

## **THEME 4**

## **NOMINATION**

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IN THE SUPREME COURT OF INDIA

ORIGINAL JURISDICTION

ELECTION PETITION NO. 3 OF 1992

**Kaka Joginder Singh** *alias*

**Petitioner**

V

**K. R. Narayanan**  
Vice-President of India

**Respondent**

*Before: J. S. Verma, J, K. Jayachandra Reddy, J., Yogeshwar Dayal, J  
G. N. Ray, J and S. P. Bharacha, J.*

*Elections – Nominations – Whether nomination void for mistakes in nomination papers – Technical defect not of a substantial nature – Whether commission of offence of undue influence at the election grounds to invalidate nomination – Undue influence must take place by or with consent of candidate.*

*Background facts:* The petitioner raised objection to the validity of the nomination papers filed by the respondent at the time of scrutiny, but the objections were rejected. These two persons alone were declared to be validly nominated candidates; and the polling was held on 19.8.92 as a result of which the respondent, Shri K. R. Narayanan, was declared duly elected as the Vice-President of India.

The petitioner challenged the election on two grounds, namely (i) wrong acceptance of the nomination of the returned candidate and (ii) commission of the offence of undue influence at the election by issuance of a whip by the Congress (I) Party to vote for the respondent of the election.

*Held:* That the pleadings relating to the ground of undue influence did not disclose any cause of action to raise a triable issue on the point; that the mistake or defect, if any, in the nomination paper of the respondent was not a substantive character and, therefore, it could not be a ground to permit rejection of the nomination paper.

**Cases Cited in Judgement:**

*Mithilesh Kumar v Sr R. Venkataraiman & Others* [1986] 1 SCR 525  
*Karnail Singh v Election Tribunal, Hissor and Others* 10 ELR 189 (SC)  
*Awadesh Singh v Sumitra Devi & Others* (1972) 2 SCR 674  
*Davis v Elsby Brothers, Ltd.* [1960] 3 All ER 672.

## JUDGEMENT

**VERMA J :** This Election Petition calls in question the election of Shri K. R. Narayanan as the Vice-President of India. A Notification dated 17th July 1992 was issued by the Returning Officer for the election of the Vice-President of India, specifying 31st July 1992 as the last date for filing the nominations. Petitioner Kaka Joginder Singh alias Dharti Pakad and respondent Shri K. R. Narayanan filed their nomination papers; and in the scrutiny held on 1st August 1992, the nomination papers of both of them were found to be valid by the Returning Officer. The petitioner raised objection to the validity of the nomination papers filed by the respondent, at the time of scrutiny, but the objections were rejected. These two persons alone were declared to be validly nominated candidates; and the polling was held on 19.8.1992 as a result of which the respondent, Shri K. R. Narayanan, was declared duly elected as the Vice-President of India. On 17.9.1992, this election petition was filed challenging the election.

The election of the returned candidate is challenged by the petitioner on two grounds, namely, (i) wrong acceptance of the nomination of the returned candidate, a ground under Section 18(1)(c) of the Presidential and Vice-Presidential Elections Act, 1952 called (the Act); and (ii) commission of the offence of undue influence at the election, a ground under Section 18(1)(a) of the Act, by issuance of a whip by the Congress (1) Party to vote for the respondent at the election. The material part of Section 18, for the purpose of the present election petition, is as under:

"18. (1) If the Supreme Court is of opinion –

- (a) that the offence of bribery or undue influence at the election has been committed by the returned candidate or by any person with the consent of the returned candidate; or

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- (c) that the nomination of any candidate has been wrongly rejected or the nomination of the successful candidates has been wrongly accepted; the Supreme Court shall declare the election of the returned candidate to be void.

- (2) For the purposes of this section, the offences of bribery and undue influence at an election have the same meaning as in Chapter IX–A of the India Penal Code."

The facts relevant for the aforesaid two grounds on which the election petition has been filed are now stated. The competence of the petitioner to file this election petition as a candidate is not in dispute. The only question is: whether both or any of the grounds on which the election petition has been filed have been made out?

To support the ground in Section 18(1)(c) of wrong acceptance of the nomination of the returned candidate – the respondent, the petitioner alleges that there was substantial defect in all the nomination papers of the returned candidate which require their rejection in accordance with Section 5E(3)(e) of the Act by the Returning Officer, at the time of scrutiny. It is alleged that there was a failure to comply with the requirement of sub-sections (1) and (2) of Section 5B, in as much as the nomination papers of the returned candidate were not completed in the prescribed form, and no nomination paper was accompanied by a certified copy of the entry relating to the candidate in the electoral roll for the parliamentary constituency in which the candidate is registered as an elector. These provisions have to be read along with Rule 4 of the Presidential and Vice-Presidential Election Rules, 1974 (called the Rules) and Form 3 therein which prescribes the form of the nomination paper for election to the office of the Vice-President of India. Form 3 requires mention of the name of the parliamentary constituency in the electoral roll for which the candidate is registered as an elector. In the nomination papers of the respondent, the name of the parliamentary constituency in the electoral roll for which the returned candidate is shown to be registered as an elector is mentioned as 'Ottapalam (SC)'. To each of the nomination papers, to satisfy the requirement of sub-section (2) of Section 5B, a certificate is attached, as under:

**"CERTIFICATE"**

Certified that the name of Shri K. R. Narayanan, Kocheril House, Ward No. VIII of Uzhavoor Panchayat, Meenachil Taluk, Kottayam District, Kerala State is included in the voters list 1989 of 94 Palai Assembly Constituency, Part No. 101. The true extract of which is reproduced below:

S1 No.	House No.	House Name	Name of the Voter
192	61	(Kocharial)	K. R. Narayanan

Name of the Guardian	Sex	Age as on 1.1.1989
Raman	Male	68

The age of Sri K. R. Narayanan as on 1.1.1992 is 71 (seventy-one). Certified further that voter's list 1989 of which extract has been quoted above is the latest and the current list.

Talul Office  
Meenachi

sd/-  
Electoral Registration Officer and  
Tahsildar – Meenachil."

Dated: 29. 7. 1992

The petitioner's contention is, that the above certificate annexed to each nomination paper of the returned candidate does not satisfy the requirement of sub-section (2) of Section 5B, inasmuch as it is not 'a certified copy of the entry relating to the candidate in the electoral roll; and this certificate shows that the returned candidate was registered as an elector in the electoral roll of '94 Palai Assembly Constituency' which is not in '*Ottapalam (SC)*' parliamentary constituency mentioned in the nomination paper but in 'Muvattupuzha' parliamentary constituency. The petitioner further contends that the certificate shows the 'Name of the Guardian of the elector as 'Raman', whereas in the prescribed form the heading of the corresponding column is 'Name of the Father/Mother/Guardian/Husband. These defects, according to the petitioner, rendered invalid all the nomination papers filed for the candidature of the respondent, and, therefore, liable to rejection.

The other ground taken in the election petition to challenge the election, is of 'undue influence' under Section 18(1)(a) of the Act. In view of a strong objection on behalf of the returned candidate that there are no requisite pleadings in the election petition to constitute the ground under Section 18(1)(a), it would be appropriate to quote the entire pleadings relating to this group, on which the petitioner has relied for this purpose. The only pleading in the election petition relating to the ground in Section 18(1)(a) of the Act is in paras 10, 11 and grounds (1) and (III) on para 14 thereof, which are as under:

"10. That the returning officer unconstitutionally, illegally accepted the nomination paper's of respondent under pressure or undue hope of profit in future, without passing any order on the written objections.

11. That the ruling party in power, competent to change the future, issued the whip in favour of returned candidate, the respondent affecting the election is violative of the provisions of the Constitution. A copy of whip is attached and marked as Annexure 'D'."

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14. That the petitioner is approaching this Hon'ble Court on the following amongst other.

### GROUND

1. That the whip Annexure 'D' is violative to Article 66 of the Constitution of India in view of Antidefection Act as the proposes of five M.Ps. of B. J. P. were facing disciplinary action during the period of Election hence all the political parties and their leaders made a mockery of the Election of the Vice-President of India by proposing the returned candidate Shri K. R. Narayanan as a representative

of Scheduled Caste candidate which is against the preamble of the Constitution of India hence it is violative of Articles 14, 21 and 38 of the Constitution of India.

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III. That all sorts of undue influences by way of whip by the Ruling Party and opposition parties have been used which amounts to corrupt practices in the Election as the 80 proposers violates Article 66 of the Constitution of India in view of Antidefection Act."

In reply, it was contended by Shri Soli J. Sorabjee, learned counsel for the returned candidate that no triable issue relating to the ground of commission of the offence of undue influence contained in Section 16(1)(a) of the Act arises in the absence of the requisite pleadings for that purpose; and the grounds contained in Section 18(1)(c) is not made out since the defect, if any, in the nomination papers of the returned candidate is not of a substantial character. On this basis it was contended, that the returning officer could not reject the nomination papers, as clearly provided in sub-section (5) of Section 5E of the Act. Shri Sorabjee also submitted that the objection now taken in the election petition for raising the ground under section 18(1)(c) of the Act was not even raised before the returning officer at the time of scrutiny, the objection taken being merely of mis-description of the proposers and seconders, and not the returned candidate, in the nomination papers. Learned counsel submitted that the ground raised now is a clear afterthought and of no consequence since there was never any ambiguity in the identity of the returned candidate from his description given in the nomination papers, the only object of the particulars required in the nomination paper being to clearly identify the candidate and to determine his eligibility for the election. It was also submitted that such an objection, if raised, at the time of scrutiny would have enabled correction of the technical defect in the nomination papers. It was lastly urged by Shri Sorabjee that the minor defect in the nomination papers of the returned candidate can, at the most, be only a mis-description of the candidate whose identity was clear and unambiguous and, therefore, the defect, if any, is not of a substantial character to permit rejection of the nomination papers on the ground. The learned Attorney General supported the submissions of Shri Sorabjee.

It was common ground before us that no evidence was required to be adduced in the election petition which could be decided on admitted facts and the documents produced by the parties, the contents of which were admitted. The arguments of both sides were, therefore, heard on that basis.

The ground of 'undue influence' contained in Section 18 (1)(a) of the Act is taken up first for consideration. As the above-quoted provision clearly shows, to constitute the ground, the essential ingredients are: (1) commission of the offence of undue influence at the election; and (2) its commission by the returned candidate or by any person with the consent of the returned candidate. Thus, the offence of undue influence at the election, as defined in Section 171-C contained in Chapter IX-A of the Indian Penal Code, must have been committed; and that offence must have

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been committed either by the returned candidate himself or by any person with the consent of the returned candidates. Unless both these ingredients to constitute the ground under Section 18 (1)(a) are pleaded and proved, this ground for declaring the election to be void cannot be made out. The entire pleading relating to this ground in the election petition has been quoted above. A bare perusal of the same is sufficient to indicate that at least one of the two essential ingredients of the ground is not even pleaded in the election petition.

There is no averment anywhere in the election petition that the offence of undue influence alleged to have been committed by issuance of the whip by the Congress (1) Party was committed either by the candidate himself or by any person with the consent of the returned candidate. There is not even a whisper or casual assertion that the returned candidate was in any manner associated with, involved or instrumental in issuance of the whip by the Congress (1) Party or any other political party to its members, at the election. The letter dated 14.8.1992 (Annexure – D to the election petition) issued by the Chief Whip of the Congress (1) Party also nowhere mentions any role of the returned candidate in the issuance of the whip, while describing the returned candidate K. R. Narayanan as ‘a consensus candidate’, obviously meaning that he was the candidate chosen by consensus of several political parties. It may also be mentioned that the respondent in his counter-affidavit has, even without any such pleading in the election petition, expressly denied that he had any role in the issuance of the whip by the Congress (1) Party to its members. There is no rejoinder to this denial. It is significant that no other candidate had been set up by any political party and the respondent had the support of all the political parties, being the candidate chosen by consensus of the political parties. The petitioner, who was the only other candidate, obtained only one vote, as stated by him at the hearing.

The question whether, even in such a situation, the issuance of a whip by a political party can amount to undue influence does not arise for decision in the present case, on account of the absence of requisite pleadings to raise a triable issue on the point.

It is sufficient to refer to a recent Constitution Bench decision of this Court in *Mithilesh Kumar v Sri R. Vankataraman & Others*, [1988] 1 SCR 525 to indicate that such deficiency in pleadings in the election petition is fatal; and the ground contained in Section 18(1)(a) of the Act does not arise for consideration on merits, in such a situation. In a similar situation where the ground of undue influence contained in Section 18 (1)(a) of the Act was raised by reason of the fact that a whip had been issued by the Congress (1) Party, but there was no allegation that any act amounting to undue influence was committed either by the returned candidate himself or by any other person with his consent, it was held that it was unnecessary to examine whether issuance of such a whip by any political party amounts to undue influence vitiating the election. This aspect, with reference to the earlier decisions of this Court, was considered at length therein and, therefore, it is unnecessary to reiterate the same herein. Following that decision, it must be held that the pleadings relating to the ground contained in Section 18(1)(a) do not disclose any cause of action to raise a triable issue on this point; and, therefore, the election petition, in so far as it relates to the ground contained in Section 18(1)(a), must be rejected for this reason alone.

The only question remaining for consideration now is whether the nomination of the returned candidate was wrongly accepted, to make out the ground for setting aside the election under Section 18 (1) (c) of the Act.

The provisions in the Act relevant for this ground are the following:

"5B. (1) On or before the date appointed under clauses (a) of sub-section (1) of section 4, each candidate shall, either in person or by any of his proposers or seconders, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon, deliver to the Returning Officer at the place specified in this behalf in the public notice issued under section 5, a nomination paper completed in the prescribed form and subscribed by the candidate as assenting to the nomination, and

- (a) in the case of Presidential election, also by at least ten electors as proposers and at least ten electors as seconders;
- (b) In the case of Vice-Presidential election, also by at least five electors as proposers and at least five electors as seconders;

provided that no nomination paper shall be presented to the Returning Officer on a day which is public holiday.

(2) Each nomination paper shall be accompanied by a certified copy of the entry relating to the candidate in the electoral roll for the parliamentary constituency in which the candidate is registered as an elector.

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5E. (1).....

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(5) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination paper and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:

- (a) .....

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(e) that there has been a failure to comply with any of the provisions of Section 5B or Section 5C.

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(5) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

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(8) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to any of the disqualifications mentioned in section 16 of the Representation of the People Act, 1950."

The defect in the nomination papers of the returned candidate, on which this ground is based, has already been indicated. The undisputed fact, on the basis of the affidavits filed by both sides, is that the respondent, K. R. Narayanan, son of Raman was registered as an elector in the electoral roll of '94 Palai Assembly Constituency' which falls within Muvattupuzha parliamentary constituency and not Ottapalam (SC) parliamentary constituency. There is no inaccuracy or defect in the description of the respondent as an elector in the certificate issued by the Electoral Registration Officer and Tahsildar', Meenachil, which was annexed to the nomination paper when it was filed. The certificate clearly says that the name of the respondent was included in the electoral roll of '94 Palai Assembly Constituency, Part No. 101'. It further contains the 'true extract' of that electoral roll of 1989 and certifies it to be the extract from the latest and current electoral roll.

Section 5B (2) requires that 'a certified copy of the entry relating to the candidate in the electoral roll for the parliamentary constituency in which the candidate is registered as an elector' shall accompany each nomination paper. The contents of the certificate, so annexed to each nomination paper, fully satisfy the requirement of 'a certified copy of the entry relating to the candidate in the electoral roll' for the assembly constituency in which the respondent was registered as an elector. The certificate does not name the parliamentary constituency and the nomination paper mentions the parliamentary constituency as Ottapalam (SC) instead of Muvattupuzha. The question is whether this difference is of a substantial character to warrant rejection of the nomination paper.

Section 13D of the Representation of the People Act, 1950 is in Part 11B thereof relating to 'Electoral Rolls for Parliamentary Constituencies' and Section 15 is in Part III relating to 'Electoral Rolls for Assembly Constituencies', which read as under:

"13D. Electoral rolls for parliamentary constituencies –

(1) The electoral roll for every parliamentary constituency, other than a parliamentary constituency in the State of Jammu and Kashmir or in a Union Territory not having a Legislative Assembly, shall consist of the electoral rolls for all the assembly constituencies comprised within that parliamentary constituency; and it shall not be necessary to prepare or revise separately the electoral roll for any such parliamentary constituency:

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15. Electoral roll for every constituency –

For every constituency, there shall be an electoral roll which shall be prepared in accordance with the provisions of this Act under the superintendence, direction and control of the Election Commission."

It is clear from the above provisions that there is no separate electoral roll for a parliamentary constituency and the electoral roll for the parliamentary constituency consists of the electoral rolls for all the assembly constituencies comprised within that parliamentary constituency. Thus, the parliamentary constituency of which '94 Palai Assembly Constituency' forms a part would be the parliamentary constituency in which the respondent was registered as an elector; and his name had to be found in the electoral roll of the assembly constituency therein in which he was so registered. The respondent, in the present case, was registered as an elector in the electoral roll of '94 Palai Assembly Constituency' as clearly mentioned in the certificate annexed to each nomination paper. There was thus no ambiguity in the description of the respondent as an election on reading the nomination paper along with the certificate annexed to it. The mistake, however, was in mentioning the name of the corresponding parliamentary constituency for '94 Palai Assembly Constituency' as 'Ottapalam (SC)' instead of 'Muvattupuzha' in the nomination paper of the respondent. This mistake did not mislead anyone, not even the petitioner, which is evident from the fact that such an objection was not taken at the time of the scrutiny even by the petitioner, since there was no doubt in the mind of anyone about the correct description of the respondent as a candidate at the election. The other mistake pointed out is that the name of respondent's father, 'Raman', is written under the column 'Name of the Guardian' when the heading of that column according to the petitioner, should have been 'Name of Father/Mother/Guardian/Husband'. In our opinion, this can hardly be called a defect, since the omission, if any, is in giving the full heading of that column and not in mentioning the name of respondent's father thereunder.

The ultimate question is whether this discrepancy in describing the parliamentary constituency corresponding to '94 Palai Assembly Constituency' in which the respondent was registered as an elector, and the deficiency in the heading of the column under which the name of respondent's father is written, are defects of substantial nature which required rejection of the nomination on the ground contained in Section 5E (3) (e) of the Act. We do not think so.

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The decision of a Constitution Bench of this Court in *Karnail Singh v Election Tribunal, Hissar, and Others*, 10 ELR 189 (SC) holding that the rejection of nomination is not permissible only for a technical defect which is not of a substantial character, has been consistently followed. In that case, the nomination paper did not record the name of the part of the electoral roll in which the name of the candidate appeared but there was no difficulty in identifying the candidate. It was held by the Election Tribunal that rejection of the nomination paper on that ground was improper. This Court affirmed the view of the Election Tribunal and held thus:

"..... The only defect pointed out was that the name of the sub-division was not stated therein, but on the evidence it was quite clear that there was no difficulty in identifying the candidate and the candidate himself pointed out to the Returning Officer the entry of his name in the electoral roll. The defect, in these circumstances, was a technical one and the Tribunal was perfectly right in holding that the defect was not of a substantial character and that the nomination paper should not have been rejected....."

It is sufficient to refer to the decision in *Ram Awadesh Singh v Sumitra Devi & Others*, [1972] 2 SCR 674 in which the decisions of this court, starting with *Karnail Singh*, are referred, indicating the object of such a provision and the nature of a substantial defect which permits rejection of the nomination paper. The ground taken there was of improper acceptance of nomination paper of the returned candidate, inasmuch as the name of the constituency in which the returned candidate was registered as an elector was wrongly mentioned in the nomination paper. The earlier decisions of this Court were referred to, and it was held that a mis-description as to the electoral roll number of the candidate or of the proposer in the nomination paper is not to be considered as a material defect in the nomination paper. It was also pointed out that the returning officer while scrutinising the nomination papers can permit the correction of any mistake therein, which indicates that every mistake in filling the nomination paper is not to be treated as substantial in nature. In our opinion, sub-section (5) of Section 5E, which inhibits the returning officer and does not permit rejection of any nomination paper on the ground of any defect which is not of a substantial nature, expressly provides for such a situation. We have no doubt that rejection of any nomination paper of the respondent in the present case on the ground alleged by the petitioner would have been an improper rejection of the nomination paper, and in violation of Section 5E (5) of the Act. It is, therefore, erroneous to contend that the nomination papers of the respondent were wrongly accepted by the returning officer.

The nature of mistake or defect in the nomination papers of the respondent, viewed from a different angle, also leads to the same conclusion. The object of the particulars required to be filled in the nomination paper, in accordance with sub-sections (1) and (2) of Section 5B of the Act read with Rule 4 and Form 3 of the Rules, is to correctly and unambiguously identify the candidate, and to indicate that the conditions of eligibility for being a candidate at the election are satisfied. The returning officer is also required to permit correction of any discrepancies, to remove any ambiguity or mis-description. It is, therefore, clear that unless the defect in the

nomination paper or the deficiency therein is of a substantial character, Section 5E (5) enjoins the returning officer not to reject the nomination paper. It is, therefore, obvious that if there be any mistake or defect in the nomination paper which is a mere mis-description of the candidate, but the mis-description is such that it does not mislead anyone, and the identity of the candidate is not in doubt to enable the returning officer to perform his duty of scrutinising the nomination paper to find out whether the candidate has been validly nominated, then the mistake, if any, is not of a substantial character.

The requirements for a valid nomination in sub-section (1) and (2) of Section 5B are: the nomination by specified number of proposers and seconders, assent of the candidate to the nomination, a certified copy of the entry in the electoral roll showing the candidate to be a registered elector, representation of the nomination paper completed in the prescribed form within the specified time to the returning officer at the specified place, and fulfilment of the conditions of eligibility as a candidate. For this purpose, correct identification of the candidate is necessary. There is not even a remote suggestion in the present case that there was any difficulty or doubt in identifying the respondent as the candidate nominated by the nomination papers filed for his candidature, due to any mistake in describing the parliamentary constituency corresponding to '94 Palai Assembly Constituency' in which the respondent was registered as an elector or showing the name of his father 'Raman' under the column written as 'Name of Guardian' instead of 'Name of Father/Mother/Guardian/Husband. Even the petitioner was not misled by these defects, and it is for this reason that no such objection was taken by the petitioner to the nomination of the respondent even though the petitioner did raise objection at the time of scrutiny for other reasons.

The mistake in mentioning the name of the parliamentary constituency as Ottapalam (SC) instead of Muvattupuzha when the assembly constituency in which the respondent was registered as and elector therein was correctly described as '94 Palai Assembly Constituency' was at best a misnomer which misled no one, not even the petitioner, and it was, therefore, not a defect of substantial nature. The true test for determining whether a misdescription is a mere misnomer or defect of substantial nature was indicated in *Davies v Elsby Brothers, Ltd.*, [1960] 3 A11 ER 672 at p. 676 as under:

.....In English law as a general principle the question is not what the writer of the document intended or meant, but *what a reasonable man reading the document would understand it to mean; and that is the test which ought to be applied as a general rule in cases misnomer* – which may embrace a number of situations apart from misnomer on a writ, for example mistake as to identity in the making of a contract. *The test must be: How would a reasonable person receiving the document take it? If, in all the circumstances of the case and looking at the document as a whole he would say to himself: "Of course it must mean me, but they have got my name wrong", then there is a case of mere misnomer.* If, on the other hand, he would say; "I cannot tell from the document itself whether they

mean me or not and I shall have to make inquiries", then it seems to me that one is getting beyond the realm of misnomer....." (Emphasis supplied.)

Viewed in this manner also, there can be no doubt that the mistake or defect, if any, in the nomination paper of the respondent was not of a substantial character and, therefore, it could not be a ground to permit rejection of the nomination paper in accordance with Section 5E (3) (e) of the Act. Had the defect been pointed out by anyone at the time of scrutiny, the Returning Officer would have certainly, and rightly, permitted correction of the same, since it was only a technical defect. However, no one, not even the petitioner, had any such doubt, as the identify of the respondent and his eligibility as a candidate was undisputed. For this reason, this objection was not even raised at the time of scrutiny, but only as an afterthought in the election petition."

The fact, however, remains that this technical defect crept into the nomination papers of the respondent in spite of the association of a galaxy of men drawn from the top echelons of several political parties in the filing of his nomination papers. The election petition does serve the purpose of revealing this discrepancy which that galaxy of men completely missed. It is in a different matter that the defect is merely technical and not substantial in nature, so that it has no adverse consequence.

Accordingly, the ground contained in Section 18 (1)(c) of the Act is also not available to challenge the validity of the election of the respondent.

Consequently, the election petition is dismissed. – No costs.

.....J.  
(J. S. VERMA)

.....J.  
(K. J. AYACHANDRA REDDY)

.....J.  
(YOGESHWAR DAYAL)

.....J.  
(G. N. RAY)

New Delhi:  
July 16, 1993

.....J.  
(S. P. BHARUCHA)

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**Elections – Nominations – Forcible prevention of prospective candidate filing nomination papers – Injunction granted to prevent returning officer publishing first respondents name as sole nominated parliamentary candidate for Boringo North constituency – Whether injunction should stand.**

**Background facts:** *The relief sought in the Notice of Motion is an Order to stay the order of Mrs Justice Aluoch given on 21st December 1992. Whereby she granted an injunction against the Returning Officer and the Commission pending an appeal to the Court of Appeal.*

**Held:** *That the application failed.*

**Cases cited in Judgement:**

*Thande Y. Mantemars (1970) EA 343*

*Stanley Munga Githunguri v Jimba Credit Corpr. Ltd. (1988) Civil application No. NAI 161.*

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IN  
HC MISC. APPLIN NO 1077 OF 1992

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RULING OF THE COURT

This is an application under Rule 5 (2) (b) of the Court of Appeal Rules brought under a certificate of urgency by Richard Chirchir, Returning Officer, Kabartonjo, Baringo North Constituency (The Returning Officer) and the Electoral Commission (the Commission). The respondent is Henry Ronguno Cheboiwo (the respondent) and Willy Kamuren has been joined as the interested party (Mr. Kamuren).

The relief sought in the Notice of Motion is an order to stay the order of Mrs Justice Aluoch given on 21st December 1992 in Misc. Civil Application No. 1077 of 1992 whereby she granted an injunction against the Returning Officer and the Commission pending an appeal to this Court.

In his application to the superior court the respondent sought a number of reliefs the second one of which was:

(2) "That the second defendant be and is hereby restrained from publishing in the Kenya Gazette or otherwise acting on or giving effect to the declaration by the first respondent that the third respondent has been nominated as the sole parliamentary candidate for Baringo North Constituency."

The respondent's motion was supported by his own affidavit in which he deponed *inter alia*:

(17) That I was validly nominated by the Democratic Party of Kenya to contest for the Baringo North Parliamentary seat during the General Elections scheduled for 29th December 1992.

(18) That since my announcement of my affiliation to and membership of the Democratic Party of Kenya, my entire family and I have been subjected to threats of violence and harassment from the supporters of the KANU Nominee who is the third respondent.

(19) That I left Nakuru on 9th December 1992 at 5.30 am on route to Kabartonjo Baringo North to present my nomination papers.

(20) That at Marigat, I found an unlawful road block erected using huge stones and logs and manned by about one thousand five hundred people wearing YK 92T-Shirts and caps and some plain cloths policemen armed with pangas simis and stones.

- (21) That at the aforementioned road block, I was asked to identify myself, state where I was coming from where I was heading to and produce my KANU Card.
- (22) That my driver did the needful on my behalf and misled the youths as to my identify.
- (24) That I only managed to reach 10 km from Marigat where I encountered a third road block which was manned by vicious and menacing-looking KANU youth wingers at Kamungai.
- (25) That I was forced to turn back at Kamungai road-block as those who manned it were armed with bows and arrows and rungs and I feared for my life.
- (26) That I reached Nakuru Town at around 11 a.m. after my efforts to present my nomination papers at Kabartonjo were badly frustrated.
- (30) That on the same day 9th December, 1992 I was informed by my agent, Mr. Mutua Mboya, Advocate, that he was violently blocked by agents of the third respondent from presenting my nomination papers."

The averments contained in the respondent's affidavit were also repeated in his accompanying statement of facts. There was also an affidavit by Francis Mutua Mboya in which he explained how his efforts to reach Kabartonjo on 9th December, 1992 to deliver the nomination papers of the respondent were thwarted by members of an organisation called Youth for Kanu 92 and youths wearing T-Shirts, they deponed *inter alia*:

- (18) That I was escorted by Mr. Michael Buluma the O.C.S. Kabartonjo. The District Officer (D.O) Baringo North Division Mr. Earrah and several policemen to present Mr Cheboiwo's nomination papers to the Returning Office.
- (19) That on arrival, I found outside the Returning Officer's Office one Mr Willy Kamuren the third respondent herein with a group of about one thousand five hundred (1,500) armed men who formed a human shield (barricade) around the Returning Officer's offices and dared me to come out of my vehicle.
- (20) That I had been violently and unlawfully assaulted before by the same group of people and since the policemen who had escorted me did nothing to disperse the crowd, I could not come out of my vehicle for I feared for my life.

(21) That I sat in my car until 1.15 p.m. when the crowd milled away and I started my journey back having been denied the opportunity to present the nomination papers on behalf of the applicant.

(22) That between 12.30 and 1.15 p.m. Mr Willy Kamuren, the third respondent herein repeatedly addressed the vicious crowd in an inciting and war-like manner.

As at the time the motion came before the Judge, the respondents to the motion (the present applicants) had not filed any affidavit in reply but had filed grounds of objection.

The objections taken on behalf of the Returning Officer and the Commission were that the Commission was not a body capable of being sued or ruling except through the Attorney-General; that an injunction could not be granted on a prerogative writ; that the application was premature as under Section 19 of the National Assembly and Presidential Election Act a question in relation to an election should be by way of a petition; that the court had no jurisdiction; and that the Returning Officer having prepared the necessary certificate under regulation 20 of the National Assembly and Presidential Elections Regulations was *functus officio* and the court had no power to inquire into his decision.

In the case of Mr Kamuren, the grounds of objection were that the application was misconceived and did not lie; that the only remedy, if any, of the applicant (respondent herein) is by way of an election petition after the result of the election has been gazetted; and that the application was premature.

All these grounds of objection were taken before the Judge as a preliminary objection. On 21st December, 1992, the Judge delivered her ruling and dismissed the preliminary objection raised on behalf of the Commission, the Returning Officer and Mr Kamuren. She did not deal with the application on the merits because counsel who appeared for the Commission, the Returning Officer and Mr Kamuren, quite properly, decided to contest the Judge's ruling on the preliminary objection, on appeal. She stayed further proceedings but granted an injunction restraining the Commission from publishing in the Kenya Gazette or otherwise acting or giving effect to the declaration by the Returning Officer that Mr Kamuren had been nominated as the sole parliamentary candidate for Bringo North constituency.

Before us on this application both Mr Ransley and Mr A. B. Shah for the Commission, the Returning Officer and Mr Kamuren, repeated the same submissions they made in the superior court. Basically the submission is that, even if what the respondent alleges happened did happen, his remedy lies in a petition under Section 19 of the National Assembly and Presidential Elections Act (Cap 7) on the grounds that once the Returning Officer had issued a certificate in form 12 under regulation 20 (2) of the National Assembly and Presidential Elections Regulations, the election process was complete and the Commission was obliged to gazette the election of Mr Kamuren. Whether this submission is correct or not, it is not our duty to decide at this stage that

being a matter to be canvassed in the appeal. All we say at the moment is that before a nomination can become the subject of regulation 20 it must first come within the preview of regulation 15 of the National Assembly and Presidential Elections Regulation which stipulates that:

15 (1) For the purpose of nomination of candidates at a parliamentary election every candidate *shall be*

(b) *nominated by the delivery by the returning officer of the constituency* between the hours of eight o'clock in the morning and one o'clock in the afternoon of the nomination day of election of a nomination paper in Form 9. (Emphasis added).

Both Mr Ransley and Mr Shah relied heavily on the case of *Thande Y Manteamers* (1970) E. A. 343 where the Court of Appeal for East Africa held that a preliminary election is part of a parliamentary election and the High Court has jurisdiction to determine any question in respect of a preliminary election. One only needs to read Section 17 (3) of the National Assembly and Presidential Election Act. 1969 (Act No. 13 of 1969) and the definition of preliminary election under the 1969 Act to appreciate that *Thande's* case is now only of historical importance. It has been overtaken by the tide of time.

For this application to succeed, the applicants must satisfy the test laid down in the case of *Stanley Munga Githunguri v Jimba Credit Corporation Ltd.* (Civil Application No. NAI 161 of 1988). They must show that they have an arguable appeal, or put another way, that their appeal is not frivolous and that the appeal, if successful, would be rendered nugatory unless a stay was granted.

As regards the first condition, we entertain a degree of doubt having regard to our reading of the law as it stands today. The law of Kenya contemplates that a Kenyan seeking nomination as a candidate in a parliamentary election shall be entitled to unimpeded access to the Returning Officer of the constituency of his choice.

If this application is refused, the only possible prejudice Mr. Kamuren will suffer if you can call it prejudice, is that his purported election as the Member of Parliament for Baringo North constituency will be lightly delayed but he can take some consolation from the fact that such a temporary setback is not too heavy a price to pay for democracy. Soon after the general election, the Speaker will issue the necessary writ for an election to be held according to the Law.

On the other hand, If we allow this application, we shall be giving a seal of approval to unbridled use of violence and strong arm tactics in the election process. That cannot be the function of a court of law.

The fact that the High Court bench is split right down the middle on the correct legal position on the issues to be canvassed in the appeal only goes to show that the point is not free from difficulty. The elections of this year are not ordinary elections and those who have a genuine interest to participate should be given every encouragement to do so. The Commission has got that power.

In the upshot, the application fails and is dismissed with costs. We are grateful to counsel for their assistance.

Dated and delivered at Nairobi this 24th day of December 1992.

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**IN THE HIGH COURT OF JUDICATURE: ANDHRA PRADESH: AT HYDERABAD  
TUESDAY THE TWENTY-NINTH DAY OF NOVEMBER  
ONE THOUSAND NINE HUNDRED AND NINETY-FOUR**

**PRESENT**

**The Honourable Mr. S. S. Ahmad, Chief Justice  
and  
The Honourable Mr. Justice P. Venkatarama Reddi**

**WRIT APPEAL NO. 1395 OF 1994**

**(Writ Appeal Under Clause 15 of the Letters Patent against the Order in W.P. No  
20283/94 dt 17.11.94 on the file of the High Court.)**

- 1. P. Ravindra Reddy**
- 2. Indrajit Reddy**
- 3. P. Bayyapa Reddy**

**...APPELLANTS**

**V**

- 1. The Election Commission,  
represented by its Secretary,  
Nirvachan Sadan, New Delhi – 1**
- 2. The Chief Electoral Officer,  
Andhra Pradesh, Secretariat,  
Hyderabad.**
- 3. The District Election  
Officer-District Collector,  
Anantapur District,  
Anantapur.**
- 4. The Returning Officer-cum-  
Revenue Divisional Officer,  
163, Gorantla Assembly  
Constituency, Penukonda,  
Anantapur District.**

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5. **The State of Andhra Pradesh,  
represented by the Chief Secretary,  
Secretariat, Hyderabad.**

**...RESPONDENTS**

**Counsel for Appellants:**

**M/s Seshagiri Rao  
& C Kodanda Ram, &  
R. Sudheer**

**Counsel for Respondent No.1**

**Mr C P Sarathy  
Advocate**

**Counsel for Respondents 2 to 5**

**Advocate-General**

***Elections** – Nominations – Kidnapping of prospective candidate – Forcible prevention of filing nomination papers – Impact on purity of the election process – Whether results of the election would reflect true choice of electorate of constituency – Power of Election Commission to recommend rescission election notice in circumstances.*

***Background facts:** The official Congress (I) candidate, Sri Siddaiah, for 163, Gorantha Assembly Constituency was kidnapped by the rebel Congress faction with the intention of preventing him from filing his nomination paper. The matter was investigated by the superintendent of Police, Anantapur, who submitted his report to the Election Commission two days after the kidnapping. The Election Commission took the view that the purity of the election process was irretrievably sullied in the constituency concerned and recommended to the Governor of the State to rescind the notification of election in that constituency. The Governor acted accordingly, and his notification, dated 11.11.1994, cancelling the election was challenged by two writ petitions on the ground, inter alia, that the Election Commission did not have the power to recommend rescission of the notification which initiated the election process in the constituency.*

***Held:** That the notification cancelling the election was properly issued by the Governor of the State.*

***Cases Cited in the Judgement:***

*Mohinder Singh Gill & Another v Chief Election Commissioner & Others (1978) AIR SC 851*  
*A. C. Jose v Sivan Pillai & Others (1984) AIR SC 921*  
*Election Commission of India v State of Haryana (1984) AIR SC 1406*  
*N.P. Ponnuswami v Returning Officer, Namakkal (1952) AIR SC 64*  
*S. Narayanaswami v G. Pannerselvamn (1972) AIR SC 2284*  
*Dhoon Singh v Prekash Chandra Sethi & Others (1975) AIR SC 1012*  
*Thakur Vishweshwar Sharan Singh v State Transport Appellate Tribunal, Gwalior (1981) AIR Madhya Pradesh, 121*

The Court delivered the following judgement:

**ORAL JUDGEMENT (Per The Hon. Chief Justice)**

This Writ Appeal arises out of a common judgement dated 17th November 1994, passed by Mr Justice Motilal B. Naik, by which Writ Petition Nos 20130 and 20283 of 1994 were dismissed at the admission stage.

In order to constitute a new Legislative Assembly for the State of Andhra Pradesh, the Governor of Andhra Pradesh issued a Notification No. 597/Elec.F/94 dated 1st November 1994 under Section 15 of the Representation of People Act, 1951 calling upon all the Assembly Constituencies of Andhra Pradesh, including 163, Gorantla Assembly Constituency, to elect their members for the State Assembly.

This was followed by the Notification issued by the Electoral Commission of India under Section 30 of the Act setting out the following election programme for the Assembly elections in Andhra Pradesh:

8.11.1994	:	Last date for making nomination;
9.11.1994	:	Scrutiny of nominations;
11.11.1994	:	Last date of withdrawal of candidature;
1.12.1994	:	Date of Poll;
9.12.1994	:	Counting of Votes.

Many persons filed their nominations for contesting the election of the State Assembly from 163, Gorantla Assembly Constituency. On 8th November 1994 a fax message was sent by the Chief Electoral Officer, Andhra Pradesh, to the Secretary, Election Commission of India, that he, namely the Chief Electoral Officer, was informed by the Collector and District Election Officer, Anantapur, by telephone that a complaint had been lodged with him, namely, the Collector, that the official Congress (1) candidate, Sri Siddaiah, for 163, Gorantla Assembly Constituency was kidnapped in the morning by the rebel Congress faction with the intention of preventing him from filing his nomination paper and that, he was being searched for by the police so that he could file his nomination before 3.00 pm on the day which was the last day for filing nominations. The Chief Electoral Officer further stated in his fax message that he had instructed the Collector and had also made a request to the Chief Secretary and the Director General of Police to locate the kidnapped person, namely, Sri Siddaiah, so that he could file his nomination paper before 3.00 pm on that day. It was also recited in the fax message that a more detailed report would be submitted on receipt of the report from the Collector. The next day, i.e. on 9th November 1994, the Secretary, Election Commission of India, issued a fax message to the Chief Secretary, Government of Andhra Pradesh, saying that the message of the Chief Electoral Officer, the message of the District Election Officer and the message of the Superintendent of Police quoted in the message of the District Election Officer, did not clearly and specifically state whether Sri

Siddaiah and his proposer were ultimately prevented from filing the nomination paper. The Commission also wanted to know by fax whether nomination papers were in the personal possession of Sri Siddaiah at the time of kidnapping, and wanted a more detailed report whether Sri Siddaiah was physically prevented from filing his nomination paper, either personally or through his proposer. Thereupon, the Chief Secretary, by fax message dated 10th November 1994 informed the Commission that the Collector and District election Officer, Anantapur, had reported that Sri Siddaiah did not carry the nomination paper with him at the time of kidnapping, but he was to go to the office of the Mandal Revenue Officer, Gorantla, to obtain the blank nomination paper and after filling up the same he was to hand over the nomination papers to the Assistant Returning Officer at Gorantla, but this could not be done on account of his kidnapping and he could not reach the office of the Mandal Revenue Officer, nor could he file the nomination paper.

The Superintendent of Police, Sri A Sivanarayana, IPS submitted a report about the incident of 8th November 1994 and set out therein that Sri K Siddaiah, who was a practising Advocate of Anantapur, was given Congress (1) Ticket to contest from 163, Gorantla Assembly Constituency and the sitting M.L.A., Sri Ravindra Reddy of Pamudurthi, who was aspiring for Congress (1) Ticket, could not get it. He, therefore, decided to file his nomination as an independent candidate and for that purpose he and his followers assembled at the office of Mandal Revenue Officer on 8th November 1994. In the meantime, at about 1.00 pm on 8th November 1994, the Inspector of Police, Sri Satya Sai Rural Circle, got information that Sri K Siddaiah, Congress (1) candidate, along with his followers, while proceeding from Anantapur to Gorantla via Puttaparthi to file his nomination paper got abducted at about 11.30. am by Sri P Ravindra Reddy, sitting M.L.A., who could not get Congress (1) Ticket, by his men who took him and his follower Sri G. Narasimhulu, Advocate, away to unknown destination. This information was passed on to superior officers and District S. B. Control of VHF Set and a case was registered as Crime No. 93/1994 under Sections 147, 148, 342, 323, 365 and 149, I. P. C. at Police Station, Gorantla, at 1.15 P.M. on 8.11.1994. All border Police Stations were alerted and search parties were deputed to different directions. During the course of investigation, it was ascertained that Commander Jeep No. AP 04 6336 was used in abducting the Congress (1) candidate and his follower. The Jeep was traced at 1.00. am on 9th November 1994 near Gorantla Town and was seized. In the meantime information was received by the police in the early hours of 9th November 1994 that both the abducted persons had reached their houses at Anantapur at about midnight. Sri K. Siddaiah and his friend and follower Sri G. Narasimhulu were examined by the Deputy Superintendent of Police, Penukonda, and they stated that they were abducted on the instigation of Sri P. Ravindra Reddy, sitting M. L. A. by his men and were detained in the hillocks of Pamudurthi hilly area from 1.00 pm to 7.00 pm, which prevented Sri K. Siddaiah from filing his nomination paper by 3.00 pm on 8th November 1994.

The above report of the Superintendent of Police, Anantapur, was considered by the Election Commission of India on 10th November 1994 and being of the view that the purity of the election process was irretrievably sullied in 163, Gorantla Assembly Constituency in the State of Andhra Pradesh, and in those circumstances the result of the election in the said constituency would not

be reflective of the true choice of the electorate of that constituency, it recommended to the Governor of the State to rescind the notification dated 1st November 1994 issued by him under Section 15 (2) of the Representation of the People Act, 1951 in so far as it related to 163, Gorantla Assembly Constituency, so that the entire election process may be commenced anew in that Constituency. Acting upon the above recommendation, the Governor of Andhra Pradesh, by notification dated 11th November 1994, cancelled the notification dated 1st November 1994 issued under Section 15 (2) of the Act. The notification dated 11th November 1994 was challenged by means of two writ petitions, namely, *W.P. No. 20130/1994 (N. Kristappa v The Chief Election Commission & Others)* and *W. P. No. 20283/1994 (P. Ravindra Reddy v Election Commissioner & Others)*, filed in this Court on the ground, *inter alia*, that the Election Commission was not vested with any power to recommend rescission of the notification issued under Section 15 (2) of the Act by which the election process was initiated in the State and that the power, in any case, had been exercised in an unfair and arbitrary manner on the biased reports of the Chief Electoral Officer, Andhra Pradesh and, therefore, its recommendation to rescind the notification dated 1st November 1994 is vitiated. The writ petitions were dismissed by a common judgement and order dated 17th November 1994, and the present appeal is directed against this judgement.

Sri Seshagiri Rao, appearing on behalf of the appellants has contented that rescission of a notification issued under Section 15 of the Act, by which the election process was set in motion, is not contemplated by the Act and, therefore, the Election Commission was in error in recommending to the Governor that the said notification may be rescinded. It is also contented that the Election Commission has to act within the ambit and scope of the Representation of the People Act, 1950 and the Representation of the People Act, 1951 as both the Acts have been made by Parliament under Article 327 of the Constitution and provide for all matters relating to, or in connection with elections to either House of Parliament or either House of the Legislature of a State. It is contented that the Election Commission cannot traverse beyond the scope of the aforesaid two enactments, and since recommendation to rescind the notification issued under Section 15 of the Act is not covered by any provision of the Act nor is contemplated by the Act, the impugned Notification issued by the Governor in pursuance of the said recommendation was liable to be set aside and the earlier notification issued under Section 15 was liable to be restored, so that the electorate of 163, Gorantla Constituency could also exercise their franchise in the General Elections proposed to be held in December 1994 for constituting a new State Legislative Assembly.

The relevant provision of Article 324 of the Constitution is quoted below:

"324 Superintendence, direction and control of elections to be vested in Election Commission.

(1) 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 President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).

(2)	xxx	xxx	xxx
(3)	xxx	xxx	xxx
(4)	xxx	xxx	xxx
(5)	xxx	xxx	xxx
(6)	xxx	xxx	xxx

Articles 327, 328 and 329 which are also relevant for purposes of the present case, are also quoted below:

"327 Power of Parliament to make provision with respect to elections to Legislatures:

Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of Legislature of a State including the preparation of electoral rolls, the delineation of constituencies and all other matters necessary for securing the due constitution of such House or Houses".

"328 Power of Legislature of a State to make provision with respect to elections to such Legislature:

Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provision with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses."

"329 Bar to interference by courts in electoral matters:

Notwithstanding anything in this Constitution –

- (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies,

made or purporting to be made under Article 327 or Article 328, shall not be called in question in any court;

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

Learned Advocate-General appearing on behalf of the respondents, as also Sri C. P. Sarathy, appearing on behalf of the Commission, have contended that the writ petition was not maintainable on account of the bar to interference by Court created by Article 329 of the Constitution and, therefore, this appeal which is continuation of the writ petition, is also liable to be dismissed at the threshold as not maintainable. It is contended that on account of the provisions contained in Article 329 this Court need not go into the merits of the question raised in the writ petition or in this Writ Appeal, and that the appeal may be dismissed at the admission stage itself.

Since all the parties are represented before us, we propose to hear and dispose of the appeal at the initial stage itself as the usual exercise of first admitting the appeal and then allowing it to come up for hearing in its turn in the normal course would unnecessarily delay the disposal of a matter which requires to be disposed of at the earliest, so that the question whether the electorate of 163, Gorantla Constituency will at all exercise their right of franchise in the present election may be settled before the date of the poll which, we are informed, will be held either on 1st of December or on 5th of December, 1994. In disposing of the appeal on merits we would also, if necessary, consider the question of maintainability of the writ petition as also this appeal, at the appropriate stage of this judgement.

A perusal of Article 324 extracted earlier will show that the Election Commission is clothed with very wide powers. In the matter of Election to Parliament and to the State Legislatures, as also to the offices of the President and Vice-President, it has vested in it the superintendence, direction and control of the preparation of electoral rolls. The power to conduct all the above elections is also vested in it. The Commission has also the power to advise the President or the Governor of a State, as the case may be, on the question of disqualification of any Member of Parliament or of a State Legislature. While superintendence, direction and control of the preparation of Electoral rolls and conduct of all elections to Parliament and State Legislatures are vested in the Commission, the Parliament, under Article 327, has been given the power to make law for all matters relating to, or in connection with, election to either House of Parliament or to either House of the Legislature of a State. In exercise of the power under this Article, the Parliament has, as already pointed out earlier, enacted the Representation of the People Act, 1950 and the Representation of the People Act, 1951. But this does not mean that the Commission, on account of the aforesaid two Parliamentary enactments, is divested of its power of superintendence,

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direction or control of preparation of electoral rolls, or conduct of all elections to Parliament or State Legislatures, or to the offices of the President and the Vice-President of India.

The effect of the law made by Parliament under Article 327 or by the State Legislature under Article 328 was considered by the Supreme Court in *Mohinder Singh Gill & Another v Chief Election Commissioner & Others* and it was laid down that:

".....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 heading 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 to be the *raison d'être* for the opening clause in Article 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 conform to the existing laws and rules in exercising its powers and performing its manifold duties for the conduct of free and fair elections.....".

It is thus clear that the Election Commission still retains its jurisdiction as also all its plenary powers under Article 324, except in respect of matters for which specific provisions have been made in the Act made either by Parliament under Article 327, or by a Legislature under Article 328.

It may be stated that in *Mohinder Singh Gill's case supra*, election to a particular constituency was cancelled and a re-poll was ordered by the Commission, which was challenged before the Supreme Court, and the Supreme Court held that the Commission, notwithstanding the law made by the Parliament in the form of the Representation of the People Act, 1950 and that of 1951, still had the jurisdiction and power under Article 324 to cancel an election and to order a re-poll in a situation which was not foreseen by the Act and for which no provision was made therein. The Election Commission is, therefore, entitled to exercise its plenary power under Article 324 in an area not covered by the Act, or the Rules made thereunder.

In *A. C. Jose v Sivan Pilai & Others (2)* it was held that when there is no Parliamentary or State legislation, or where there does exist a Parliamentary or State legislation or the Rules made thereunder but they are silent with regard to a particular situation, the Election Commission will have plenary power to give appropriate directions in respect of the conduct of election. It was also held that the Commission cannot override the express provisions in the Act, or pass orders in direct disobedience to their mandate. The Supreme Court observed that the Commission's powers are meant to supplement and not supplant the law.

In *Election Commission of India v State of Haryana (3)* it was laid down by the Supreme Court that the ultimate decision whether at a given time it would be possible and expedient to hold the elections must rest with the Election Commission. It was also laid down that the Election Commission also has the power to review its decision as to the expediency of holding the poll on the notified date. It was also provided that it was the duty and obligation of the Commission to keep the situation under constant scrutiny so as to adjust the decision to the realities of the ground situation, and until the elections are held the Commission has jurisdiction, for good reasons, to alter its decision to hold the poll on a particular day.

In view of the above decisions of the Supreme Court it is clear that the law with regard to the power of the Commission under Article 324 has not undergone any change from the date of first decision in *N.P. Ponnuswami v Returning Officer, Namakkal (4)* till the more recent decisions on the point.

We have already set out the facts leading to the issuance of the impugned notification earlier part of this judgement, which would show that the Commission had intervened in the matter only on being satisfied that the candidate set up by a national political party had been abducted so as to prevent him from filing his nomination paper. The Commission was of the opinion that election, if held, would not be reflective of the true will of the people and, therefore, it decided to recommend to the Governor to issue a fresh notification for cancelling the notification dated 1.11.1994 issued under Section 15 of the Act, so as to discontinue the process of election in 163, Gorantla Assembly Constituency and pave way for initiation of a fresh process of election. The abduction of a candidate is a situation which is not foreseen by any of the provisions contained in the Representation of the People Act, 1951 or the Rules made thereunder and, therefore, when the Commission recommended to the Governor of Andhra Pradesh to cancel the notification dated

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1st November 1994, it purported to operate in a field which was not covered by any parliamentary legislation. It could therefore exercise its plenary power under Article 324 for getting the process of election stalled or cancelled altogether by appropriate action.

Learned Counsel for the appellants has contended that once the process of election is commenced by issuing the requisite notification under Section 15 of the Act, it cannot be stopped or interfered with at any subsequent stage by any authority, including the Election Commission, as the process is irreversible under law. He has, in this connection, drawn our attention to Section 153 of the Act which provides that it shall be competent for the Election Commission, for reasons which it considers sufficient, to extend the time for the completion of an election by making necessary amendments in the notification issued by it under Section 30, or sub-section (1) of Section 39, and has contended that if a situation as happened in 163, Gorantla Assembly Constituency occurs, the Election Commission can extend the time fixed in the notification issued under Section 30 of the Act, but it cannot altogether cancel the process of election commenced by the notification issued under Section 15 of the Act. Section 153 contains an enabling provision which empowers the Election Commission to extend the time for the completion of any election. Under Section 30, or for that matter, under Section 39 of the Act, various dates constituting the election programme are fixed by the Election Commission. The purport of Section 153 is only to give power to the Commission to alter that programme by extending the time for the completion of the election. Under Section 52 of the Act, a poll can be countermanded on the death of a candidate if other conditions set out in the Section are fulfilled.

Section 57 contemplates adjournment of poll in certain situations, while Section 58 contemplates fresh poll in the case of destruction etc. of ballot boxes. A situation arising out of abduction of a prospective candidate so as to prevent him from filing the nomination paper is not contemplated by the provisions referred to above, or any other provision in the Act. So far as the statutory provisions, to which a reference has already been made, are concerned, the Election Commission cannot transgress over those provisions, nor can it act in defiance or disobedience or in violation of the said provisions. But, where the statutory provisions are silent, as in the case of abduction of a prospective candidate the Commission can exercise its plenary power under Article 324 and issue appropriate directions, or make recommendation to the Governor for the cancellation of the notification requiring the Assembly constituency concerned to elect its representative. In doing so, it would not over-step any statutory provision, nor would such a direction or recommendation be in defiance thereof.

In view of the above situation, the learned Single Judge was, in our opinion, justified in holding that the Election Commission was justified in recommending to the Governor to cancel the notification issued under Section 30 by the impugned notification dated 11th November 1994.

Learned Counsel for the appellants contended that by holding that in order to overcome a situation caused by the abduction of a prospective candidate, the Commission could recommend cancellation of the process of election, the learned Single Judge has added or legislated a new



(2) For the said purpose, the Governor or Administrator, as the case may be, shall, by one or more notification published in the Official Gazette of the State on such date or dates as may be recommended by the Election Commission, call upon all Assembly constituencies in the State to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder:

Provided that where a general election is held otherwise than on the dissolution of the existing Legislative Assembly, no such notification shall be issued at any time earlier than six months prior to the date on which the duration of that Assembly would expire under the provisions of Clause (1) of Article 172 or under the provisions of Section 5 of the Government of Union Territories Act, 1963 (20 of 1963), as the case may be."

The provision contemplates that the Governor can call upon all the constituencies to elect new members either by one notification or by more than one notification. The provision also contemplates recommendation of the Commission as to the date or dates when such notifications are to be published.

The Representation of the People Act is a Central Act made by Parliament under which the Governor of the State, as pointed out earlier, has been given the power to issue notification calling upon the constituencies to elect new representatives. Since the power to issue notification is available under the Central Act, the provisions of Section 21 of the General Clauses Act, which is quoted below, would be available to the Governor in rescinding the notification, as it is specifically provided that:

"Where, by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions, if any, to add to, amend, vary or rescind any notifications, orders, rule or bye-laws so issued".

It requires no effort of interpretation to understand the meaning of Section 21 of the Act, as the provisions are clear and specific and there is no ambiguity involved. The power to issue a notification also includes the power to vary or rescind such notification provided the conditions for the exercise of that power, while issuing that notification, are complied with at the time of issuing the notification of rescission.

There is nothing in Section 15 or any other provisions of the Representation of the People Act which, by context or by implication excludes the availment of power conferred by Section 21 of the General Clauses Act. On the other hand, the exercise of power under Section 21 in a case of this nature advances the purpose of the enactment dealing with elections.

The notification under Section 15 was issued by the Governor on 1st November 1994 on the recommendation of the Election Commission. The impugned notification dated 11th November 1994 by which the earlier notification was rescinded has also been issued on the recommendation of the Election Commission which was of the opinion that the kidnapping and subsequent prevention from filing nomination by Sri K. Siddaiah was proved and that, the purity of the election process had been irretrievably sullied in 163, Gorantla Constituency. Thus, all the conditions which were required to be complied with at the time of issuance of notification under Section 15 have also been complied with at the time of issuance of the impugned notification for rescinding the earlier notification.

Learned Counsel for the appellants referred us to a decision of the Madhya Pradesh High Court in *Thakur Vishweshwar Sharan Singh v State Transport Appellate Tribunal, Gwallor*, in which it was laid down that if an Act is brought into force by notification issued by the State Government, the latter, namely the Government, cannot cancel or modify the notification so as to repeal a provision of the Act which has been brought into force. This decision, in our opinion, does not apply to the facts of the case. In that decision certain provisions of the Motor Vehicles Act were amended which were enforced from a particular date by a Notification issued under Section 1(2) of the Act by the State Government. This notification was subsequently sought to be modified by a subsequent notification, and it was in that connection held by the Madhya Pradesh High Court that no other notification could be issued with the aid of Section 21 of the General Clauses Act, as it would have the effect of repealing the amended provision of the Act brought into force by the earlier notification.

In the instant case, the substantive provisions of the Representation of the People Act, 1951 are not affected, and it is only the direction issued to the constituency to elect its representative which has been withdrawn with the promise to start the election process anew in 163, Gorantla Constituency.

Lastly we shall advert to an argument advanced by the learned Counsel for the appellants that Sri Siddaiah was not nominated as a candidate, that he does not come within the definition of 'candidate' and therefore the powers under Article 324 of the Constitution and Section 21 of the General Clauses Act should not have been invoked to protect the interests of a non-candidate.

Assuming that he is not a candidate within the meaning of the Act or the Conduct of Election Rules, undisputedly he is a person who was authorised to contest the election on behalf of a national party. The physical disability of such candidate to file nomination by reason of his abduction is certainly a factor which has inevitable bearing on the purity and fairness of election. It cannot be said that in the circumstances, the power has been exercised for any extraneous purpose, particularly as the Commission had acted after obtaining full details of the incident from various sources and had proceeded in the matter only on being satisfied that the election process in 163, Gorantla Constituency had been "irretrievably sullied".

No other point was urged before us. Since we have found on the merits of the case that the impugned notification does not suffer from any of the defects pointed out by the learned Counsel for the appellants and we are of the opinion that the said notification was properly issued by the Governor of the State, we need not decide the preliminary objection raised by the learned Advocate-General as also by Sri C. P. Sarathy on behalf of the Election Commission that the present petition, or for that matter, the present appeal is not maintainable in view of Article 329 of the Constitution.

The appeal is dismissed without any order as to costs.

Sd/-M. V. Subba Rao,  
Addl. Dy Registrar

// TRUE COPY //

for Asst. Registrar.

To:

1. The Secretary, Election Commission, Nirvanchan Sadan, New Delhi
2. The Chief Electoral Officer, A.P., Secretariat, Hyderabad
3. The District Election Officer/District Collector, Anantapur Dt. Anantapur
4. The Returning Officer-cum-Revenue Divisional Officer, 163 Gorantla  
Assembly Constituency, Penukonda, Anantapur District
5. The Chief Secretary, State of A.P., Secretariat, Hyderabad
6. One C. D. copy
7. One cc to Mr. C. P. Sarathy, Advocate (OPUC)

K. U. R. R.

Dated: 29. 11. 1994

JUDGEMENT:

W. A. NO. 1395 OF 1994

Dismissing the W. A.  
without costs.

**Footnotes**

- (1) *AIR 1978 SC 851*
- (2) *AIR 1984 SC 921*
- (3) *AIR 1984 SC 1406*
- (4) *AIR 1952 SC 64*
- (5) *AIR 1972 SC 2284*
- (6) *AIR 1975 SC 1012*
- (7) *AIR 1981 Madhya Pradesh, p. 121*