(1998) 10 SHI CK 0017

High Court of Himachal Pradesh

Case No: Election Petition No. 8 of 1998

Yogesh Sethi and Another		APPELLANT
	Vs	
Ms. Krishna Mohini and Others		RESPONDENT

Date of Decision: Oct. 14, 1998

Acts Referred:

- Representation of the People Act, 1951 - Section 83

Citation: AIR 1999 HP 6 : (1999) 1 ShimLC 384

Hon'ble Judges: R.L. Khurana, J

Bench: Single Bench

Advocate: Bhoop Singh and K.D. Sood, for the Appellant; O.P. Singh, M.S. Chandel, Asha Vaid, Sunita Sharma and G.D. Verma, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R.L. Khurana, J.
The election to the 9th Himachal Pradesh Legislative Assembly were held on 28-2-1998. Respondents 1 to 7 contested such elections from 14 Solan Assembly Constituency. Respondent No. 1, who was a Congress candidate, was declared elected in such elections. Respondent No. 2, who was a candidate of Bhartiya Janta Party, was defeated by margin of 26 voles by respondent No. 1.

2. The two petitioners before this Court are the voters of 14-Solan Assembly Constituency petitioner No. 1 was the counting agent, while petitioner No. 2 was the election agent of respondent No. 2 during such elections. By virtue of the present petition they have assailed the election of respondent No. 1, under Sections 80, 81 read with Sections 100 and" 101 of the Respresentation of People Act, 1951 (hereinafter referred to as the Act). They have prayed that the election of respondent No. 1 from 14-Solan Assembly

Constituency be declared void and be set aside and that respondent No. 2 be declared to have been duly elected from the said constituency u/s 101(a) of the Act.

3. While assailing the election of respondent No. 1 and in making out a case for inspection and recounting of votes, the petitioners have averred that the election of respondent No. 1 is hit by invalid counting of votes, wrong reception"" invalid votes in favour of respondent No. 1 and wrong rejection of valid votes cast in favour of respondent No. 2. According to the petitioners during the course of second recount 37 valid votes polled in favour of respondent No 2. despite protests by petitioner No. 2, were wrongly and illegaly rejected by the Returning Officer on the ground that the mark of seal was affixed in the column of respondent No. 2 as well as in the column of other candidates, that is, either in the column of respondent No. 4 or in the column of respondent No. 5. The details of such 37 votes have been given in Para 8 of the petition as under:--

Counting Table No.	No. of votes polled in favour of respondent No. 2 and rejected on the ground that the mark has also appeared in column of another candidate"s column which actually was impression of mark in respondent No. 2"s column
i ii	iii
1 2	3 (In two of the ballots the impression of seal, originally affixed in the column of respondent No. 2, has appeared in the column of Sh. Vinod Kumar and on 3rd ballot paper the impression of seal has appeared in the column of Sh. Ravinder Nalh Parihar,
1 4	1 (impression of seal appeared in the column of Sh. Vinod Kumar whereas original was affixed in respondent No. 2"s column.
1 5	3 (impression of seal in all the three ballot papers appeared in the column of Sh. Vinod Kumar, whereas original was affixed in respondent No. 2"s column.
1 10	4 (impression of seal in three of the ballot papers appeared in the column of Sh. Vinod Kumar whereas on the 4th ballot paper impression of seal appeared in the column of Sh. Ravinder Nath Parihar, whereas the original mark was in the column of respondent No. 2.

1	13	4 (impression of seal in all the ballot papers appeared in the column of Sh. Vinod Kumar whereas the original mark was in respondent No. 2''s column.
1	14	2 (impression of seal appeared in the column of Sh. Vinod Kumar in one ballot paper and on the other the impression of seal appeared in the column of Sh. Ravinder Nath Parihar, whereas the actual mark of seal was in the column of respondent No. 2.
2	2	3 (impression of seal in all the ballot papers appeared in the column of Sh. Vinod Kumar, whereas original mark was in the column of respondent No. 2.
2	3	3 (In two of the ballot papers impression of seal had appeared in the column of Sh. Ravinder Nath Parihar, whereas on the third ballot paper the impression of seal had appeared in the column of Sh. Vinod Kumar, whereas the original mark was in the column of respondent No. 2.
2	4	1 (impression of seal appeared in the column of Sh. Vinod Kumar, whereas original mark was in respondent No. 2''s column.
2	5	2 (impression of seal had appeared in the column of Sh. Vinod Kumar whereas original mark of seal was in respondent No. 2''s column.
2	8	1 (impression of seal had appeared in the column of Sh. Vinod Kumar Nath Parihar whereas original mark of seal was in respondent No. 2''s column.
2	12	1 (impression of seal had appeared in the column of Sh. Vinod Kumar whereas original mark of seal was in the column of respondent No. 2.
2	13	3 (impression of seal had appeared in the column of Sh. Vinod Kumar whereas the original mark of seal was in the column of respondent No. 2.

3	1	1 (impression had appeared in column of Sh. Ravinder Nath Parihar whereas original mark of seal was in the column of respondent No. 2.
3	5	1 (impression of seal had appeared in the column of Sh. Vinod Kumar whereas the original mark of seal was in the column of respondent No. 2.
3	7	1 (impression of seal had appeared in the column of Sh. Vinod Kumar whereas the original mark of seal was in the column of respondent No. 2.
3	14	3 (impression of seal had appeared in the column of Sh. Vinod Kumar whereas the original mark of seal was in the column of respondent No. 2.

4. The Returning Officer is further alleged to have wrongly, illegally and improperly rejected 8 valid votes polled in favour of respondent No. 2 on the ground that the mark of seal on the ballot paper was made otherwise than with the instrument supplied for that purpose, that is, the mark of seal was indistinct. The particulars of such 8 votes, as detailed in Para 9 of the petition are as under:--

Round No.	Table No.	Number of votes which were polled in favour of respondent No. 2 and rejected on the ground that mark of seal in the respondent No. 2"s column is indistinct, whereas actually the mark was quite clear and distinct
1	2	3
1	1	1
1	2	1
1	10	1

1	12	1
2	7	1
2	11	1
3	5	2

5. The petitioners have further averred that apart from improper rejection of abovementioned 45 votes polled in favour of respondent No. 2, 27 votes were improperly and wrongly received and counted in favour of respondent No. 1, which ought to have been rejected underrate 56B of the Conduct of Election Rules, 1961 (hereinafter referred to as the Rules). The particulars of such 27 votes have been detailed in Para 10 of the petition as under:--

1	2	3	4	5
Round No.	Table No.	Invalid votes in which mark of seal was affixed in the column of respon-dent No. 1 as well as in the column of Haminder Singh Thakur and coun-ted as valid for respon-dent No. 1	Invalid votes having indistinct mark and counted as valid in favour of respondent No. 1	Invalid votes where mark was affixed in blank space between columns of respond-ent No. 1 and Jagdish Chander Bhardwaj and counted for res-pondent No. 1
1	1	2	-	-
1	2	-	1	2
1	5	2	-	1
1	7	1	1	-

1	9	3	-	-
1	10	-	1	1
1	12	2	-	-
2	7	2	1	-
2	9	1	-	-
2	10	3	-	-
2	12	-	1	-
3	13	2	-	-

6. The petition is being resisted and contested by respondent No. 1 only. Respondents 3 to 6 failed to appear in spite of service. They were as such ordered to be proceeded against ex-parte. Respondent No. 2 vide his written statement dated 18-6-1998 has admitted the case of the petitioners in toto. Respondent No. 7 has chosen not to file any written statement.

7. Respondent No. 1, while resisting the petition has denied the averments made in the petition with regard to the irregularities alleged to have been committed by the counting staff and/or the Returning Officer. It was averred that the election petition lacks in material facts and particulars and it does not furnish a cause of action. Further objections raised are to the effect that a true copy of the petition has not been supplied and that the petition is bad for non-joinderof necessary parties inasmuch as Sarvshri B.S. Nainta, Tek Chand Thakur and Bishamber Jhangta, who respectively were the Deputy Commissioner, Solan, Returning Officer, Solan and Assistant Returning Officer, Solan, at the relevant time and against whom serious allegations have been made, have not been impleaded as parties.

8. On the basis of the pleadings of the parties, following issues were framed on 8-7-1998:--

1. Whether the copy of the petition supplied to the respondent is not a true copy of the petition? If so, to what effect? OPR

2. Whether the petition has not been properly verified as required u/s 83(C) of the Representation of the People Act? If so, to what effect? OPR.

3. Whether the petition lacks material particulars and facts and is vague as alleged? If so, to what effect? OPR

4. Whether the petition is bad for want of nonjoinder of necessary parties? If so, to what effect? OPR

5. Whether the petitioner is entitled to recount of votes for the reasons stated in the election petition? OPP

6. Whether 45 valid votes of respondent No. 2 were wrongly rejected and 27 invalid votes of respondent No. I were wrongly accepted as alleged? If so, to what effect? OPP

7. Whether irregularities and illegalities were committed during counting as mentioned in the petition? If so, to what effect? OPP

8. Relief.

9. Issues Nos. 1 to 4 above were ordered to be treated as preliminary issues. By this order, the said preliminary issues are being disposed of.

10. The parties chose not to lead any evidence in support of the preliminary issues. I have heard the learned counsel for the parties and have also gone through the record of the case. My finding on the abovesaid preliminary issues are as under:

Issue No. I.

11. This issue was not pressed by the learned counsel for the respondent No. 1, during the course of hearing. The same is as such decided against respondent No. 1.

No. 2.

12. Clause (c), Sub-section (1) of Section 83 of the Act provides that an election petition shall be signed by the petitioner and verified in the manner laid down in the CPC for the verification of the pleadings. Rule 15 of Order 6, Code of Civil Procedure, deals with verification of pleadings. It reads: --

"15. Verification of pleadings:-- (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the fact of the case.

(2) The person "verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and snail Mate the crate on which and the place at which it was signed."

13. The petition, in the present case, has been verified by the petitioner No. 2, in the following terms:--

"Verified at Shimla, this 15th day of April 1998 that the contents of paragraphs 1 to 16 of the petition are true and correct to my knowledge and nothing is wrong or concealed therefrom."

14. The learned counsel for respondent No. 1 has contended that Rule 15(2) of Order 6, Code of Civil Procedure, specifically lays down that "the person verifying shall specifically specify by reference to the number of paragraphs of the pleadings, what he verifies of his own knowledge and what he verifies upon information received and believed to be true." In the present case the contents of all the paragraphs No. 1 to 16 have been verified as true and correct to the personal knowledge of petitioner No. 2. None of the paragraphs have been verified as correct on the basis of information received and believed to be true. The learned counsel for the respondent No. 1 by drawing the attention of this Court to the contents-of paragraphs 6,7,9,10,11 and 12 of the petition, has contended that the facts stated therein could not have to be the personal knowledge of petitioner. No. 2. Such knowledge of facts must have been derived on the basis of information -received. Therefore, failure on the part of the petitioners ,to verify the contents of such paragraphs on the basisof information received and believed to be true, renders the verification defective arid the petition is liable to be rejected.

14-A. It is significant to note that petitioner No. 2 was the election agent of respondent No. 2 and was present throughout during the course of counting process. He was present at the table of the Returning Officer, where all the doubtful votes from different counting tables were being brought by the counting staff for the purpose Of adjudication regarding the validity or otherwise of such doubtful votes. Therefore, the facts enumerated in the above referred to paragraphs can be very well said to be in the personal knowledge of petitioner No. 2, who has verified the petition. Therefore, no fault can be found with the verification of the petition.

15. Even if it be assumed that the petition has not been properly verified within the meaning of Clause (c), Sub-section (1) of Section 83 of the Act, the present petition cannot be thrown out simply on this ground.

16. In Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore and Others, and in F.A. Sapa Etc., Etc., Vs. Singora and others, , it has been held that mere defect in the verification is not fatal and the election petition cannot be thrown out solely on that ground and that the defect can be removed in accordance with the provisions contained in the Code of Civil Procedure.

17. To the similar effect it has been held by this Court on 19-8-1998, in Smt. Renu Chanda v. Smt. Asha Kumari, Election Petition No. 7 of 1998.

18. The issue is accordingly decided against respondent No. 1. Issue No. 3.

19. Section 83 of the Act, insofar as it is material for the purpose of determination of the present issue, provides:--

"83. Contents of petition.-(l) An election petition-

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

(b) shall set forth full particulars of any corrupt practice that the petitioner 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).....

(2).....

20. In the light of the above provisions, the learned counsel for respondent No. 1 has raised the following contentions:--

(i) No details of counting agents in respect of each table have been given;

(ii) No material has been disclosed as to how the petitioners derived the knowledge/information as to invalid votes;

(iii) Serial number of the votes polled in favour of respondent No. 2 and improperly rejected as well as the votes improperly received and counted in favour of respondent No. 1 not mentioned;

(iv) The details of polling booths not given;

(v) The names of counting attendants/supervisors of each counting table have not been given.

(vi) A roving and fishing enquiry is being sought by the petitioners.

21. While dealing with the scope and ambit of Section 83 of the Act, the Hon''ble Supreme Court in Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, has laid down the following principles:--

1. Section 83 of the Act is mandatory and requires first a concise statement of material facts and then requires the fullest possible particulars.

2. Omission of a single material fact leads to an incomplete cause of aclion and the statement of claim becomes bad.

3. The function of particulars is to present in full a picture of the cause of action to make the oppositeparty understand the case he will have to meet.

4. Material facts and particulars are distinct matters. Material facts will mention statement of facts and particulars will set out the names of the persons with date, time and place.

5. Material facts 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.

6. In stating the material facts, it will not do merely to quote the words of the section because then the efficacy of the material facts will be lost. The fact which constitute a corrupt practice, must be stated and the fact must be correlated to one of the heads of corrupt practice.

7. An election petition without the material facts relating to corrupt practice is no election petition at all. A petition which merely recites the sections cannot be said to disclose a cause of action where the allegation is the obtaining or procuring of assistance unless the exact type and form of assistance and the person from whom it is sought and the manner in which the assistance is to further the prospects of the election are alleged as statements of facts.

22. The petitioners have primarily challenged the election of the respondent No. 1 on the basis of facts enumerated in paragraphs 8 to 19 of the petition. Therefore, it is to be seen whether these paragraphs contain a concise statement of material facts, that is, cause of action.

23. There is no denying that after the original counting of votes, two recounting of votes were ordered by the Returning Officer. While the first recount was ordered at the behest of respondent No. 1, the second recount was ordered at the behest of respondent No. 2 and/or his election agent. Since, the challenge to the election of respondent No. 1 is based on the irregularities alleged to have been committed during the course of second recount, the necessary material facts and particulars with regard thereto have been detailed in paragraphs 8 to 19 of the petition.

24. The contentions raised on behalf of the respondent No. 1, under the present issue, and detailed above are being dealt with hereinafter.

Contention No. (i).

25. A bare perusal of the pleadings set out in paragraphs 8 to 10 of the petition shows that the challenged to the election of respondent No. 1 is based on wrongful rejection to votes which were polled in favour of respondent No. 2 and wrongful reception of invalid votes polled in favour of respondent No. 1.

26. Rule 56 of the Rules enumerate the situations in which the Returning Officer can reject the ballot papers.

27. It has been averred in Para 8 of the petition that respondent No. 2 and petitioner No: 2 were present at the table of the Returning Officer, where validity or otherwise of the doubtful votes was decided by the Returning Officer. Therefore, in view of the fact that the challenge to the election of respondent No. 1. is based on wrongful rejection of valid votes and wrongful reception of invalid votes by the Returning Officer, the petitioners

were not required to give the details of each counting agent deputed on each counting table. Such particulars, on the facts and in the circumstances of the present case, would not constitute "material facts on which the petitioner relies" within the meaning of Section 83(l)(a) of the Act.

Contention no. (II)

28. As stated above, it is specifically pleaded in paragraph of the petition that petitioner No. 2 was present at the table of the Returning Officer where the validity or otherwise of the doubtful votes was being decided. Therefore, it is evident that the knowledge and information as to the facts enumerated in paragraphs 8 to 10 of the petition are based on the personal knowledge of petitioner No. 2 and as such no further material in this regard was required to be disclosed.

Contention No. (iv)

29. Admittedly, as per the Rules, as contained in Part V relating to counting of votes, the counting is not to be carried out boothwise. UnderRule 55 all the ballot boxes used in various polling stations are to be opened and the ballot papers found therein are to be counted simultaneously. Therefore, the petitioners are not obliged to set out the details of the polling booths. No fault can be thus found on this score in the petition.

Contention Nos. (v).

30. For the reasons set out while dealing with the contention No. (i) above, the petitioners were not required to give the names of counting agents/ supervisors of each table.

Contentions No (iii) and (vi).

31. The petitioners in paragraph 8 of the petition while giving the number of the valid votes polled in favour of respondent No. 2 which are alleged to have been wrongly and illegally rejected by the Returning Officer, have also given the counting table numbers and the grounds for rejection of such ballot papers. Similarly, in Paragraph 9 of the petition, the petitioners have given the number of votes polled in favour of respondent No. 2 which are alleged to have been wrongly and illegally rejected by the Reluming Officer, along with the number of the counting table and the ground on which such ballot papers were rejected. Again in paragraphs 10 of the petition, the petitioners have set out the number of invalid votes, which are alleged to have been wrongly and illegally accepted and counted in favour of respondent No. 1, along with number of the counting table and the grounds on which such ballot papers were to be treated as invalid.

32. The petitioners have specifically pleaded that particulars of ballot papers could not be furnished as during the course of counting, they were not permitted to notedown the serial number of such ballot papers.

33. In, Arun Kumar Bose Vs. Mohd. Furkan Ansari and Others, the election of the returned candidate was challenged by the defeated candidate on the ground that 74 ballot papers on table No. 10, Booth No. 10 polled in favour of the election petitioners were wrongly rejected on the ground that they did not contain the signature of the Presiding Officer. The election petitioner in his petition had furnished (a) the number of votes alleged to have been wrongly rejected, (b) the number of counting table, (c) the number of the booth, and (d) the ground on which such ballot papers were rejected. Only serial numbers of the ballot papers alleged to have been wrongly rejected were not given. It was pleaded by the election petitioner that particulars of such ballot papers could not be obtained as during the counting they were not shown. An objection was raised by the returned candidate that the petition lacked in material facts.

34. The learned trial Judge of the High Court of Patna, after the evidence of the parties had been recorded, made the following order at page 1312:--

"Having considered the arguments of learned counsel for the parties and the materials on the record and in view of the decisions referred to above, I am satisfied that the petitioner in his election petition has given adequate statements of material facts on which he relies in support of his case and has made out prima facie case for inspection of the ballot papers which have been cast in his favour and rejected. Without expressing any opinion regarding the merit of the claim of the parties, I am of the view that in order to decide the dispute and to do justice between the parties, inspection of ballot papers is necessary. I, therefore, direct that all those ballot papers which have been cast in favour of the petitioner and rejected by the Returning Officer at the lime of counting, i.e. 74 of Fukbandi Booth No. 10 and 31 of other booths, should be inspected by learned counsel for the parties in presence of a responsible officer of the Court."

35. Feeling aggrieved, the returned candidate sought to challenge the abovesaid order by moving an application under Article 136 of the Constitution of India, before the Hon''ble Supreme Court. Such application was, however, dismissed.

36. The learned trial Judge alter inspection of the concerned 74 ballot papers and upon hearing the parties, held that the rejection of such 74 ballot papers for want of the signature of the Presiding Officer was not justified and gave credit of all these votes to the election petitioner. Resultantly, the election of the returned candidate was set aside and the election petitioner was declared to have been duly elected.

37. In appeal by the returned candidate before the Hon''ble Supreme Court, one of the points raised was to the effect that the particulars furnished in paragraph 9 of the election petition were inadequate and fell short of the requirements of law and in support reliance was placed on the ratio laid down in Samant N. Balakrishna etc.v. George Fernandez etc. (supra). It was held at page 1314 of AIR 1983:--

"Balakrishna"s case where Hidayatullah, C.J. made these observations was one where allegations of corrupt practice had been made and the case came u/s 83(l)(b) of the Act. Obviously, allegations of corrupt practice being in the nature of a criminal charge, the Act requires full particulars to be given. The scheme in Section 83(1) of the Act makes the position very clear. Clause (a) refer to general allegations and requires a concise statement of material facts to be furnished while Clause (b) referring to corrupt practice requires all details to be given. Appellant"s counsel, therefore, was not entitled to rely upon the proposition in Balakrishna"s case for the present purpose."

38. The Court further held:--

"We have already pointed out that the allegations made in Para 9(i) of the election petition were clear and definite. On the facts of the case the plea was confined to one aspect, viz., for want of the Presiding Officer"s signature with reference to 74 ballot papers cast at a particular booth and counted on a particular table the same had been rejected. The only specific detail which was wanting was the serial number of the 74 ballot papers. We have, on the evidence recorded in the case, come to the conclusion that this particular was not available to the election petitioner in spite of attempts made on his behalf. While we agree with the view expressed in Bhabhi"s case, on the facts before us, we are inclined to think that inspection had rightly been ordered."

39. Again in Jagjit Singh Vs. Dharam Pal Singh and Others, the election of the returned candidate was challenged by the defeated candidate, who had lost the election by a narrow margin of 80 votes, on the ground of improper rejection of votes. The election petitioner in his petition, though had given the number of votes improperly rejected and the table and booth numbers as also the grounds on which such votes were rejected, had not given the serial numbers of such votes. It was pleaded that at no stage any ballot paper was shown to the candidates or their agents at the time of counting.

40. The learned trial Judge of the High Court of Punjab and Haryana, dismissed the election petition mainly on the ground that it did not contain a concise statement of material facts on which the appellant relied. It was also held that vague and general allegations were made with regard to improper rejection of votes. The learned Judge further held that serial numbers of the ballot papers, which were wrongly rejected, had not been specifically stated in the petition. The learned Judge thus came to the conclusion that material particulars, as required u/s 83(l)(a) of the Act, had not been stated and that the election petitioner had really attempted to embark upon a roving and fishing inquiry.

41. The election petitioner went up in appeal before the Hon"ble Supreme Court and following the ratio laid down in Arun Kumar Bose"s case (supra), it was held:--

"In our view, the election petition should not have been summarily dismissed. It is true that the appellant had not given the serial numbers of the ballot papers which, according to the appellant, were wrongly rejected. The case of the appellant is that counting of votes

took place behind an iron net. The counting agents were made to sit 5-6 feet behind the net and as such could not take down the numbers properly. But he had given full particulars of the valid votes which, according to the appellant, were improperly rejected."

42. In Ashwani Kumar Sharma Vs. Yaduvansh Singh and Others, the election of the returned candidate was challenged by one of the defeated candidates on the ground that the result of election had been materially affected by improper reception of votes and by mixing the votes of the elelction petitioner with the votes of other candidates. It was pleaded by the election petitioner that his counting agents were not given a reasonable opportunity of inspecting ballot papers before they were rejected.

43. The High Court of Patna rejected the election petition at a preliminary stage on the ground that it did not contain a concise statement of material facts.

44. On appeal, the findings returned by the High Court of Patna were set aside by the Hon"ble Supreme Court and it was held that the election petition could not have been rejected at a preliminary stage on the ground that it did not contain a concise statement of material facts. In coming to such conclusion the ratio laid down in Arun Kumar Bose"s case (supra) was followed.

45. The pleadings in the instant case are in no way different from the pleadings in the above referred to three cases. Therefore, the ratio laid down therein is applicable to the facts of the present case on all fours. Following such ratio, it: cannot be said that the present petition lacks material facts required to be stated u/s 83(l)(a) of the Act. Nor it can be said that only a roving and fishing inquiry is being attempted by the petitioners. Both the contentions are as such, without merit.

46. Resultantly issue No. 3, is answered in the negative and against respondent No. 1.

Issue No. 4

47. During the course of hearing the learned counsel for the petitioners has contended that the petitioners are basing their claim only on the question of wrongful rejection of valid votes, polled in favour of respondent No. 2 and wrong-ful reception of invalid votes polled in favour of respondent No. 1, as per the pleadings contained in paragraphs 8 to 10 of the petition.

48. It may be stated that the allegalions made in paragraphs 5 to 7 of the election petition against Sarvshri U.S. Nainta, Tek Chand Thakur and Bisharaber Jhangta relate to their alleged conduct at the counting of votes during the original counting and during the first recounting. These averments appear to have been made only as narration of facts leading to the second recount.

49. As stated above, the present petition has been based primarily on me question of wrongful rejection of valid votes and wrongful reception of invalid votes during the course

of second counting. In view of this fact, Sarvshri B.S, Nainta, Tek Chand Thakur and Bishamber Jhangta are not necessary parties to the present petition. Therefore, the present petition is not bad for non joinder of necessary parties. The issue is decided against the respondent No. 1.

50. For the foregoing reasons and the findings recorded under issues No. 1 to 4 above, the present petition does not suffer from any fatal defect so as to entail dismissal at the preliminary stage.