any printing mistake in any of the orders made by the Commission under section 9 or any error arising

A therein from an inadvertent slip or omission; and

(b) where the boundaries or name of any district or any territorial division mentioned in any of the said orders are or is altered, make such amendments as appear to it to be necessary or expedient for bringing the orders up-to-date, so, however, that the boundaries or areas or extent of any constituency shall not be changed by any such notification.

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(2) Every notification under this section shall be laid, as soon as may be after it is issued, before the House of the People and the Legislative Assembly of the State concerned."

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It is pertinent to consider Section 9 (1) (b) of the Representation of People Act, 1950. It reads:-

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"(1) The Election Commission may, from time to time, by notification published in the Gazette of India and in the Official Gazette of the State concerned,-

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.....

(b) where the boundaries or name of any district or any territorial division mentioned in the Order are or is altered, make such amendments as appear to it to be necessary or expedient for bringing the Order up-to- date."

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23. Comparing Section 11(1)(b) of the Delimitation Act and Section 9 (1)(b) of the Representation of People Act, 1950, makes it amply clear that Section 11 (1)(b) of the Delimitation Act further qualifies Section 9 (1)(b) of the Representation of People Act, 1950 and provides for a clear restriction on the powers of the Election Commission in as much as the power of the Election Commission shall not extend to changing the boundaries or areas or extent of any constituency. The power of the Election Commission as envisaged in the above mentioned sections, flows from the order published by the

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Delimitation Commission. A three Judge Bench of this court in the case of *Election Commission of India v. Mohd. Abdul Ghani* [(1995) 6 SCC 721] has explained the aforesaid principle. In this case the issue was that the river Ganges had started changing its course in 1957, that ultimately resulted in causing 16 villages to be located towards the east bank of the river. After this change these villages came to form part of the territorial division named as District Malda. The State Government made the consequential changes in the description of these villages when they became part of District Malda for all administrative purposes. In spite of this geographical change resulting in inclusion of these 16 villages in the territorial division of District Malda for administrative purposes, the position of these villages remained unaltered for election purposes and they continued to form part of 8-Jangipur Parliamentary Constituency in accordance with the Delimitation Order of 1976 made on the basis of the previous census held in 1971. The residents of these villages filed a writ petition claiming that as a result of the above geographical change, these 16 villages should now form part of the Malda Parliamentary Constituency since they have become a part of District Malda instead of the earlier District Murshidabad. It was claimed that this is the duty cast on the Election Commission to make such a change by virtue of Section 9(1) (b) of the Representation of the People Act, 1950. However this court placing reliance of the import of the wordings of Section 9 (1)(b) of the Representation of Peoples Act, 1950 and Section 11 (1)(b) of the Delimitation Act, observed that the power of the Election Commission as envisaged by the sections extended to merely update the Delimitation Order by making the necessary changes on account of subsequent events to correct the description in the Delimitation Order which has become inappropriate and therefore this power cannot extend to alteration of the boundaries or area or extent of any constituency as shown in the Delimitation Order.

24. Therefore, it is clear that the power of delimitation of

A constituencies vests in the Delimitation Commission and the preparation of electoral rolls vests in the Election Commission. The communication dated 24.3.2007 by the Under Secretary of the Election Commission of India to the Chief Electoral Officer, Uttar Pradesh, is merely a reiteration of the above B provision as rightly observed by the High Court. In the absence of a fresh order of delimitation issued by the Delimitation Commission, the Election Commission had no power to change the electoral roll for the constituency.

C 24. The notification dated 8th December, 1973 published by the Delimitation Commission mentions that the extent of 397 Meerut Assembly constituency shall be Meerut Municipality excluding Ward Nos. 1, 2, 3, 14 and 15 :

"MEERUT DISTRICT

D

.....

396. Meerut

Cantonment : Wards 1 to 3, 14 and 15 in Meerut E Municipality, Meerut Cantonment, Kanker Khera T.A., Abdullapur T.A., Buxer Khera T.A., and L.Cs., 36- Nagla Tashi Kasampur, 37-Sikhera, 38- Behchola, 43- Aurangshahpur Diggi, and 44- Abdullapur in Meerut pargana in Meerut tahsil. 397. Meerut : Meerut F Municipality, (excluding wards 1 to 3, 14 and 15)"

26. The notification published on 16th January 1976 also stated the same for 397 Meerut constituency (now 381 constituency). It is the appellant's contention that localities which were outside the territorial boundaries of the Meerut G constituency at the time of publication of these notifications, were subsequently included. In light of this contention it is pertinent to look at the relevant provisions of the U.P Municipalities Act, 1994 :

H Section 11-B of the Act reads:-

"11-B. Delimitation Order.-- A

(1) The State Government shall, by order, determine--

(a) the number of wards in to which each municipal area shall be divided for purposes of elections to the municipality; B

(b) the extent of each ward;

(c) [omitted]

(d) the number of seats to be reserved for the Scheduled Castes, the Scheduled Tribes, the backward classes and the women. C

(2) The draft of the Order under Sub-section (1) shall be published in the manner prescribed for a period of not less than seven days. D

(3) The State Government shall consider any objections filed under Sub-section (2) and the draft Order shall, if necessary, be amended, altered or modified accordingly and thereupon it shall become final." E

Section 11-C of the Act reads:-

"11-C. Amendment of Delimitation Order.--

(1) The State Government may, after consulting the Board concerned, by a subsequent Order, alter or amend the final order under Sub-section (3) of Section 11-B. F

(2) For the alteration or amendment of any order Sub-section (1), the provisions of Sub-sections (2) and (3) of Section 11-B shall mutatis mutandis apply." G

27. The sections clearly reveal that the State Government has the power to break up every municipality into territorial constituencies to be called 'wards'. Section 11-C clearly H

A empowers the State Government to alter or amend the delimitation carried out earlier. There is no bar on the State Government to increase the area of a ward. Hence the contention of the appellant that delimitation is to be carried out only by the Delimitation Commission fails as the notifications B issued by the Delimitation Commission in 1973 and 1976 specify that the extent of 381 Meerut constituency shall be the same as the Meerut municipality. Had the intention of the Commission been to restrict the extent of the constituency to as it existed on the date of publication of such notification, it C should have been clearly specified. There has been no subsequent amendment to the notifications and there has been no fresh delimitation carried out. The notification is still in force in its original form. Therefore the natural corollary to be derived is that the territory of 397 Meerut Assembly constituency (now D 381 Meerut Assembly constituency) shall comprise all that area falling in the different wards mentioned in the Delimitation Order as it exists on the date of making of the nomination for the election in question. In this regard we agree with the finding of the High Court. Therefore the contention of the appellant concerning Article 325 of the Constitution is nullified in light of E the power vested in the State Government under the U.P Municipalities Act.

28. *Material facts and cause of action:*

F An election petition has to disclose all the material facts on which the election petitioner relies to establish the existence of a cause of action. Material facts essentially refer to all the relevant facts which a appellant relies upon during the course of the trial. In the absence of material facts and insufficient cause G of action, the election petition is liable to be dismissed. There is a catena of cases decided by this court which have discussed as to what constitutes material facts for the purpose of Section 100 of Representation of Peoples Act, 1951. In the case of *Samant v. George Fernandez* (AIR 1969 SC 1201), it was stated:-

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"The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. Thus the material facts will mention that a statement of fact (which must be set out) was made and it must be alleged that it refers to the character and conduct of the candidate that it is false or which the returned candidate believes to be false or does not believe to be true and that it is calculated to prejudice the chances of the appellant. In the particulars the name of the person making the statement, with the date, time and place will be mentioned. The material facts thus will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. In stating the material facts it will not do merely to quote the words of the section because then the efficacy of the words 'material facts' will be lost. The fact which constitutes the corrupt practice must be stated and the fact must be correlated to one of the heads of corrupt practice. Just as a plaint without disclosing a proper cause of action cannot be said to be a good plaint, so also an election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to disclose a cause of action where the allegation is the making of a false statement."

29. In the case of *Virender Nath Goutam v. Satpal Singh and ors.* [(2007) SCC 617], this court explained:-

"18. All material facts, therefore, in accordance with the

A provisions of the Act, have to be set out in the election petition. If the material facts are not stated in a petition, it is liable to be dismissed on that ground as the case would be covered by Clause (a) of Sub-section (1) of Section 83 of the Act read with Clause (a) of Rule 11 of Order VII of B the Code. The expression 'material facts' has neither been defined in the Act nor in the Code. According to the dictionary meaning, 'material' means 'fundamental', 'vital', 'basic', 'cardinal', 'central', 'crucial', 'decisive', 'essential', 'pivotal', indispensable', 'elementary' or 'primary'. [Burton's C Legal Thesaurus, (Third edn.); p.349]. The phrase 'material facts', therefore, may be said to be those facts upon which a party relies for his claim or defence. In other words, 'material facts' are facts upon which the plaintiff's cause of action or the defendant's defence depends. What D particulars could be said to be 'material facts' would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts E and must be stated in the pleading by the party."

30. The court further went on to explain the difference between `material facts' as envisaged in Section 83 (1) (a) of the Representation of Peoples Act, 1951 and `full particulars' F as envisaged in Section 83 (1) (b) of the Act dealing with allegations of corrupt practices employed during an election.

"21..A distinction between 'material facts' and 'particulars', however, must not be overlooked. 'Material facts' are G primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. 'Particulars', on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to H

the basic contours of a picture already drawn so as to make it full, more clear and more informative. 'Particulars' thus ensure conduct of fair trial and would not take the opposite party by surprise." A

31. In the case of *Mahadeorao Sukaji Shivankar v. Ramaratan Bapu and Ors.* [(2004) 7 SCC 181], it was held : B

"(6) Now, it is no doubt true that all material facts have to be set out in an election petition. If material facts are not stated in a plaint or a petition, the same is liable to be dismissed on that ground alone as the case would be covered by Clause (a) of Rule 11 of Order VII of the Code. The question, however, is as to whether the appellant had set out material facts in the election petition. The expression "material facts" has neither been defined in the Act nor in the Code. It may be stated that the material facts are those facts upon which a party relies for his claim or defence. In other words, material facts are facts upon which the plaintiff's cause of action or defendant's defence depends. What particulars could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish existence of cause of action or defence are material facts and must be stated in the pleading of the party. C D E F

(7) But, it is equally well settled that there is distinction between "material facts" and "particulars". Material facts are primary or basic facts which must be pleaded by the petitioner in support of the case set up by him either to prove his cause of action or defence. Particulars, on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving finishing touch to the basic contours of a picture already drawn so as to make it full, more clear and G H

A more informative. Particulars ensure conduct of fair trial and would not take the opposite party by surprise."

32. In the case of *Hari Shankar Jain v. Sonia Gandhi* (AIR 2001 SC 3689) it was held:-

B "Material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the C Code of Civil Procedure, 1908. The expression 'cause of action' has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Omission of a single material fact leads to D an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet."

E 33. In the case of *V.S Achutanandan v. P.J Francis* [(1999) 2 SCR 99], it was held that failure to plead material facts is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time limit prescribed for filing the election petition.

F 34. In the case of *Azhar Hussain v. Rajiv Gandhi* (AIR 1986 SC 1253), it was stated:-

"In substance the argument is that the Court must proceed G with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned H Counsel, it is an argument which it is difficult to

comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose.... The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence is a thoroughly misconceived and untenable argument."

35. Therefore, it is a settled legal position that an election petition must clearly and unambiguously set out all the material facts which the appellant is to rely upon during the trial, and it must reveal a clear and complete picture of the circumstances and should disclose a definite cause of action. In the absence of the above, an election petition can be summarily dismissed. To see whether material facts have been duly disclosed or whether a cause of action arises, we need to look at the averment and pleadings taken up by the party.

36. Coming to the present case, the relevant portion of the specific averment made by the appellant in Para 27 of the Election Petition reads as follows:-

"That the appellant thereupon made a representation to the Chief Election Officer, Election Commission of India, New Delhi, on 05.05.2007 wherein he prayed that the name of voters included in the electoral rolls of the aforesaid 21 localities/colonies/mohallas be excluded from 381 Meerut Assembly constituency."

37. The essential averment of the appellant is with respect to inclusion of the voters from the above mentioned colonies in the electoral roll of 381 Meerut constituency and the acceptance of their votes, which materially affected the results of the elections. The appellant places reliance upon Section 100 (1) (d) (iii) and (iv) of the Representation of Peoples Act,

A 1951 to plead for the declaration of the election to be void. The relevant provisions state:-

> "(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected ....
>
> B (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 any rules or orders made
> C under this Act."

38. The averments of the appellants in the election petition do not disclose any definite cause of action. The appellant pleads that the names of the 21 localities have been wrongfully included in the electoral roll of the relevant constituency. But
D there has been no order by the Election Commission for the alteration of the electoral rolls of the constituency. Furthermore the Election Commission does not have the power to amend the electoral roll as there has been no fresh delimitation carried out by the Delimitation Act. The electoral rolls have been
E prepared keeping in view the 381 Meerut constituency, which consists of the Meerut municipality ward. This is as per the notification of the Delimitation Commission. As stated above, delimitation is to be carried out by the Delimitation Commission and in furtherance of the delimitation carried out by the
F Commission, the Election Commission shall proceed to prepare electoral rolls for the constituency. Therefore, there has been no default on the part of any of the authorities, so as to render any votes void. There has been no violation of any of the provisions of the Act or the rules framed thereunder. The
G appellant primarily relies on the communication issued by the Election Commission of India dated 24.3.2007. But as discussed above, the same cannot be construed as any direction on the part of the Commission. The averments also do not disclose any material facts. As observed by the High
H Court, the main concern of the appellant in effect is the addition

of the 21 colonies into the Meerut constituency and not in relation to addition or deletion of names in the electoral roll. But yet there has been no specific pleading in this regard in the election petition. The pleading should have been with respect to the said inclusion of the 21 colonies into the Meerut municipality ward which was later incorporated into the 381 Meerut Assembly constituency. In the absence of such pleadings, it can safely be said that the election petition does not disclose any material facts and, therefore, High Court was right in summarily dismissing the election petition.

39. Before parting with the case, we will now refer to the decision on which reliance is placed by learned counsel for appellant.

40. The facts in *Shankar Babaji Sawant v. Sakharam Vithoba Salunkhe* [(1965) 2 SCR 403] were that the Presiding Officer for the polling station at Village Turveh Khurd, improperly prevented 19 voters from inserting their ballot papers into the ballot box. On the polling day, those 19 voters wanted to vote in favour of the petitioner. The contention raised was that an improper refusal of votes contemplated by section 100(1)(d)(iii) must mean an improper refusal of valid votes. However the court came to the conclusion that the said votes were not valid votes as they were never inserted into the ballot box. The facts and the circumstances of the case are clearly distinguishable from the present case. The present case involves acceptance of alleged improper votes from people of the 21 localities in question, which has according to the appellant materially affected the result of the election. Therefore this case does not assist the appellant in any manner.

41. In *Baidyanath Panjiar v. Sitanath Mahato* [(1969) 2 SCC 447], the issue which arose before this court was, whether the electoral registration officer could amend the electoral rolls after the last date for filing of nominations was over. The provision in question was Section 23 (3) of the Representation of Peoples Act, 1950, which specifically barred any alteration

A in the electoral roll after the date of filing of nomination was over. The court reiterated the principle laid down in the provision by observing that:-

> "It gives a mandate to the electoral registration officers not to amend, transpose or delete any entry in the electoral roll
> B of a constituency after the last date for making nominations for election in that constituency and before the completion of that election. If there was no such provision, there would have been room for considerable manipulations, particularly when there are only limited number of electors
> C in a constituency. But for that provision, it would have been possible for the concerned authorities to so manipulate the electoral rolls as to advance the prospects of a particular candidate. This would be more so if either all or a section of the electors are persons nominated to local authorities."

D

The court finally came to the conclusion that it is clear that the entries in an electoral roll of a constituency, as they stood on the last date for making the nominations for an election in that constituency should be considered as final for the purpose of
E that election. This principle was reiterated by this court in the case of *Kabul Singh v. Kundan Singh and ors.* [(1969) 2 SCC 452], where the 1st respondent challenged the result of the election by way of an election petition and one of the grounds was that the vote of one Hari Singh should have been held to
F be a void vote as his name was included in the electoral roll on April 5, 1968 i.e. just two days before the date of polling. The court rendered the vote of Hari Singh to be void as it was in contravention to Section 23 (3) of the Representation of Peoples Act, 1950. The court held:-

G

> "Part III of the 1950 Act deals with the preparation of rolls in a constituency. The provisions contained therein prescribe the qualifications for being registered as a voter (Section 19), disqualifications which disentitle a person from being registered as a voter (Section 16), revision of
> H the rolls (Section 21), correction of entries in the electoral

rolls (Section 22), inclusion of the names in the electoral rolls (Section 23), appeals against orders passed by the concerned authorities under Sections 22 and 23 (Section 24). Sections 14 to 24 of the 1950 Act are integrated provisions. They form a complete code by themselves in the matter of preparation and maintenance of electoral rolls. It is clear from those provisions that the entries found in the electoral roll are final and they are not open to challenge either before a civil court or before a tribunal which considers the validity of any election."

42. In the case of *Rampakavi Rayappa Belagali v. B.D Jatti and Ors.* [(1970) 3 SCC 147], the main issue raised by the petitioner was that that respondent No. 1 had ceased to be a person ordinarily resident within the constituency of Jamkhandi during the period relevant to the 1967 General Elections. This court went into the definition of an elector under Section 2 (1)(e) of the Representation of Peoples Act, 1951 and held that the conditions about being ordinarily resident in a constituency for the purpose of registration are meant for that purpose alone and have nothing to do with the disqualifications for registration which are prescribed by Section 16 of the Act of 1950 which alone are relevant to the definition of an "elector" as given in Section 2(1)(e) of the Act. In this regard, this court observed:-

"The entire scheme of the Act of 1950 and the amplitude of its provisions show that the entries made in an Electoral Roll of a constituency can only be challenged in accordance with the machinery provided by it and not in any other manner or before any other forum unless some question of violation of the provisions of the Constitution is involved."

43. The above issue was also a question in the form of a contention before a Constitution Bench of this court in the case of *Hari Prasad Mulshanker Trivedi v. V.B Raju and ors.* [(1974) 3 SCC 415], in as much as the election of the

A respondents were to be declared void on the ground that they were not ordinarily resident in the area covered by any parliamentary constituency in the State of Gujarat and that their names had been illegally entered in the electoral roll of the respective constituency in Gujarat. Reliance was placed on B Section 19 of the Representation of Peoples Act, 1950 which reads :-

> "Subject to the foregoing provisions of this Part, every person who-
>
> C (a) is not less than eighteen years of age on the qualifying date, and
>
> (b) is ordinarily resident in a constituency, shall be entitled to be registered in the electoral roll for that constituency."

D The Constitution Bench observed thus:-

> "Under Section 100(1)(d)(iv) of the 1951 Act the result of the election must have been materially affected by noncompliance with the provisions of the Constitution or E of that Act or of the rules, orders made under that Act in order that High Court may declare an election to be void. Non-compliance with the provisions of Section 19 of the 1950 Act cannot furnish a ground for declaring an election void under that clause."

F In this regard the court observed that there was no allegation that they were disqualified under Section 16 of the 1950 Act. Nor was there any ground taken that they were not qualified in the sense of their being not citizens or under the age as required. As their names were entered in the electoral roll and G as they did not suffer from any of the disqualifications mentioned in Section 16 of the 1950 Act, they were electors within the definition of the term in Section 2(1)(e) of the 1951 Act. Therefore, the respondents qualified to be chosen as candidates under Section 3 of the 1951 Act.

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44. In the case of *Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors.* [(1978) 1 SCC 405], a Constitution Bench discussed the scope of Article 324 of the Constitution of India and Section 100 (1)(d)(iv) of the Representation of Peoples Act, 1951. The Court observed:-

> "Article 324(1) vests in the Election Commission the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of the President and Vice-President held under the Constitution. Article 324(1) is thus couched in wide terms. Power in any democratic set up, as is the pattern of our polity, is to be exercised in accordance with, law. That is why Articles 327 and 328 provide for making of provisions, with respect to all matters relating to or in connection with elections for the Union Legislatures and for the State Legislatures respectively. When appropriate laws, are made under Article 327 by Parliament as well as under Article 328 by the State Legislatures, the Commission has to act in conformity with those laws and the other legal provisions made thereunder. Even so, both Articles 327 and 328 are "subject to the provisions" of the Constitution which include Article 324 and Article 329. Since the conduct of all elections to the various legislative bodies and to the offices of the President and the Vice-President is vested under Article 324(1) in the Election Commission, the framers of the Constitution took care to leaving scope for exercise of residuary power by the Commission, in its own right, as a creature of the Constitution in the infinite variety of situations that may emerge from time to time in such a large democracy as ours. Every contingency could not be foreseen, or anticipated with precision. That is why there is no hedging in Article 324, The Commission may be required to cope with some situation which may not be provided for in the enacted laws and the rules. That seems

A to be the ration d'etre for the opening clause in Articles 327 and 328 which leaves the exercise of powers under Article 324 operative and effective when it is reasonably called for in a vacuous area. There is, however, no doubt whatsoever that, the Election Commission will have to B conform to the existing laws and rules in exercising its powers and performing its manifold duties for the conduct of free and fair elections."

As a natural corollary to the above observation it was held that "if there is any illegality in the exercise of the power under C Article 324 or under any provision of the Act, there is no reason why Section 100(1)(d)(iv) should not be attracted to it. If exercise of a power is competent either under the provisions of the Constitution or under any other provision of law, any infirmity in the exercise of that power is, in truth and substance, D on account of non-compliance with the provisions of law, since law demands of exercise of power by its repository; as in a faithful trust, in proper regular, fair reasonal manner." Therefore according to this court Article 329 (b) of the Constitution of India rules out the maintainability of the writ application with respect E to challenge of an election. The remedy available to an aggrieved person is therefore by way of an election petition filed in the prescribed manner.

45. In the case of *Lakshmi Chandra Sen and Ors. v. A.K.M. Hassan Uzzaman and Ors.* [(1985) 4 SCC 689], this F court while discussing the scope of Section 23 (3) of the Representation of Peoples Act, 1950, has stated :

"Section 23(3) of the Act of 1950 also points in the same direction. Under that provision, no amendment, G transposition or deletion of an entry can be made under Section 22 and no direction for the inclusion of a name in the electoral roll of a constituency can be given, after the last date for making nomination for an election in the particular constituency. The election has to be held on the H basis of the electoral roll which is in force on the last date

for making nominations. If that were not so, the easiest expedient which could be resorted to for the purpose of postponing an election to the legislature would be to file complaints and objections, omnibus or otherwise, which would take days and months to decide. It is not suggested that claims and objections filed in the prescribed form should not be decided promptly and in accordance with law. But, the important point which must be borne in mind is that whether or not a revision of an electoral roll is undertaken and, if undertaken, whether or not it is completed, the electoral roll for the time being in force must hold the field. Elections cannot be postponed for the reason that certain claims and objections have still remained to be disposed of. Then, claimants and objectors could even evade the acceptance of notices and thereby postpone indefinitely the decision thereon. The holding of elections to the legislatures, which is a constitutional mandate, cannot be made to depend upon the volition of interested parties."

The court further observed that "as far as electoral rolls are concerned, there never comes a moment where an electoral roll is not in force." This observation was made after drawing an analogy from Section 21 (3) of the Act of 1950 which confers upon the Election Commission the power to direct a special revision of the electoral roll. The proviso to that Sub-section also says that until the completion of the special revision so directed, the electoral roll for the time being in force shall continue to be in force.

46. In the case of *Indrajit Baruah and others v. Election Commissioner of India and others,* (AIR 1986 SC 103), one of the contentions raised whereby the petitioners sought to escape from the ban of Article 329(b) by contending that they are challenging the impugned elections as a whole and not any individual election and that the ban of Article 329(b), therefore, does not stand in the way of the writ petitions filed by them

A challenging the impugned elections. The principal ground on which the validity of the elections has been challenged is that the electoral rolls were not revised before the elections in contravention of the provisions of Section 21, Sub-section (2)(a) of the Representation of the People Act, 1950, and the B elections were held on the basis of the electoral rolls of 1979. The Constitution Bench of this court while relying on the well settled law on the question involved held thus:-

> "In the first place, Article 329(b) of the Constitution bars any challenge to the impugned elections by a writ petition C under Article 226 as also on the ground that the electoral rolls on the basis of which the impugned elections were held were invalid. The petitioners sought to escape from the ban of Article 329(b) by contending that they are challenging the impugned elections as a whole and not any D individual election and that the ban of Article 329(b), therefore, does not stand in the way of the writ petitions filed by them challenging the impugned elections, But we do not think this escape route is open to the petitioner. There is in the Representation of the People Act, 1951, E no concept of elections as a whole. What that Act contemplates is election from each constituency and it is that election which is liable to be. challenged by filing an election petition. It may be that there is a common ground which may vitiate the elections from all the constituencies, F but even so it-is the election from each constituency which has to be challenged though the ground of challenge may be identical. Even where in form the challenge is to the elections as a whole, in effect and substance what is challenged is election from each constituency, and Article G 329(b) must, therefore, be held to be attracted. We are of the view that once the final electoral rolls are published and elections are held on the basis of such electoral rolls, it is not open to anyone to challenge the election from any constituency or constituencies on the ground that the H electoral rolls were defective. That is not a ground available

for challenging an election under Section 100 of Representation of People Act, 1951. The finality of the electoral rolls cannot be assailed in proceeding challenging the validity of an election held on the basis of such electoral roll vide *Kabul Singh v. Kundan Singh* : [1970] 1 SCR 845 . Article 329(b) in our opinion clearly bars any writ petition challenging the impugned election on the ground that the electoral rolls of 1979 on the basis of which the impugned elections were held were invalid."

47. In our considered view, none of the decision on which reliance is placed by learned senior counsel is anyway nearer to the issue that is debated in this appeal. We hasten to add, that the learned senior counsel was very fair to the court by bringing to the notice of this court the observations made by this court in the case of *Shyamadeo Parsad Singh vs. Nawal Kishore Yadav,* [(2000) 8 SCC 46], which answers all the legal issues raised by the appellant in this appeal.

48. For the reasons mentioned above, this appeal fails and the same is dismissed and since no representation was there for the respondent, we refrain from imposing costs.

K.K.T. Appeal dismissed.