

A.F.R.

Judgment reserved on: 13.01.2020

Judgment delivered on: 12.06.2020

Court No. - 16

Case :- MISC. SINGLE No. - 9920 of 2018

Petitioner :- Sumitra Devi

Respondent :- Special Judge / Addl Distt & Sess. Judge E.C Act Hardoi Ors

Counsel for Petitioner :- Amitabh Misra, Harish Chandra

Counsel for Respondent :- C.S.C, Anurag Shukla

Hon'ble Rajan Roy, J.

Hon'ble Rajnish Kumar, J.

Hon'ble Dinesh Kumar Singh, J.

(Per - Rajan Roy, J.)

Heard.

An interesting issue regarding the manner of presentation of an election petitions under Section 12-C(1) and (3) of the U.P. Panchayat Raj Act, 1947 (hereinafter referred to as 'the Act, 1947') has been referred by a Single Judge Bench for our consideration. The Single Judge Bench has referred the matter to us as it noticed conflicting opinions of various Benches of this Court on the issue involved and also as it is an issue which arises quite often before the Courts in proceedings arising from of an election petition under the Act, 1947, hence the need to settle it conclusively. The question referred to us vide order dated 13.8.2019 of the writ court, as rephrased by us vide our order dated 22.11.2019, are quoted below :-

"1.) Whether presentation of an election petition by the election petitioner personally is a mandatory requirement in view of Sub-section 3 of Section 12 C(1) of the Act, 1947 and Rule 3(1) of the Rules, 1994 and whether it's non-compliance is fatal or it would merely be an improper presentation, a curable defect?

*2. Whether the decision of the Single Judge Bench of this Court in the case of **Viresh Kumar Tiwari** (supra) lays*

*down the law correctly with regard to the question framed at serial no. 1 or it is the division Bench judgment in the case **Lal Bahadur Singh** (supra) and the subsequent Single Bench judgment in the case of **Urmila** (supra) which lay down the law correctly ?”*

As we are not required to decide any factual issue involved in the Writ Petition and especially as the questions referred to us are not dependent on any peculiar facts of the case but are of a general nature, we do not find it necessary to mention the facts leading to the filing of the Writ Petition in question. Suffice it to say that according to the petitioner the election petition in question had not been presented by the candidate, it was presented by his Advocate, as is recorded in the ordersheet by the Prescribed Authority, therefore, the mandate of section 12-C(3) of the Act 1947 had not been complied which was mandatory, hence the petition was liable to be dismissed, but neither the Prescribed Authority nor the revisional authority have appreciated this aspect of the matter appropriately and in accordance with law.

Learned Counsel for the petitioner argued to persuade the Court that filing of an election petition under Section 12-C of the Act, 1947 is to be done by the candidate/election petitioner himself and not by any other person, if the petition is by the candidate. Any defect in this regard, according to him, was fatal and not curable.

On the other hand Shri Anurag Shukla appearing for the contesting opposite party took up a contrary stand. He tried to convince us that the petition could be filed by the agent of a candidate/ election petitioner such as his Advocate or his clerk and in this regard the provisions of C.P.C would apply in view of the provision contained in Rule 4 (1) of the U.P. Panchayat Raj (Settlement of Disputes) Rules, 1994 (hereinafter referred as 'Rules 1994'). Even if it was required to be filed by the candidate/election petitioner personally, the defect was a curable one and not fatal as there were no penal consequences prescribed in the Act 1947 or the Rules 1994 for non-compliance of Section 12-C(3). Shri S.P. Singh, learned CSC took us through various provisions of this Act and his stand was the same as that of the petitioner.

Question no. 1 is in two parts. We would like to first of all consider the first part of Question No. 1, as to whether an application questioning the election of a person as Pradhan or as a Member of Gram Panchayat referable to Section 12-C(1) is required to be mandatorily presented by a candidate personally or it can be presented by his agent or Advocate, as the case may be, as well.

The State Legislature has promulgated the U.P. Panchayat Raj Act, 1947. As per its preamble, it is an Act to establish and develop local self-government in the Rural areas of Uttar Pradesh and to make better provisions for village administration and development.

Subsequent to promulgation of the said Act, 1947, Part-IX has been inserted in the Constitution of India by the 73rd Act, 1992 w.e.f. 24.04.1993. Part- IX provides for constitution of Panchayats, their composition and also that all the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area. As per Article 243-C(1) subject to the provisions of Part-IX of Constitution, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats. Article 243-K deals with elections of Panchayats.

Article 243-O(b) contained in Part-IX of the Constitution of India provides that 'notwithstanding anything in this Constitution no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State'. The words '*presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State*' indicate that the manner of presenting an election petition has to be such as is provided by the State Legislature.

Now coming back to the Act, 1947, Section 11-B of the said Act deals with election of Gram Pradhan. Section 12 of the Act, 1947 deals with Gram Panchayat and elections to it. Section 12-BB of the Act, 1947 provides for superintendence etc. of such election by the State Election Commission. Section 12-BC to 12-BD of the Act, 1947 also deal with elections to the Gram

Panchayat. Section 12-C provides for filing of an election petition and matters related thereto.

There are general Rules which have been made under the Act, 1947 known as U.P. Panchayat Raj Rules, 1947 (hereinafter referred to as 'the Rules, 1947').

This apart there are separate Rules made under Section 110 of the Act, 1947 dealing with separate subject matters. One such set of Rules, as already stated, is known as U.P. Panchayat Raj (Settlement of Disputes) Rules, 1994.

The Act, 1947 and the Rules made thereunder provide a complete Code for dealing with matters related to the Panchayats including elections to the same and all matters related thereto.

Section 12-C of the Act, 1947 which is relevant for our purpose, reads as under:-

“12-C. Application for questioning the elections – (1) The election of a person as Pradhan or as member of a Gram Panchayat including the election of a person appointed as the Panch of the Nyaya Panchayat under Section 43 shall not be called in question except by an application presented to such authority within such time and in such manner as may be prescribed on the ground that –

(a) the election has not been a free election by reason that the corrupt practice of bribery or undue influence has extensively prevailed at the election, or

(b) that the result of the election has been materially affected –

i- by the improper acceptance or rejection of any nomination or;

ii- by gross failure to comply with the provisions of this Act or the rules framed thereunder.

(2) The following shall be deemed to be corrupt practices of bribery or undue influence for the purposes of this Act.

(A) Bribery, that is to say, any gift, offer or promise by a candidate or by any other person with the connivance of a candidate of any gratification of any person whomsoever, with the object, directly, or indirectly of including –

(a) a person to stand or not to stand as, or withdraw from being, a candidate at any election; or

(b) an elector to vote or refrain from voting at an election; or as a reward to –

i- a person for having so stood or not stood or having withdrawn his candidature; or

ii- an elector for having voted or refrained from voting.

(B) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of a candidate or of any other person with the connivance of the candidate with the free exercise of any electoral right;

Provided that without prejudice to the generality of the provisions of this clause any such person as is referred to therein who –

i- threatens any candidate, or any elector, or any person in whom a candidate or any elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

ii- induces or attempts to induce a candidate or an elector to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause.

(3) This application under sub-section (1) may be presented by any candidate at the election or any elector and shall contain such particulars as may be prescribed.

(4) The authority to whom the application under sub-section (1) is made shall in the matter of –

i- hearing of the application and the procedure to be followed at such hearing;

ii- setting aside the election, or declaring the election to be void or declaring the applicant to be duly elected or any other relief that may be granted to the petitioner,

have such powers and authority as may be prescribed.

(5) Without prejudice to generality of the powers to be prescribed under subsection (4) the rules may provide for summary hearing and disposal of an application under sub-section (1).

(6) Any party aggrieved by an order of the prescribed authority upon an application under sub-section (1) may, within thirty days from the date of the order, apply to the District Judge for revision of such order on any one or more the following grounds, namely –

(a) that the prescribed authority has exercised a jurisdiction not vested in it by law;

(b) that the prescribed authority has failed to exercise a jurisdiction so vested;

(c) that the prescribed authority has acted in the exercise of its jurisdiction illegally or with material irregularity.

(7) The District Judge may dispose of the application for revision himself or may assign it for disposal to any Additional District Judge, Civil Judge or Additional Civil Judge under his administrative control and may recall it from any such officer or transfer it to any other such officer.

(8) The revising authority mentioned in sub-section (7) shall follow such procedure as may be prescribed, and may confirm, vary or rescind the order of the prescribed authority or remand the case to the prescribed authority for re-hearing and pending its decision pass such interim orders as may appear to it to be just and convenient.

(9) The decision of the prescribed authority, subject to any order passed by the revising authority under this section, and every decision of the revising authority passed under this section, shall be final.”

The procedure regarding proceedings of an election petition as referred in sub-rule (4) and (5) of section 12-C has been prescribed in the Rules 1994. Rule 3 and 4 of the said Rules, 1994 read as under:-

“3. Election Petition. - (1) *An application under sub-section (1) of Section 12-C of the Act shall be presented before the Sub-Division Officer, within whose jurisdiction the concerned Gram Panchayat lies, within ninety days after the day on which the result of the election questioned is announced and shall specify the ground or grounds on which the election of the respondent is questioned and contain a summary of the circumstances alleged to justify the election being questioned on such ground :*

Provided that no such application shall be entertained unless it is accompanied by a treasury challan to show that the amount of rupees fifty has been deposited in the personal Ledger Account of the Gram Panchayat concerned as security.

(2) *The person whose election is questioned and where the petition claims that the petitioner or any other candidate shall be declared elected in place of such person, every unsuccessful candidate shall be made a respondent to the application.*

(3) *Every respondent may give evidence to prove that any person in respect of whom a claim is made, that such person be declared elected, should not be declared so elected on the same ground or grounds on which his election could have been questioned, if he had been elected.*

4. Hearing of the petition. - (1) *Subject to the provisions of the Act and these rules, every election petition shall be tried by the Sub-Divisional Officer, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, for the trial of suits:*

Provided that -

(i) *the Sub-Divisional Officer may hear the petitioner or his counsel and if he finds that the petition has no substance, reject the same without the issue of any notice to the opposite parties;*

(ii) it shall not be necessary for the Sub-Divisional Officer to record the evidence in full and he may maintain only a memorandum of evidence produced by the parties before him;

(iii) if there is a sole petitioner and he dies, or there is a sole respondent and he dies, the petition shall abate;

(iv) the Sub-Divisional Officer may allow only such evidence to be produced as he deems relevant for the purpose of deciding the petition;

(v) the District Magistrate may at any stage on sufficient cause being shown transfer an application made under sub-section (1) of Section 12-C for hearing to another Sub-Divisional Officer;

(vi) an application not presented within time or unaccompanied by a treasury challan as required under sub-rule (1) of Rule 3 may, at any time, be dismissed by the Sub-Divisional Officer; and

(vii) the Sub-Divisional Officer may, on an application of either party made within five days after the date of his decision, review his order.

(2) If the Sub-Divisional Officer after hearing finds in respect of any person whose election is called in question by the petition, that his election was valid, he shall dismiss the petition as against such person and may award costs at his discretion and in case he finds the application to be altogether frivolous he may also order that the security deposit shall in part or whole be forfeited to the concerned Gram Panchayat.

(3) If the Sub-Divisional Officer finds that the election of any person was invalid he shall either -

(a) declare a casual vacancy to have been created; or

(b) declare another candidate to have been duly elected, whichever course appears, in the particular circumstances of the case, to be appropriate, and in either case may award costs at his discretion :

Provided that no such declaration shall be made unless a claim for it has been made in the application.

(4) The security deposit or portion thereof, as the case may be, not forfeited under sub-rule (2) and not required for payment of any costs awarded to any opposite party shall be refunded by the District Panchayat Officer to the person depositing the same or in case of his death, to his legal representative.”

The question as to whether an application under Section 12-C(1) and (3) is to be presented by a candidate or an elector personally or it could also be presented through his Advocate or his agent came up for consideration before a Division Bench of this Court in a case reported in **1963 ALJ 542; Lal Bahadur Singh Vs. Vishal Singh** i.e. prior to coming into force of Rules 1994. The Division Bench dealt with the issue in the light of Rule 24 and 25 of the Rules, 1947 and opined that Clause (2) of Rule 24 of the Rules, 1947 can not be interpreted as requiring an election petition to be mandatorily presented personally by the petitioner. Even if it is held that it is necessary for an election petition to be presented personally too much importance could not be attached to such a requirement. It observed, defective representation has always been held to be a curable irregularity. It referred to the Code of Civil Procedure in this regard. The Division Bench disapproved a contrary view expressed by a Single Judge Bench of this Court in the case of **Smt. Prem Lata Vs. Rajendra Pati** reported in **1959 ALJ 741** and followed another Division Bench Judgment rendered in the case of **Ganpat Singh Vs. Election Tribunal, Mainpuri** reported in **1960 ALJ 48** which was a matter pertaining to a different provision contained in the U.P. Town Areas (Conduct of Election of Chairman) Rules, 1953 (hereinafter referred to as ‘the Rules, 1953’). The Division Bench found the provision in Rule 24(2) of the Rules, 1947 to be paramateria with Rule 47 of the Rules, 1953.

A striking feature of the decision in **Lal Bahadur Sing’s case** (supra) is that the language used in Section 12-C(3) of the Act, 1947 has not been considered, instead, Rule 24(2) of the Rules, 1947 as then

existing, was considered. Rule 24 (2) and 25(1) of the Rules, 1947 made under the Act, 1947, as considered in the aforesaid case, read as under:-

“24(2). The application may be presented by any candidate in whose favour votes have been recorded or whose nomination paper was rejected or by any 10 or more electors of the Sabha. “Clause (1) of R. 25 provides,

“25(1) Subject to the provisions of the Act and the Rules contained in this Chapter, every election petition shall be tried by the Sub-Divisional Officer, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial suits.”

Subsequently, a Single Judge Bench of this Court rendering its decision in the case of ***Viresh Kumar Tiwari Vs. Additional District Judge, Ballia and Ors., 2013 Law Suit (All)3871***, noticed the Division Bench judgment in ***Lal Bahadur Singh’s case*** (supra) but it did not follow it as it relied upon a decision of the Supreme Court in the case of ***G.V. Sreerama Reddy and Anr. Vs. Returning Officer and Ors.*** reported in ***2009 (8) SCC 736***, wherein, considering a similar provision contained in Section 81 of the Representation of Peoples Act, 1951, the Supreme Court had opined that the election petition had to be necessarily presented by the candidate or the elector in person. In the said case following the aforesaid decision of the Supreme Court the learned Single Judge held that an election petition under Section 12-C(1) and (3) of the Act, 1947 was also required to be presented by the candidate personally. The Single Judge Bench repelled the argument that the defect, if any, in non-presentation of the petition by the candidate personally was curable and not fatal. The said Bench relied upon the Single Judge Bench decision in the case of ***Smt. Prem Lata*** (supra) wherein it had been held that the word ‘candidate’ used in Section 12-C(3) and the relevant Rule, would not include the agent of the election petitioner nor his counsel.

This issue came up for consideration before another Single Judge Bench of this Court earlier, in the case of *Devendra Yadav Vs. District Election Officer/District Magistrate, Mau* reported in *2011 (9) ADJ 219*, in the context of the U.P. Panchayat Kshetra Panchayat and Zila Panchayat (Election of Pramukh and Up-pramukhs and Settlement of Disputes) Rules, 1994, involving Rule 35(2) therein. The Court held that presentation of the election petition in person by the election petitioner was mandatory on the ground that the provisions relating to elections should be construed and applied strictly. It was also persuaded to take this view on account of the object behind such a provision which was to avoid frivolous and fictitious litigation. The use of the word 'shall' in Rule 35(2) was also a factor which led the Court to hold such a requirement to be mandatory. The Court held that even in the absence of any penal consequences provided in the Rules, 1994 flowing from non compliance of Rule 35(2) if the statute prescribed a manner of doing a particular thing it should be done in the same manner and if there is non compliance, then, the Judge has inherent powers to dismiss the election petition otherwise it would make the provision meaningless and redundant. The Court further opined that if such a plea was not taken at the earliest that the election petition had not been presented by the candidate/election petitioner, it would be deemed to have been waived.

This issue again came up for consideration before another Single Judge Bench of this Court in the case of *Urmila Vs. State of U.P. and Ors.* reported in *2019 (2) ADJ 500*. This was a case arising out of an election petition under Section 12-C of the Act, 1947, just as the case at hand, though the facts were slightly different. In the said case the order sheet of the election petition did not mention that the petition had been presented by the candidate i.e. the election petitioner, and the issue cropped up as to whether it was liable to be dismissed on this ground or not. The Court, relying upon the decision of the Supreme Court in the case of *State of Maharashtra Vs. R.S. Nayak* reported in *1982 (2) SCC*

463, opined that an order sheet of a Court or Tribunal is conclusive evidence of the proceedings before it. However, taking the reasoning further it opined that what came out from the said decision of the Supreme Court was that the recitals in the order sheet of the Court are evidence only of the facts stated in the order sheet but are not evidence of non-existence of any fact not stated in the order sheet, meaning thereby, as the order sheet did not mention that the petitioner was not present at the time of its presentation, mere mentioning the presence of Advocate in the order sheet can not be treated as proof of non-presence of the petitioner unless it was specifically so stated. The Court also took cognizance of the fact that the Sub-Divisional Officer who is the Prescribed Authority for hearing an election petition under Section 12-C of the Act, 1947 is part of the executive structure of the State. They and their ministerial staff are not necessarily persons having knowledge of law nor are they conscious of the importance and sanctity of the recitals in the order sheet prepared in any case. In the said case the Court found that the order sheet did not indicate as to who presented the election petition, therefore, the said order sheet could not be conclusive evidence on this issue, as, it was incomplete and inadequate as regards the events which took place at the time of presentation of the petition before the Prescribed Authority. The Court relied upon a decision of the Supreme Court in the case of *Sheo Sadan Singh Vs. Mohan Lal Gautam* reported in *1969 (1) SCC 408* to hold that, even if, respondent no. 6 therein had not personally presented the petition to the Prescribed authority, the said fact would not itself be fatal for the election petitioner and it would not invite a dismissal on ground of improper presentation, if respondent no. 6 was present in the Court when the petition was being presented to the Prescribed Authority. Thus, the imprint on the first page of the election petition that it had been presented by the Advocate and the contention based thereon that it was not presented by the petitioner, was rejected. The Court thereafter took notice of the fact that no such objection had been specifically raised in the

written statement filed in the election petition nor any application under order VII Rule 11 CPC had been filed. No issues were framed on this aspect of the matter. It found that this argument was being raised for the first time before the High Court merely on the basis of recitals in the order sheet and the imprint of the first page of election petition. It relied upon Section 114(e) of the Indian Evidence Act, 1872 to opine that all Judicial and Official acts are presumed to have been regularly performed. The said presumption was rebuttable but the petitioner before the High Court did not plead nor adduce any evidence to rebut the same nor did he make any effort to get an issue framed on the controversy, as such it opined that he could not be permitted to raise any objection or dispute regarding presentation of the election petition for the first time before the High Court. The said Bench of this Court did not specifically go into the question as to whether the election petition was necessarily required to be presented by the candidate but, presumed it to have been so presented on facts and in law and thereafter, considered other issues on the basis of facts before it. It did not lay down any such proposition that the defect in this regard, if any, was curable, instead, it put the burden upon the person raising the objection of non-presentation of the petition by the candidate and found that it had not been discharged by him.

Coming back to the Act, 1947, Section 12-C(3) is the only provision which deals with presentation of an Election Petition referred under Section 12-C(1) of the said Act. When we peruse the provisions contained in Section 12-C(3) we find that the application under subsection 1 of Section 12-C **may be presented by any candidate** at the election **or any elector** and shall contain such particulars as may be prescribed. The word '**may be**' is a verb phrase that indicates something that might happen or a potential state of affairs.

Now, the word '**may be**' used in the said provision has nothing to do with its directory or mandatory character. It is merely indicative of the

choice which a candidate at an election has i.e. to file or not to file an application under Section 12-C(1).

However, the words '**presented by any candidate**' are significant. The word 'presented' is derived from the word 'present'. It conveys an act of presentation. One of the meanings assigned in the Chamber's dictionary (1993 Edition) to the word 'present', which appears apposite in the context of Section 12-C(3), is, to give, or furnish, specially formally or ceremonially; to deliver, convey or handover. Thus, the word 'presented' conveys an act of giving, filing or delivering, in the case of an election petition. The word '**present**' has been defined by the Oxford English Dictionary (Second Edition, 2014) to mean, the act of giving something to somebody especially at a formal ceremony.

Further, the word '**by**' is used in various contexts and one of the meanings assigned to the said word by the Oxford English Dictionary is that it is used after a passive verb for showing who or what did or cause something, as for example, the event was organized '**by local people**'. The same word has been explained in the Chambers Dictionary, inter alia, as meaning 'through' (denoting the agent, cause, means etc.).

Thus, there is no doubt that in the context of the issue involved in the present case, as per Section 12-C(3) of the Act, 1947, an election petition has to be given or filed by any candidate at the election. The language used in Section 12-C(3) does not permit presentation of the Election Petition by the Advocate of the candidate or his clerk or any other agent or representative. As, under Rule 3 of the Rules, 1994, it is the Sub-Divisional Officer concerned who is to function as the Prescribed Authority, therefore, it has necessarily to be given or filed before him, by the candidate.

The word 'candidate' has not been defined in the Act, 1947 nor in the Rules, 1994. In this context, it is worthwhile to refer to the Single

Judge Bench decision in the case of **Smt. Prem Lata** (supra), wherein, this aspect was considered and the High Court opined as under:-

“The term “candidate” has not been defined in the U.P. Panchayat Raj Act and the U.P. Panchayat Raj Rules. But if the provisions of the Act are given a proper meaning, the term “candidate” will not, on each and every case, include his agent. Proceedings arising out of an election petition are treated a quasi criminal proceedings in which the charge must be established beyond doubt and the election of a person cannot be set aside unless all the ingredients are established, for example, while defining the corrupt practice of bribery and undue influence it is mentioned that such corrupt practice should be committed by the candidate or any other person with the connivance of the candidate. Consequently, if an election agent is guilty of corrupt practice without the connivance of the candidate, the election cannot be set aside for the reason that it will not amount to a corrupt practice of bribery and undue influence as defined in the Act. In other words for purposes of sub-Sec. (2) of Sec. 12-C of the U.P. Panchayat Raj Act, candidate shall not include an agent. This finds corroboration from Sec. 81 of the Act also which lays down that any party to a civil or criminal or revenue case may appear before a Nyaya Panchayat either in person or by a servant, partner, relation or friend duly authorized in writing by him. In case the word “person” included his agent also, it was not necessary to lay down in Sec. 81 that a person could appear by his agent.

The rules framed by the State Government as contained in the U.P. Panchayat Raj Rules also lead us to the same inference. Rule 24(2) can usefully be compared with Rules 4-H and 18. Rule 24(2) lays down that the election petition may be presented by any candidate, while under Rule 18(1) the nomination paper has to be delivered to the Returning Officer by the candidate in person or by his agent. If the term

“candidate” included his agent, it was not necessary to provide in this rule that the nomination paper could be delivered by the agent of the candidate. Rule 4-H governs the filing of claims or objections against the provisional Register of members, that is, the list of persons entitled to vote. It is laid down in the proviso to sub-rule (2) of this rule that a person may file any number of claims or objections including those on behalf of others by one petition. While filing a claim or objection on behalf of others, the applicant acts as their agent. In other words, for the purposes of filing claims or objections to the provisional list of voters, an agent can act for the principal.

It is thus apparent that in the U.P. Panchayat Raj Act and also in the U.P. Panchayat Raj Rules a differentiation has been made between a candidate and his agent, and consequently when an act can be done by the candidate only, it shall be deemed that it must be done by him, and not by or through his agent.

As indicated above, under Rule 24(2) of the U.P. Panchayat Raj Rules, an application under Sec. 12-C of the Act has to be presented by a candidate in whose favour votes had been recorded. It was not provided that the application could be presented by an agent of the candidate. The election law is a special law in the sense that it provides for a remedy complete in itself for challenging the result of the election, and it must be construed strictly. In other words, an election petition under Sec. 12-C should be presented in person by the candidate, and if it is presented by his agent, it will not be proper presentation. In the present case, the election petition was not presented by respondent no. 1, and consequently it should not have been entertained and in any case, it could not be allowed.”

In the aforesaid decision the Act, 1947 and the Rules, 1947 were considered. The Rules, 1994 were not in existence at that time. When we peruse the Rules, 1994 along with the Act, 1947 we do not find anything therein which would persuade us to hold that the term ‘candidate’ used in

Section 12-C(3) would include his agent. Thus, the observation made in the aforesaid judgment apply to the case at hand also with the same force. We shall deal with this aspect further, hereinafter.

Though, this decision was disapproved by the Division Bench in ***Lal Bahadur Singh's case*** (supra), with respect, we are inclined to agree with it for the reasons already mentioned therein and also on account of the fact that a somewhat similar provision contained in Section 81 of the Representation of Peoples Act, 1951 and the object behind such a provision was considered by the Supreme Court in the case of ***G.V. Sreerama Reddy*** (supra). As per the observations made therein the question to be considered by the Supreme Court in the said case was as to whether the election petition was presented in accordance with Section 81(1) of the Act, 1951 and whether the High Court was right in dismissing the same, as, it was not presented by the candidate or elector?

Before proceeding further, we may quote Section 81(1) of the Act, 1951:-

“81 (1) (1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

Explanation.—In this sub-section, “elector” means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not. Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.”

The words *may be presented..... by any candidate at such election or any elector* have been used in Section 81(1) of the Act, 1951 just as they have been used in Section 12-C(3) of the Act, 1947, and it is these words which are relevant for answering the question posed before us.

In this context it is relevant to refer to the argument advanced in the said case before the Supreme Court on behalf of appellants before it, which was as under:-

“Learned counsel appearing for the appellants submitted that in the light of the language used in sub-section (1) there is no compulsion/obligation to present the election petition by the candidate himself. In other words, according to him, in view of the fact that the election petitioner had duly executed a vakalatnama, in favour of his advocate, he is empowered to present it to the authorized officer of the Registry. It is further contended that presentation of the election petition by a candidate or elector is not mandatory and if it is presented by his advocate duly authorized, the same is a proper presentation in terms of sub-section (1) of Section 81 of the Act. It is also contended that in cases of substantial compliance and where it is shown that absence was not to harm the respondent’s case and certain exigencies existed which made the present difficult, the court should not dismiss the petition merely for non-compliance with Section 81(1) of the Act.”

The argument advanced on behalf of learned counsel for the respondent therein, was as under:-

“On the other hand, learned counsel appearing for the contesting second respondent –successful candidate submitted that in view of the language used in sub-section (1), it is mandatory that the candidate or elector is to personally present it before the High Court. In view of the endorsement by the Registrar (Judicial) stating that the petitioners (appellants herein) were not present while presenting the election petition, the impugned

order of the High Court dismissing the same cannot be faulted with.”

The Supreme Court considered the arguments referred above and opined that the election petition under Section 81(1) was necessarily to be presented by the candidate or elector in person. It repelled the argument of the appellants as quoted hereinabove. It observed that while interpreting a special statute, which is a self contained Code, the Court must consider the intention of the Legislature. It mentioned the reason for this fidelity towards the legislative intent as being the fact that the statute had been enacted with specific purpose which must be measured from the wording of the statute strictly construed. It went on to observe that inspite of existence of adequate provisions in the Code of Civil Procedure relating to institution of a Suit, the present Act (the Act, 1951) contains elaborate provision as to disputes regarding elections. It thus opined that the provisions had to be interpreted as mentioned by the Legislature.

In the said case the Supreme Court observed, one can discuss why the Election Petition is required to be presented personally. It held that an election petition is a serious matter with a variety of consequences. Since, such a petition may lead to the vitiation of a democratic process, any procedure provided by an election statute must be read strictly. Therefore, the Legislature has provided that the petition must be presented ‘by’ the petitioner himself so that at the time of presentation the High Court may make preliminary verification which ensures that the petition is neither frivolous nor fictitious. It disapproved the decision of the Rajasthan High Court in the case of *Bhawar Singh Vs. Navrang Singh* reported in *AIR 1987 Rajasthan 63* wherein a contrary view had been taken. It also held that the object of presenting an election petition by a candidate or elector is to ensure genuineness and to curtail fictitious litigation. Thus, even from a purposive view of the matter, the reasons given by the Supreme Court regarding the object of such a provision, an Election Petition under

Section 12-C(1) read with 12-C(3) of the Act, 1947, is required to be presented by the candidate so as to subserve such object.

It is not out of place to mention that while laying down that presentation of an election petition under section 81 of the Act 1951 by the candidate himself was mandatory, the Supreme Court gave an additional reason for its conclusion that is the provision contained in section 86 of the said Act 1951 which enjoins the High Court to dismiss an election petition on violation of section 81, but this does not dilute the importance or impact of the reasons given by it based on the language and object of section 81 which have been dealt with by the Supreme Court in the said case independent of the provisions of section 86.

The said observations, for the reasons mentioned therein, apply on all its fours to the provision contained in Section 12-C(3) of the Act, 1947 regarding presentation of an Election Petition under the Act 1947.

In fact in *Jyoti Basu's case* (supra) Section 81 of the Act, 1951 was also considered and what it held, as quoted below, veritably clinches the issue:-

“Section 81 prescribes who may present an election petition. It may be any candidate at such election; it may be any elector of the constituency; it may be none else.”

These observations are based on the language used in section 81 of the Act 1951.

Such presentation of an Election Petition by the candidate and none else is also necessary as any statutory provision relating elections has to be applied strictly and there is no scope for equity or application of common law principles in this regard when the language of the statute is clear. In this regard we may quote the observations of the Constitution Bench decision in the case of *Jagan Nath Vs. Jaswant Singh and Ors.* reported in *AIR 1954 SC 210*, wherein, their Lordships have held as under:-

“An election petition is not an action at common law, nor in equity. It is a statutory proceeding to which

neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statutory creating it. Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, court is put in a straight jacket. Thus the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State Legislature except as provided by the Representation of the People Act, 1951 and again, no such election may be questioned except in the manner provided by the Representation of the People Act. So the Representation of the People Act has been held to be a complete and self-contained code within which must be found any rights claimed in relation to an election or an election dispute. We are concerned with an election dispute. The question is who are parties to an election dispute and who may be impleaded as parties to an election petition. We have already referred to the Scheme of the Act. We have noticed the necessity to rid ourselves of notions based on common law or equity. We see that we must seek an answer to the question within the four corners of the statute. What does the Act say? ”

As regards the permissibility of such presentation of an Election Petition by the candidate's Advocate in view of applicability of Code of Civil Procedure, 1908 to such proceedings, in view of Rule 4(1) of the Rules 1994, we must point out that the language used in section 12-C(3)

of the Act 1947 regarding presentation of the election petition by any candidate or elector is very different from the provision contained in sections 15 and 26 C.P.C. read with Order III Rule 1 thereof. The aforesaid provisions of the C.P.C. do not require presentation of the plaint by the plaintiff personally as is evident from the provisions contained in section 26 which merely says 'every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed. Order III Rule 1 permits any appearance, application or act in or to any Court, required or authorised by law to be made or done by a party in such Court, may, except where expressly provided by any other law for the time being in force be made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or acting as the case may be on his behalf, provided that any such appearance shall, if the Court so directs, be made by the party in person. Rule 2 of Order III deals with recognized agents. Rule 4 of Order III deals with appointment of 'pleader'. The term 'pleader' has been defined in section 2(15) C.P.C. and includes an Advocate. Thus the provision contained in section 12-C(3) of the Act 1947 regarding presentation of an election petition by any candidate or elector is differently worded from the provisions contained in the C.P.C. as referred hereinabove.

Moreover, although as per Rule 4 of the Rules, 1994, the procedure applicable under the Code of Civil Procedure, 1908 for the trial of suits has been made applicable to the trial of an election petition under Section 12-C(1) by the Sub-Divisional Officer, but with a caveat '*as nearly as may be*', and moreover *this is subject to the provisions of the Act, 1947 and the said Rules, 1994* as is evident from the opening line of Rule 4(1) which uses the words—"*subject to the provisions of the Act and these Rules.*" These words leave no doubt that if the Act, 1947 and the Rules made thereunder provide for the manner in which the election petition is to be presented, then, the provisions of the Code of Civil Procedure, 1908, to the contrary, will not apply, and it is the Act, 1947 and the Rules which

will prevail. As already stated, as per Section 12-C(3) an election petition has to be presented by the candidate. The words Agent or Advocate has not been used in the said provision. In this context this Court in ***Smt. Prem Lata's case*** (supra) rightly held that the legislature, wherever it deemed fit in the Act, 1947 and the general Rules, 1947, used the words agents etc. in addition to the word 'candidate' but in Section 12-C(3) it has only used the word 'candidate', therefore, the intention of the Legislature is clear and it is in tune with the object mentioned hereinabove which is to avoid frivolous and fictitious litigations and to ensure its genuineness.

As regards applicability of the provisions of CPC, '**as nearly as may be**', which permits actual presentation of complaints through Advocates and not necessarily by the plaintiff, apart from the fact that such an argument has been repelled by the Supreme Court in ***G.V. Shri Ram Reddy's case*** (supra), in the case of ***Jyoti Basu and Ors. Vs. Devi Ghosal and Ors.*** reported in ***AIR 1982 SC 983*** also it has been held by the Supreme Court that the provisions of the Civil Procedure Code can not be invoked to permit that which the Representation of Peoples Act, 1951 does not permit. The Civil Procedure Code applies subject to the provisions of the Peoples Act, 1951 and any Rule made thereunder. The said observation/ratio applies in the instant case also in view of the provision contained in section 12-C of the Act 1947 which excludes application of any contrary provision in the CPC on the subject. In the said case the Supreme Court observed as under:-

"The question is not whether the Civil Procedure Code applies because it undoubtedly does, but only as far as may be and subject to the provisions of the Representation of Peoples Act, 1951 and the rules made thereunder. Sec. 87(1) expressly says so. The question is whether the provisions of the Civil Procedure Code can be invoked to permit that which the Representation of the People Act does not.

Quite obviously the provisions of the Code cannot be so invoked.”

As already quoted earlier, the Supreme Court, in the said case, considered the provision of Section 81 and opined that an election petition can be presented by the candidate and none else. Hence the non-applicability of CPC in this regard.

We may also refer to the decision of the Supreme Court reported in *AIR 2005 SC 241; Kailash Vs. Nanku and Ors.*, wherein, although it was held in the context of Representation of Peoples Act, 1951 that trial of an election petition encompasses all proceedings commencing from the filing of the election petition up to the date of decision but it was held that the procedure provided for the trial of civil suits under CPC is not applicable in its entirety to the trial of the election petition. The Court further observed that applicability of the procedure in CPC is circumscribed by two riders; firstly, the procedure prescribed in CPC is applicable only ‘**as nearly as may be**’, and secondly, the CPC would give way to any provisions of the Act or any Rules made thereunder, therefore, the procedure prescribed in CPC applies to election trial with flexibility and only as guidelines.

These observations are applicable in the case of proceedings of an election petition under the Act, 1947 also in view of the language used in Rule 4 of the Rules, 1994.

As Section 12-C(3) of the Act, 1947 clearly and specifically provides that it is the Candidate or the Elector who can present the Election Petition, therefore, none else can do it and CPC can not be applied to negate this unambiguous legislative mandate in the Act, 1947.

Thus, the provisions of the CPC would not apply so far as presentation of an election petition is concerned, as, the said field is occupied by Section 12-C(3) of the Act, 1947 thereby excluding the

provisions in this regard as contained in the CPC for trial of suits and to this extent the Division Bench does not lay down the law correctly.

Shri Anurag Shukla learned counsel for the opposite parties placed reliance upon the proviso to Rule 4(1), wherein, it has been provided that the Sub-Divisional Officer may hear the petitioner or his counsel and if he finds that the petition has no substance reject the same without the issuance of any notice to the opposite parties, to contend that, the words 'may hear the petitioner or his counsel' are indicative of the fact that the petition could be presented either by the petitioner or his counsel, as, at the stage of presentation and preliminary hearing itself the Court may see as to whether the petition has substance and if it finds that it does not have substance it can reject the same without issuance of any notice to the opposite parties, therefore, the presence of the counsel at that stage is indicative of the intent of the Legislature that the petition can be presented by him.

This contention is not acceptable for the reasons, firstly, the proviso to Rule 4(i) can not be read in conflict and contradistinction to the provision of main Act, 1947 under which it had been made, Secondly, the act of presentation of an election petition and its hearing at the preliminary stage are two different acts which may in a given situation be separated by time also. Even otherwise, as already discussed, the intent of Section 12-C(3) of the Act, 1947 is that the act of presenting the election petition before the Prescribed Authority should be by the candidate and no one else. The fact that the counsel is also present at that time and he may argue the case is an entirely different matter but this by itself does not persuade us to hold that presentation of the election petition can also be made by the counsel or by any other agent of the candidate in the absence of the election petitioner.

We are also persuaded to take this view on account of the fact that it is not for us to read something into a statutory provision which is not

specifically provided therein when the language used in the statute is plain and unambiguous and does not lead to absurd results, especially when, the intention of the legislature has to be found in the words used by the legislature itself as has been held in *G.V. Sri Rama Reddy* (supra). Reference may also be made in this regard to the decision reported in *2003 (2) SCC 455; M/s. Unique Butyle Tube Industries Pvt. Ltd. Vs. U.P. Financial Corporation and Ors.* If the statute prescribes the mode of doing a particular thing then it has to be done in the manner prescribed and not otherwise. In this regard we approve of the observation made by this Court in *Devendra Yadav's case* as noticed by us earlier. The words 'presented by any candidate' occurring in section 12-C(3) means the candidate has to himself give or deliver the petition to the Prescribed Authority, as already discussed. The Act 1947 or the Rules 1994 does not define the term 'candidate' to include his agent or Advocate.

Having held as above, we need to take note of the decision of the Supreme Court in *Sheo Sadan Singh's case* (supra) wherein presentation of Election Petition under Section 81 of the Act, 1951 by the Advocate or clerk, in the presence of the candidate/ election petitioner was held to be substantial compliance of Section 81 of the Act, 1951 and this view has been approved by the Supreme Court in the case of *G.V. Sri Rama Reddy* (supra) also. In this view of the matter it needs to be clarified that even in matters of election petition under Section 12-C of the Act, 1947 if the election petition is presented by the agent or Advocate of the election petitioner/candidate in his presence before the Prescribed Authority, it would amount to substantial compliance of Section 12-C(3).

We are thus of the view that for these reasons an Election Petition has, necessarily and mandatorily, to be presented by the candidate/ election petitioner himself, if it is in his name, however, presentation of such a petition by his Advocate or clerk before the Prescribed Authority, in his presence, would be sufficient compliance of Section 12-C(3) of the Act, 1947. Question no. 1 is answered accordingly.

Now, coming to the second part of Question No. 1 i.e. whether non-compliance of Section 12-C (3) of the Act, 1947 in the sense that if the election petition is not presented by the candidate personally or by his agent or Advocate in his presence before the Prescribed Authority, would it be fatal or it would be a curable defect.

If a provision is held to be mandatory, then its non-compliance would be fatal.

The only aspect requiring consideration is whether in the absence of any provision prescribing penal consequences for non-compliance of section 12-C(3) such defect of non-presentation of an election petition by the candidate himself is a curable defect at any subsequent stage of the proceedings or not .

In this regard great emphasis was laid by Shri Anurag Shukla, learned counsel for the opposite parties upon the Constitution Bench decision of the Supreme Court in the case of *Jagan Nath* (supra) wherein the issue as to whether non joinder of necessary party in an election under the Act, 1951 was fatal or not, as, impleadment of necessary parties was mandatory, was considered. In the said case, it was observed as under:-

“The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the court possesses no common law power. It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law. None of these propositions however have any application if the special law itself confers authority of a tribunal to proceed with a petition in accordance with certain procedure and when it does not state the consequences of non-compliance with certain procedural requirements laid down by it. It is always to be borne in mind that though the election of a successful candidate is

not to be lightly interfered with, one of the essentials of that law is also to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices. In cases where the election law does not prescribe the consequence, or does not lay down penalty for non-compliance with certain procedural requirements of that law, the justification of the tribunal entrusted with the trial of the case is not affected. It is in these circumstances necessary to set out the different provisions of the Act relevant to the matter canvassed before us.”

It further observed that the words ‘a petitioner shall join as respondents to his petition all the candidate who were duly nominated at the election other than himself if he was so nominated’ were not considered to be of such a character as to involve dismissal of a petition in limine, as, Section 82 did not find place in the provisions of Section 85 and that the matter was such as could be dealt with by the Tribunal under the provisions of the Code of Civil Procedure specially made applicable to the trial of election petitions. It held that the provisions of law relating to the impleading of parties are not necessarily fatal and can be cured. It is for the Tribunal to determine the matter as and when it arises in accordance with the provisions of Code of the Civil Procedure.

Based on the aforesaid decision it was contended before us by Shri Shukla that there is no provision in the Act, 1947 or the Rules made thereunder analogous to Section 86 of the Act, 1951 which requires the High Court to dismiss an election petition which does not comply with the provisions of Section 12-C(3), therefore, Section 12-C(3) can not be said to be mandatory and the defect in presentation of an election petition by a person other than the candidate is liable to be cured on the analogy of the Constitution Bench decision in *Jagan Nath’s case* (supra).

We are not persuaded by this argument for the reason, in the Act, 1951, as it existed prior to 1956, there was a provision in Section 85

thereof prescribing penal consequences for non-compliance of certain provisions such as Section 81, 83 and 117 of the said Act, however, Section 82 was not mentioned in Section 85, meaning thereby, the Legislature had consciously inserted Section 85 in the Act, 1951 enjoining the dismissal of an election petition on the ground of non-compliance of certain sections of the Act 1951, but, it deliberately and consciously omitted to mention Section 82 in Section 85, meaning thereby, the Legislative intent was clear that non-joinder of a necessary party should not mandatorily lead to dismissal of the election petition. Even generally speaking, non-implead of a necessary party in any legal proceeding is rectifiable and dismissal will follow only if the litigant declines to implead a necessary party or disputes the factum of a person being a necessary party thereby requiring adjudication on this issue as also on the fate of the proceedings based thereon. Even in the language of Section 82 no such intent of the Legislature was borne out that its non-compliance had to mandatorily result in dismissal of the election petition without any opportunity to cure the defect of non-joinder of necessary party, therefore, a valid and justified inference could be drawn in the context of the Act, 1951 as was done by the Supreme Court that non-compliance of Section 82 was not fatal and it could be rectified. The judgment in *Jagan Nath's case* (supra) is therefore, to be understood in this light and the same does not help the opposite parties in view of the language of section 12-C(3) of the Act 1947 and the object behind it, as discussed earlier.

Further, the character of the provision contained in Section 82 of the Act, 1951 as considered in *Jagan Nath's case* (supra) and the object behind it was very different from Section 12-C(3) of the Act, 1947 which is similar to Section 81 of the Act, 1951, therefore, the decision in *Jagan Nath's case* (supra) does not help Shri Shukla. It is the assertions made in G.V. Sreerama Reddy case (supra) which are apposite to the provision contained in section 12-C (3) as already referred.

Absence of any provision in the Act, 1947 or the Rules made thereunder analogous to Section 86 of the Act, 1951 does not make Section 12-C(3) any less mandatory and it does not become directory merely for this reason, although the converse would have certainly made it conclusively mandatory and non-curable without any other factor being required to be taken into consideration. We may refer to a decision of the Supreme Court in the case of *Ram Sukh Vs. Dinesh Agarwal; Civil Appeal No. 16128 of 2008* wherein it was held that merely because Section 83 of the Act, 1951 was not mentioned in Section 86 it does not mean that High Court could not have dismissed the election petition at the threshold on the ground of absence of material facts i.e. the absence of a cause of action by applying Order VII Rule 11 C.P.C. In this regard a three Judge Bench decision of the Supreme Court in the case of *Hardwari Lal Vs. Komal Singh* reported in *1972 SCR (3) 742* was relied upon.

Further when the Statute prescribes a mode of doing a thing in particular manner, it should be done accordingly, and not otherwise. In the present case the election petition is required to be presented by the candidate or the elector himself, and not his agent and if it is not so done, then consequence would be dismissal of the election petition.

Moreover, as already stated, there is an object behind such a provision, therefore, even adopting a purposive interpretation of the provision it has to be held to be mandatory and non-curable in such proceedings so as to ensure genuineness of the proceedings and to avoid frivolousness and fictitiousness in this regard so as to secure sanctity of election proceedings challenging an election as held by the Supreme Court in G.V. Sri Ram Reddy's case (supra). In this regard we reiterate our approval of the observation made by this Court in *Devendra Yadav's case* as mentioned earlier.

Absence of a provision prescribing penal consequences for non-compliance of statutory provision is no doubt a factor to be considered

while deciding whether a provision is directory or mandatory but the language of the provision in question, the intent of the Legislature and the object sought to be achieved are also to be borne in mind. The language used in section 12-C(3) and the intent behind it make it non-curable, especially as 'presentation' denotes a one time act in a proceeding.

Even at the cost of repetition it needs to be mentioned that Section 81 of the Act, 1951 was held to be mandatory in *J. V. Sri Ram Reddy's case* (supra) on account of the object and intent of the Legislature and the provision contained in Section 86 was of course an additional conclusive factor but this does not diminish the value of the other reasons mentioned therein especially these regarding the object which Section 81 seeks to achieve, which apply to the case at hand also.

It is not out of place to mention that even if a provision is held to be directory it does not mean that the concerned authority which is required to observe it, can ignore it, as, no Authority or Forum can ignore a statutory provision enjoining it to perform any duty especially a provision such as the one contained in Section 12-C(3). When a provision is declared to be directory all that it means is that a failure to obey it does not render a thing duly done in disobedience of it a nullity before a Court of law on the ground of its violation, its non-compliance by itself may not necessarily be made a ground for interfering with the decision, but it certainly does not mean that those public Authorities or Forums, who are enjoined to comply it, can ignore it. Reference may be made in this regard to Paragraph 21 of Judgment of the Supreme Court in *Drig Raj Kuer Vs. Amar Krishna Narain Singh* reported in *AIR 1960 SC 444*. Reference may also be made to Paragraph 75 and 76 of the Full Bench Decision in the case of *Vikas Trivedi and Ors. Vs. State of U.P. and Ors.* reported in *(2013) 2 UPLBEC 1193* wherein reference has been made to Paragraph 5-052 of De-Smith on Judicial Review regarding mandatory and directory provision in a statute to the effect- all statutory requirements are prima

facie mandatory. However, in some situations the violation of a provision will, in the context of the statute as a whole and the circumstances of the particular decision, not violate the objects and purpose of the statute. Condoning such a breach does not, however, render the statutory provision directory or discretionary. The breach of the particular provision is treated in the circumstances as not involving a breach of the statute taken as a whole i.e. its object etc. This of course is subject to what we have already held as to the mandatory character of Section 12-C(3).

Further, a similar argument was advanced by Shri Shukla, learned counsel for the opposite parties, relying upon the proviso to Rule 2 read with Clause 6 of the proviso to Rule 4 of the Rules, 1994. He contended that a clear stipulation had been made by the Rule making Authority that in the event the petition is not filed within the limitation prescribed and/or is not accompanied by the requisite treasury challan, may, at any time, be dismissed by the Sub-Divisional Officer but no such stipulation is provided for dismissal of an election petition on the ground that it has not been presented by the candidate or the elector personally, therefore, relying upon the Constitution Bench decision in *Jagan Nath's case* (supra) he contended that absence of such a provision prescribing a penal consequence for non-filing of the election petition by the candidate or the elector personally in the Rules, 1994, while prescribing such stipulation in relation to other requirements, is conclusive of the fact that the aforesaid requirement is not mandatory but only directory and the non-filing would not be fatal.

Apart from the fact that this argument of Shri Shukla is not acceptable on account of the reasons already given by us, it needs to be reiterated that the provision for filing of an election petition by the candidate or the elector is contained in Sub-section 3 of Section 12-C which is the substantive provision contained in the main Act, 1947 and not in the Rules 1994. Although, under Section 110(ii-c) of the Act, 1947 the State Government is empowered to make Rules regarding presentation

and disposal of election petitions and applications for revision under Section 12-C and it has in fact made the Rules, 1994, which have already been referred by us earlier, there is no provision in the said Rules 1994 as to who shall present the election petition. Such a provision is contained only in Section 12-C (3) of the Act, 1947 i.e. the main Act, under which the Rules, 1994 have been made. In contradistinction to this, other modalities such as limitation for filing the election petition and that it should be accompanied by a treasury Challan have been specifically prescribed in Rule 3 of the Rules, 1994, therefore, the consequence of non-compliance of these stipulations contained in the Rules has been prescribed in Clause 6 of Rule 4 of the Rules, 1994, but, as, there is no prescription or stipulation in the Rules, 1994 as to who should file the election petition, therefore, the consequences of non-compliance of the same is not prescribed in the said Rules 1994. It being so, no such inference can be drawn, as suggested by Shri Shukla, based on absence of such a provision prescribing such consequences regarding filing of the election petition in the Rules, 1994. It is Section 12-C(3) of the Act, 1947 which applies in this regard and the question referred has to be answered keeping the said provision and object behind it in mind. An election petition under Section 12-C(1) is required to be filed by the candidate or the elector personally, as already held, and the consequences of non-filing flow from the language, intent, and object of Section 12-C(3) as explained hereinabove, and not from the Rules, 1994.

It is trite that provision of the main Act will always override the Rules made thereunder in the event of conflict. If a subject matter is covered by the Act the Rules made by the Rule Making Authority can not be read and understood to supplant the object and intent of Section 12-C(3) of the Act, 1947. The argument noticed above is thus rejected. This is in addition to the reasons already given by us while rejecting such argument of Shri Shukla based on the decision in *Jagan Nath's case* (supra).

Moreover, the Act of presentation of an election petition denotes a one time act of giving or delivering the petition by the candidate or the elector as the case may be before the Prescribed Authority. Once presented, the act of presentation stands exhausted and there is no question of it being cured on a subsequent date in the same proceedings.

In view of above, the irresistible conclusion is that once the election petition is presented by a person other than the candidate or the elector or it is presented in his absence, Section 12-C(3) stands violated and the Prescribed Authority has no option in this regard to adjourn the matter to some other date for rectification of the error which in fact is non curable/non rectifiable also as, act of presentation is a one time act in a proceeding.

Thus, non-presentation of an Election Petition under Section 12-C (1) and (3) of the Act, 1947 by the candidate/Election Petitioner personally or, by his Advocate or clerk in his presence, is fatal and is not a curable defect in those proceedings.

Having held as above we may add that in the event of dismissal of an Election Petition on the ground of its non-presentation as aforesaid by the candidate, if the limitation for filing such a petition is still available, then, the candidate can file an Election Petition afresh complying Section 12-C(3) as discussed above, as, the earlier dismissal is not on merits and there is no provision in the Act, 1947, nor was any such provision brought to our notice, which prohibits filing of a fresh Election Petition as aforesaid. We could also not find any provision in the Act, 1947 or Rules made thereunder analogous to the explanation to Section 86 read with Section 98(a) of the Act, 1951. This, in our view, will, on the one hand, achieve the object of Section 12-C(3) and abide by the language used therein and, on the other hand, will prevent an otherwise meritorious challenge to an Election from being defeated by default.

We are also of the view that any objection regarding non-presentation of an Election Petition by a candidate as aforesaid should be raised at the earliest when the trial is still pending before the Prescribed Authority and not after disposal of the Election Petition such as at the Revisional stage or before the High Court. This is for the reason firstly, if not raised during trial a specific issue can not be framed in this regard and the parties would not be able to lead evidence in respect to it, secondly, if raised at a later stage evidence may not be available by then or the Officer before whom the petition was presented may himself not be available. Thirdly, once there is an adjudication of the Election petition on merits, then, it will be highly inequitable to allow such a plea or objection to be raised at the Revisional level or before the High Court under Section 226 of the Constitution, especially when, the Election Petition has succeeded. It will therefore have to be treated as waived, as has been held in **Devendra Yadav's case (supra)**.

We are also of the view that Prescribed Authorities should specifically and mandatorily record in the order sheet as to whether the Election Petition has been presented by the candidate personally or, by his Advocate or clerk in the presence of the candidate, or not ? The consequences will follow accordingly as discussed above. This will avoid unnecessary litigation based on such pleas and save a lot of time and energy of all the stakeholders. The Prescribed Authorities and Revisional Authorities under Section 12-C(1) and 12-C(6) of the Act, 1947 are directed to strictly comply with these observations/directions.

As regards question no. 2, in view of the discussion already made by us hereinabove, we are of the view that the Division Bench in Lal Bahadur Singh does not lay down the law correctly as far as question no. 1 is concerned, subject of course to certain observations made by us in the earlier part of the judgment.

We must point out that Rule 24(2) of the Rules, 1947 when it used the words 'by any 10 or more electors' were slightly different than the language contained in Section 12-C (3) as in the latter provision word 'elector' has been used.

In fact the Division Bench in *Lal Bahadur Singh's case* (supra) only considered the said provision and did not specifically consider the language used in Section 12-C(3) of the Act, 1947 in the manner in which we have done, as such, it does not lay down the law correctly on this issue, subject however to the observations made hereinabove.

As regards the decision in *Viresh Kumar Tiwari's case* (Supra), we approve of it in part as far as it holds that the election petition is to be filed by the candidate in person and not by his agent, but in our discussion relating to question no. 1 we have made it clear that filing of such a petition by the agent of the candidate/election petitioner i.e. his Advocate or clerk, in his presence before the prescribed authority, would amount to sufficient compliance of Section 12 C(3), therefore, subject to this modification, the said decision is approved.

With regard to the decision of this Court in *Urmila's case* (supra), we find that it does not lay down any proposition of law on the question no. 1 which has been considered by us. As already observed, it turns on its own facts. Therefore, its correctness is not required to be considered by us. Question No. 2 is answered accordingly.

Based on the discussion made, and subject to it, we summaries our answers to the questions referred to us (as rephrased by us), as under:-

1. (a) An Election Petition under Section 12-C(1) and (3) of the Act, 1947 has to be necessarily and mandatorily presented by the candidate/ Election petitioner himself, personally, if it is in his name. However, if it is presented by the Advocate or his clerk, in the presence of the candidate/ Election Petitioner

before the Prescribed Authority, it would be sufficient compliance of Section 12-C(3) .

(b) In the event an election petition is not presented as aforesaid then it would be fatal and an incurable defect which has to result in dismissal of the petition by the Prescribed authority with liberty however, to the candidate to file a fresh petition, if the limitation is still available and before it expires, in accordance with Section 12-C(3), personally, or by his Advocate or Clerk in his presence. He can not adjourn the matter to some other date for rectification of the incurable defect in those proceedings.

2. The decision in Lal Bahadur Singh's case (supra) does not lay down the law correctly as regards Question No.1. The decision in Viresh Kumar Tiwari's case (supra) lays down the law correctly subject to the proposition that an election petition filed by the Advocate or his Clerk in presence of the candidate before the Prescribed Authority is also in accordance with section 12-C (3) of the Act 1947. In Urmila's case (supra) Question No.1 has not been decided.

To facilitate compliance of the judgment by the Prescribed Authorities as regards the procedure to be followed by them, the Senior Registrar of this Court at Lucknow shall communicate this Judgment to the Principal Secretary Panchayat Raj/ Additional Chief Secretary Panchayat Raj, Govt. of U.P. Lucknow, who, in turn, shall communicate it to all Prescribed Authorities in the State, for compliance.

A copy of this judgment shall also be circulated by the Registrar General of the High Court to all District Judges in the State of U.P., as they function as Revisional Authorities under Section 12-C(6) of the Act, 1947.

The records of the Petition along with our answer to the reference shall now be placed before the Writ Court for further proceedings.

Order Date :- 12.6.2020/R.K.P.

(Dinesh Kumar Singh,J.) (Rajnish Kumar,J.) (Rajan Roy,J.)