

**Aditya Vesh Disciple of Swami Daya Nand v. Bhajan Lal and another**  
(S. S. Sodhi, J.)

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was not disposed of on merits. Rather on the application of the writ petitioners in that case, the same had been dismissed as infructuous. Apart from that, neither the eligibility nor the entitlement of the present writ petitioners for appointment to the posts of Taxation Inspectors was directly or substantially in issue in the previous writ petition filed against the present writ petitioners, nor the same was decided. Consequently, the writ petitions were not barred by the principle of *res judicata*.

(9) In view of what has been stated above, we find no merit in these letters patent appeals which are dismissed. However, there will be no order as to costs.

(10) Before parting with the judgment, it may be observed that, as indicated above, 20 posts of Taxation Inspectors had been kept vacant for the writ petitioners,—*vide* order of this Court dated 31st May, 1989. They had been selected in the year 1986. Because of the litigation, they have been deprived of their appointments as Taxation Inspectors. The Authorities are now directed to give the appointments to the writ petitioners within a period of one month as Taxation Inspectors.

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P.C.G.

Before : S. S. Sodhi, J.

**ADITYA VESH DISCIPLE OF SWAMI DAYA NAND,—Petitioner.**

*versus*

**BHAJAN LAL AND ANOTHER,—Respondents.**

*Election Petition No. 1 of 1989.*

3rd August, 1990.

*Representation of People Act (43 of 1951)—S. 83—Change of symbol—Election symbol allotted to a political party allotted by mistake to a candidate—Such mistake corrected at instance of Election Commission and fresh symbol allotted to candidate within two days—Election challenged on ground that change in symbol materially affected the result of election—Petition not disclosing cause of action—Absence of material facts and particulars to show prejudice caused by change in symbol—Petition dismissed for not disclosing cause of action.*

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*Held, that the election petition falls far short of meeting the requirements of S. 83 of the Representation of People Act, 1954.*

(Para 7)

*Held, that the vague averments made clearly violate the mandate of the well-established law of pleadings, namely, that they should be precise, specific and unambiguous. Mere hope of votes to be polled cannot be equated with material facts pertaining to cause of action to be founded thereon.*

(Para 9)

*Held, that wide disparity in the number of votes cast in favour of the petitioner, as compared to those for the returned candidate and his principal rival, clearly detracts from any inference of the election of the returned candidate having in any manner been materially affected by the change in the symbol allotted to the petitioner.*

(Para 10)

*Election Petition under the provision of Part 6, Chapter 2, Sections 80 to 84 and 100 of the Representation of the People Act, 1951 praying that—*

- (i) that the election of Respondent No. 1 be declared as void on the facts and grounds mentioned in the Election petition;*
- (ii) Respondent No. 2 be held responsible for holding the election of 6 Faridabad Parliamentary Constituency Faridabad in an illegal manner;*
- (iii) any other order which this Hon'ble Court may deem fit and proper in the facts and special circumstances of this case be passed;*
- (iv) the election of 6 Faridabad Parliamentary Constituency, Faridabad may be ordered to be held afresh;*
- (v) allow the Election petition with costs.*

**K. C. Sharma, Sr. Advocate (D. D. Gupta, Advocate with him),  
for the Petitioner.**

**J. K. Sibal, Sr. Advocate (R. C. Setia, Advocate, with him),  
for the Respondents.**

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### JUDGMENT

*S. S. Sodhi, J.*

(1) Changes in the symbol allotted to the petitioner provides the foundation for the challenge to the election of the respondent Shri Bhajan Lal to the Lok Sabha from the Faridabad Parliamentary Constituency during the recent elections held in November 1989.

(2) On November 2, 1989, which was the last date for the withdrawal of nominations, the petitioner Sh. Aditya Vesh was allotted the symbol of Swastik within a Circle. Unknown to the Returning Officer then was the fact that this was the reserved symbol of the Congress (J) and it could not, therefore, be allotted to any one else. It appears that this error was detected by the Returning Officer two days later, on November 4, 1989 and on that very day, the Election Commission was moved in the matter and an order obtained that the symbol be changed and what is more, on the petitioner's own showing, a message to this effect was also received by him the same day, though it was on November 7, 1989 that he found the formal order posted at the office of his party.

(3) The picture that thus emerges is that two days after its allotment to the petitioner, the symbol of Swastik within a Circle was changed. The petitioner was then given the symbol of Woman carrying a basket on her head. It is the case of the petitioner that this change in symbol materially affected his election and that of the returned candidate rendering it thereby illegal and void. The pleadings of the petitioner, in this behalf being to the effect that from the moment the symbol of Swastik within a Circle was allotted to him, he immediately started his election campaign by getting posters printed with this symbol. He also arranged meetings during the course of his canvassing where he declared his symbol to be Swastik within a Circle and therefore, amongst the electors of his constituency, his name was duly associated with the symbol. Next, it was said that during canvassing, his name with this symbol was publicised amongst lakhs of electors. Further, that by the abrupt change of the symbol, his election campaign was gravely affected to his detriment as it put his campaign in suspension and his electors in the dark about the fate of the election.

(4) The respondent Sh. Bhajan Lal, in his return, took the preliminary objection that the petition discloses no cause of action and

further that the petitioner had not stated, as required by law, that the alleged change of symbol had materially affected the result of the election of the returned candidate.

(5) In dealing with the preliminary issue framed on the respondent's plea of the petition disclosing no cause of action, it would be relevant to advert to the provisions of Section 83 of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act') which ordain that an election petition shall contain "a concise statement of the material facts on which the petitioner relies."

(6) It is now well-settled that the provisions of Section 83 of the Act are mandatory and as explained by Hidayatullah, C.J. in *Samant N. Balakrishna etc. v. Goerge Fernandez & Others* (1), this Section 83 requires first a concise statement of material facts and then the fullest possible particulars. Material facts being facts necessary to formulate a complete cause of action and omissions of a Single material fact, it was observed. leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars, on the other hand, is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. It was pointed out that there may be some overlapping between material facts and particulars, but these two were quite distinct. Further, it was observed that a petition which merely cites the Section cannot be said to disclose a cause of action.

(7) Seen in this light, there can be no escape from the conclusion that the petition falls far short of meeting the requirements of Section 83 of the Act.

(8) There is no mention in the petition of where the petitioner canvassed or held meetings during the two days before his symbol was changed. The number of persons that he canvassed with and the date and time of any such meetings. Even the number of meetings has not been disclosed. In other words, there is no mention of the number of voters approached by the petitioner with the old symbol before it was changed nor of the figure of those, who, according to him, could not vote for him due to the change of symbol. There is also no plea of how many persons would have voted for him, but for the change of symbol. of course, backed up by the basis of any such statement.

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(1) A.I.R. 1969 S.C. 1201.

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(9) Such vague averments, as have been made in the petition here, clearly violate the mandate of the well-established law of pleadings, namely; that they should be precise, specific and unambiguous. Mere hope of votes to be polled cannot be equated with material facts pertaining to cause of action to be founded thereon.

(10) Another important and equally significant requirement in order to impeach the election of the returned candidate is that it must be shown to have been materially affected by the ground on which the election is sought to be set aside. In this context, it would indeed be pertinent to note that while the total number of votes polled by the returned candidate were 406436 and those of his main rival—Khurshid Ahmed—273419, all that the petitioner could get was 623 votes. The wide disparity in the number of votes cast in favour of the petitioner, as compared to those for the returned candidate and his principal rival clearly detracts from any inference of the election of the returned candidate having in any manner been materially affected by the change in the symbol allotted to the petitioner.

(11) Before concluding, it deserves mention that during arguments, counsel for the petitioner also sought to make the point that in form 7-A, attached to the letter of the Returning Officer of November 4, 1989 (annexure P/6), the symbol allotted to the petitioner is described as "A woman carrying a basket on her Hand" instead of "A woman carrying a basket on her Head." This error, it was argued must vitiate the election. It will be seen that no such plea figures in the petition and it was for the first time in the course of arguments that it was raised. Even otherwise, it cannot, but be branded as a contention wholly devoid of merit. No prejudice thereby to the petitioner has been alleged nor indeed had it in any manner materially affected the election of the returned candidate. This contention has thus to be noticed only to be repelled.

(12) There can thus be no manner of doubt that the respondent has no case to answer as the petition discloses no cause of action and it cannot, therefore, be sustained, rather, it must be held to be wholly frivolous and without basis. The election petition is accordingly hereby dismissed and keeping in view the circumstances, as narrated, with Rs. 5,000 as costs.

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R.N.R.