was not available. So, this is not a case in which the appeals were returned to the defendant on May 2, 1969, not in accordance with the rules, the fact of the matter being that the return was very much in accordance with the rules. Now the endorsements on the appeals show that the objections were first raised on May 2, 1969, and re-filing was directed within a week, but it was not done until June 9, 1969, when the essential objection with regard to filling the form of memorandum of appeal had not been complied with. So they were returned again on June 11, and it was not until June 21, 1969, that this part of the objections was complied with. To the period between May 2 and June 21, 1969 by no manner of looking at it can section 14 of the Limitation Act be applied, and for this period no sufficient cause for not filing the appeals has been shown. The records of the appeals only show that on June 21, 1969, the counsel for the defendant noted that the defendant could not be contacted earlier, which could hardly be described as any cause at all. So. it was the duty of the defendant in each appeal in his application under section 5 of the Limitation Act of 1961 to explain each single day's delay, and while he has rendered explanation, with sufficient cause, down to May 1, 1969, but he has failed to do so for the period between May 2 and June 21, 1969, his appeals, as already said; having been barred by time long before that date.

(6) In the approach as above Civil Miscellaneous application No. 1976-C of 1969 in Regular First Appeal No. 401 of 1969 and Civil Miscellaneous Application No. 1977-C of 1969 in Regular First Appeal No. 402 of 1969 by the defendant are dismissed, but, in the circumstances of this case, there is no order in regard to costs.

(7) The appeals be now listed for hearing before this Bench next week.

R. S. NARULA, *J.*—I agree.

N.K.S.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J. and R. S. Narula, J.

MOHAN LAL AND ANOTHER,—*Petitioners.*

versus

BHAGWATI PARSHAD AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 84 of 1969

March 11, 1970.

Punjab Municipal Election Rules (1952)—*Rules* 11(2), 40(b) and 63(1)(c)—*Election to a double-member municipal constituency*—*Candidate*

for the reserved seat filing nomination papers not accompanied by declaration duly verified by the prescribed authority of his being member of a scheduled caste—Certificate by the prescribed authority accompanying the nomination paper—Such nomination papers—Whether valid—Quashing of an order accepting the nomination papers of a returned candidate from a reserved seat in a double member municipal constituency—Election of the returned candidate alone—Whether to be set aside—Whole election of the constituency—Whether becomes invalid.

Held, that the requirement of rule 11(2) of the Punjab Municipal Election Rules, 1952, is that the nomination papers of a candidate for the reserved seat in a double-member municipal constituency has to be accompanied by a declaration of his being member of a scheduled caste. The declaration of the candidate need not necessarily be on the nomination paper itself, and it would be sufficient compliance with the rule if the candidate's declaration required under the rule is contained on a separate paper which accompanies the nomination paper. But the imperative requirement of the rule is that the declaration which must accompany the nomination paper should itself be verified by the prescribed authority. If the declaration itself is not verified by any authority but a separate certificate of the prescribed authority is attached with the nomination paper, it cannot amount to sufficient compliance with the requirements of the said rule. Thus non-verification of the declaration is a material irregularity within the meaning of that expression as used in rule 63(1)(c) and such nomination paper is not valid. (Para 6).

Held, that election to a two-member constituency is 'one election' and cannot be equated with two separate elections. The effect of the provision contained in rule 40(b) of the Rules is that in a double-member constituency, the persons securing the highest votes out of those contesting for the reserved seat has to be declared elected to the reserved seat and the votes secured by the remaining candidates whether contesting for the reserved seat or the general seat have to be considered together for declaring the election to the general seat. It is impossible to sustain part of the election to a two-member constituency so long as the manner of declaring its result is on the pattern provided in rule 40(b). Hence if the order accepting the nomination paper of a returned candidate in a double member constituency is quashed, the whole of the election of that particular constituency is liable to be set aside and not of the election of the returned candidate alone. (Paras 16 and 21).

Letters Patent Appeal under Clause 10 of the Letters Patent, against the judgment dated 24th January, 1969, passed by Hon'ble Mr. Justice Bal Raj Tuli in Civil Writ No. 1347 of 1968.

H. L. SIBAL, SENIOR ADVOCATE WITH S. C. SIBAL, ADVOCATE, for the appellants.

NAND LAL DHINGRA, AND KULWANT RAI ADVOCATES, for Respondent No. 1 only.

JUDGMENT.

NARULA, J.—The main question which calls for decision in this Letters Patent Appeal is—whether on the quashing of an order accepting the nomination papers of a returned candidate in a double-member municipal constituency the whole election of that particular constituency or the election of the particular returned candidate alone is liable to be set aside. This question has arisen in the following circumstances :—

(2) Mohan Lal and Mata Din appellants as well as Bhagwati Parshad and others, respondents Nos. 1 to 20, filed their nomination papers for election, from Ward No. 1, double-member constituency, to the Rewari Municipal Committee. Mohan Lal appellant and Udmi Ram respondent No. 7 and four other candidates contested the election to the reserved seat. According to the procedure laid down in rule 40(b) of the Municipal Election Rules, 1952 (hereinafter referred to as the Election Rules), to which provision detailed reference will be made in a later part of this judgment, Mohan Lal appellant was declared elected from the reserved seat, and Mata Din appellant from the general seat. Though the election petition challenging the election from the Ward in dispute had been filed before the prescribed authority on behalf of Mange Lal Rustogi respondent No. 20, a petition under Articles 226 and 227 of the Constitution was filed in this Court in April, 1968, by Bhagwati Parshad respondent No. 1 for quashing the order of the Returning Officer, dated February 5, 1968 (Annexure 'A'), dismissing his objections against the nomination paper of Mohan Lal appellant, as well as the order of the Deputy Commissioner, Gurgaon, dated February 15, 1968 (Annexure 'B'), dismissing the revision petition of Bhagwati Parshad respondent against the decision of the Returning Officer and upholding the validity of the nomination paper of appellant No. 1. It was further prayed in the writ petition that any other direction or order that may be deemed by this Court to be fit in the circumstances of the case may also be issued. Two objections to the validity of nomination paper of Mohan Lal were

taken before the learned, Single Judge out of which only one succeeded and it is the correctness of the decision of the learned Single Judge in connection with that objection alone which was attacked before us by Mr. S. C. Sibal, the learned counsel for the appellants. That objection was to the effect that the nomination paper of appellant No. 1 was liable to be rejected as it did not comply with the requirements of sub-rule (2) of rule 11 of the Election Rules, inasmuch as the declaration of Mohan Lal that he was a member of Jatia Chamar Caste which is a Scheduled Caste in the State of Haryana, on the nomination paper was not verified by any prescribed authority. What had factually happened in this connection was this. The prescribed declaration was endorsed on the nomination paper itself, and was duly signed by Mohan Lal appellant. It had not been verified by any prescribed authority. The nomination paper containing the declaration was, however, accompanied by a separate certificate by the Sub-Divisional Officer, Rewari, who was admittedly prescribed authority, to the following effect :—

> "This is to certify that Shri Mohan Lal son of Shri Dev Karan of village Rewari, tehsil Rewari, district Gurgaon, in the Haryana State, belongs to the Jatia Chamar Community, which is recognised as Scheduled Caste under the Scheduled Castes and Scheduled Tribes Order (Amendment) Act 1959.
>
> Shri Mohan Lal ordinarily resides in the Gurgaon district of the Haryana State. This certificate has been issued after due verification from the Tahsildar/Naib Tahsildar, Rewari."
>
> Dated : 24th January, 1968."

(3) The writ petition was contested on behalf of Mohan Lal appellant. His return, dated July 7, 1968, stated in connection with the objection in dispute that sub-rule (2) of rule 11 of the Election Rules had been substantially complied with when a regular Scheduled Caste certificate had been attached with the nomination paper and that certificate had been attested by a Magistrate. The appellant added in paragraph 6(ii) of his written statement that the Returning Officer was personally known to him, and he, therefore, did not ask him to complete the certificate on the nomination

paper, and that if the Returning Officer had asked the appellant to do so, the paper would have been completed there and then, and the formality of verification would have been done by the Returning Officer himself as a Magistrate. Lastly, it was averred that an action on the part of the Returning Officer resulting in a technical defect could not be allowed to injure the appellant or his interest.

(4) In his judgment under appeal, Tuli, J. held that in view of the law laid down by a Division Bench of this Court (my Lord, the Chief Justice and Tuli, J. himself) in *Bihari Lal* v. *Deputy Commissioner, Amritsar, and others,* (1), and in view of the pronouncement of an earlier Division Bench (Falshaw, C.J. and Grover, J.) in *Fateh Singh* v. *Shri K. C. Grover and others* (2), the nomination paper of Mohan Lal appellant did not satisfy the requirements of rule 11(2) of the Election Rules, and was, therefore, liable to be rejected. In that view of the matter, the impugned orders of the Returning Officer and the Revising Authority were quashed by the judgment of the learned Single Judge, dated January 24, 1969, and election of both the appellants as well as of respondents 1 to 20 from Ward No. 1 of the Rewari Municipal Committee was set aside leaving the parties to bear their own costs.

(5) Mr. Sibal who appears for both the appellants has raised only two questions in this appeal. He has firstly attacked the correctness of the order of the learned Single Judge on its merits inso far as it relates to the legality of the orders of the Returning Officer and the Revising Authority upholding the validity of the nomination paper of Mohan Lal. The relevant facts in this respect, to which detailed reference has already been made, are not in dispute. Rule 11(2) of the Election Rules is in the following terms :—

> "In a constituency where a seat is reserved for the Scheduled Castes, no candidate shall be deemed to be qualified to be chosen to fill that seat unless his nomination paper is accompanied by a declaration verified by any of the authorities mentioned in sub-rule (1) that the candidate

(1) I.L.R. (1969) I Pb. & Hr. 604.

(2) C.W. 927 of 1964 decided on 1st October, 1964.

is a member of the Scheduled Castes for which the seat has been so reserved and the declaration specifies the particular caste of which the candidate is a member."

(6) The Ward with the election to which we are concerned was admittedly a double-member constituency. Unless the first appellant satisfied the requirements of rule 11(2), he could not possibly be deemed to be qualified to be chosen to the reserved seat. The requirement of the rule is that the nomination paper has to be accompanied by a declaration. This shows that the declaration of the candidate need not necessarily be on the nomination paper itself, and it would be sufficient compliance with the rule if the candidate's declaration required under the rule is contained on a separate paper which accompanies the nomination paper. But the imperative requirement of the rule is that the declaration which must accompany the nomination paper should itself be verified by the prescribed authority. It is not disputed in this case that the declaration itself was not verified by any authority but a separate certificate of the prescribed authority, dated January 24, 1968, was attached with the nomination paper. We are unable to accept the argument of Mr. Sibal to the effect that what has happened in this case should be held to amount to sufficient compliance with the requirements of the relevant rule. In other words, counsel wants us to hold that the non-verification of the declaration is not a material irregularity within the meaning of that expression as used in rule 63(1) (c) of the Election Rules.

(7) In *Gurdip Singh* v. *Shri Gurmej Singh,* (3) decided by S. S. Dulat and A. N. Grover, JJ. relating to the election to the reserved seat in the Punjab Legislative Assembly from the Amritsar Sadar Constituency, the election petition questioning the result of the election on the ground that the nomination papers of certain candidates had been improperly rejected by the Scrutiny Officer for want of being accompanied by proper declaration prescribed under the 1951 Act had been dismissed by the Election Tribunal. The Tribunal had held that the question was not whether the candidates did or did not belong to a particular caste, but whether a proper declaration required by the 1951 Act had in fact been made

(3) F.A.O. 3-E of 1963 decided on 8th April, 1963.

by the candidates, and if not, whether the defect in that declaration was of a substantial character. The Tribunal concluded that the certificate filed with the nomination papers were of no consequence and further held that the omission to give the requisite particulars in the nomination was a defect of substantial character which could not be cured by looking at the evidence of fact, and that the Returning Officer was, therefore, justified in rejecting the nomination papers in question. Upholding the order of the Tribunal, the Division Bench dismissed the appeal against it, preferred to this Court under section 116-A of the 1951 Act, after reference to certain observations of their Lordships of the Supreme Court in *Brijendralal Gupta and another* v. *Jwalaprasad and others*, (4) to the effect, that what is to be seen in such cases is whether the statutory declaration has or has not been filed in proper form, and not whether the candidate had in fact attained certain qualification. Great significance was attached to the phraseology of sub-section (2) of section 33 of the 1951 Act which stated, like rule 11(2) of the Election Rules, that a candidate would not be deemed to be qualified to be chosen to fill the reserved seat unless the requisite declaration had been given. The learned Judges observed in this behalf as follows :—

> "This is a matter of form, but the requirement is statutory, and it is obvious from the language used by Parliament in sub-section (2) that the requirement is important, for here Parliament has chosen to say that without such a declaration the candidate will be deemed to be not qualified."

The Bench felt satisfied that the defect in the nomination papers involved in *Gurdip Singh's case* (3) was of a substantial character and the Election Tribunal had been justified in so holding and in rejecting the nomination papers.

(8) In *Fateh Singh* v. *Shri K. C. Grover and others*, (2), the declaration had been properly made and signed by the Scheduled Caste candidate, but the portion of the nomination form for the verification by the prescribed authority had been left blank though a separate piece of paper was tendered by the candidate bearing an attestation by a Magistrate more or less on the lines of that

(4) A.I.R. 1960 S.C. 1049.

found in the prescribed form of verification. The argument about substantial compliance with the relevant rule having been made was repelled on the authority of the earlier judgment in *Gurdip Singh's case* (3) (supra).

(9) The last case which is relevant for deciding this point is the judgment of my Lord the Chief Justice and Tuli, J. in *Bihari Lal* v. *Deputy Commissioner, Amritsar, and others,* (1). This case related to election to a double-member constituency of the Amritsar Municipality. The Returning Officer had rejected the nomination papers of all the three candidates for the reserved seat on the ground that they were not accompanied by their declarations duly verified by any of the competent authorities as required by rule 11(2) of the Election Rules. The Deputy Commissioner, Amritsar, the revising authority under the Election Rules, however, accepted the nomination paper of Bihari Lal. As a result of the election, Bihari Lal was declared elected to the reserved seat. The validity of his election was then questioned under Article 226/227 of the Constitution in this Court. Sarkaria, J. allowed the writ petition, quashed the order of the Deputy Commissioner and held that the Returning Officer had correctly rejected Bihari Lal's nomination paper. In an appeal against that judgment, the Division Bench, while upholding the order of the learned Single Judge, held that the nomination paper of Bihari Lal was defective on two grounds, viz,, (1) that the declaration of Bihari Lal had not been verified by the prescribed authority and verification on a separate paper did not meet the requirements of the rule, because what the Magistrate or any other prescribed authority had to verify, according to the prescribed form, was the declaration of the candidate made before him on solemn affirmation, and not to verify separately the fact that the candidate was a member of certain caste; and (ii) that the certificate of the prescribed authority should be on his own testimony and not on the verification of somebody else. In that case the prescribed authority had certified that Bihari Lal belonged to a Scheduled Caste on the testimony or "verification of Shri Karnail Singh, M.L.A. and Shri Gurdeep Singh." The Division Bench held that the prescribed authority had not made his declaration from his own personal knowledge, nor did he say that Bihari Lal had made such a declaration before him, and, therefore, the nomination paper was invalid and had been rightly rejected. We are unable to find any distinction between the relevant facts of *Bihari Lal's case* (1)

(supra) and this case so far as the merits of the controversy go, and it does not appear to be open to us to entertain an argument that *Bihari Lal's case* (1) has been wrongly decided.

(10) Mr. Sibal lastly referred in this connection to the prescribed form of the nomination paper under rule 11(1) of the Election Rules (Form 1 printed at page 549 of the Punjab Government, Local Government Code, Volume I), wherein the form in which the verification which is to be made by a Magistrate or any other prescribed authority is printed (at page 550) just below the declaration to be signed by a candidate who is a member of any of the Scheduled Castes. As to what counsel sought to draw from that is beyond my comprehension. If anything, this supports the view taken by the earlier Division Benches and followed by the learned Single Judge.

(11) No other argument having been advanced on behalf of Mohan Lal appellant, he cannot be granted any relief by us.

(12) This takes me to the second question which has been more seriously pressed by Mr. Sibal. His submission was that no specific prayer had been made to set aside Mata Din's election, and that in any event, in view of the particular phraseology of the Election Rules, it is the election of the returned candidate alone which could have been set aside on the finding that his nomination paper had been wrongly accepted, but that the election of Mata Din to the general seat of the same constituency could not be affected on that account. Counsel drew for this purpose on the corresponding provision in the Representation of the People Act, 1951 (referred to in this judgment as the 1951 Act), and submitted that the language of rule 63(1)(c) of the Election Rules corresponds to the language of section 100(1) of the Representation of the People Act as amended in 1956, in contradistinction to the language of that section prior to its amendment. Rule 63(1)(c) of the Election Rules is in the following terms:—

> "Save as hereinafter provided in these rules if in the opinion of the Commission—
>
> (a) * * * * *
>
> (b) * * * * *

(c) there has been any material irregularity;

(d) * * * * *

the Commission shall report that the election of the returned candidate shall be deemed to be void."

(13) The relevant part of section 100(1) of the Representation of the People Act prior to its amendment in 1956 read as follows:—

"If the Tribunal is of opinion—

(a) * * * * *

(b) * * * * *

(c) that the result of the election has been materially affected by the improper acceptance or rejection of any nomination;

the Tribunal shall declare the election to be wholly void."

While construing the unamended section 100(1)(c) and dealing with its effect on a case where the election of one of the members elected to a double-member constituency was found to be liable to be set aside on account of improper rejection of the nomination paper, it was held by their Lordships of the Supreme Court in *Surendra Nath Khosla and another* v. *S. Dalip Singh and others* (5), as follows:—

"Lastly it was urged that assuming that the Tribunal was justified in declaring the election to be void so far as the general seat was concerned, there was no reason to set aside the election as a whole and that therefore the election of the second appellant should not have been set aside. But section 100 in terms provides that if the Tribunal was of the opinion, as it was in this case, that the result of the election had been materially affected by the improper rejection of the nomination paper, 'the tribunal shall declare the election to be wholly void.' The election in this case was in respect of a double seat constituency and was one integral whole. If it had to be declared void, the Tribunal was justified in setting aside the election as a whole."

(5) A.I.R. 1957 S.C. 242=1957 S.C.J. 162.

Section 100 of the 1951 Act was amended by section 55 of the Representation of the People (Second Amendment) Act (27 of 1956) (hereinafter called the 1956 Act), and for the words "the Tribunal shall declare the election to be wholly void" were substituted by the amendment the following words:—

> "The Tribunal shall declare the election of the returned candidate to be void."

Mr. Sibal's argument was that in rule 63(1)(c), the phraseology used from the very beginning is for setting aside the election of the returned candidate, and not for declaring the election itself to be wholly void. On that basis he argued that it is not the judgment of the Supreme Court in *Surendra Nath Khosla's case* (5) (supra) that is relevant, but it is the judgments of the various High Courts dealing with section 100(1) of the 1951 Act as amended by the 1956 Act which are more apt and directly relevant for construing rule 63(1)(c). In this connection, counsel drew our attention to the judgment of the Andhra Pradesh High Court in *R. Narasimha Reddy and another* v. *Bhoomaji and another* (6). In paragraph (32) of that judgment which deals which a somewhat similar question, it was observed as below: —

> "Mr. B. V. Subrahmanyam, the learned counsel for the respondent has urged that election to a double member constituency is an integral whole and that where one election is set aside, the entire election should be held to be void. In support of his contention he drew our attention to the decision of the Supreme Court in *Surendra Nath Khosla* v. *Dalip Singh* (5), In that case the question was whether there was an improper rejection of the nomination within the meaning of section 100(1)(c) of the Representation of People Act.
>
> Their Lordships of the Supreme Court came to the conclusion that the rejection was improper and that it, therefore, rendered the entire election void. That decision has no bearing on this case. In this case there is no improper rejection of any nomination and the presumptions that may arise in that behalf will not arise. All that can

(6) A.I.R. 1959 A.P. 111.

be said is that Narasimha Reddy on the date of his election was disqualified to be chosen to fill a seat on the Andhra Pradesh Legislative Assembly by reason of section 7(d) of the Act.

In such a case the Tribunal can only declare the election of the returned candidate void. The entire election cannot be deemed to be void. Therefore, the disability of Narasimha Reddy and the declaration that his election is void will not affect the other candidate Shri Muthyal Rao."

Similarly in paragraph 24 of the Division Bench judgment of the Patna High Court in *Chandra Shekar Prasad Singh and another v. Jai Prakash Singh,* (7) it was held in the following language that the election of the returned candidate other than the one whose nomination paper had been wrongly accepted relating to an election from a double-member constituency was not liable to be set aside :—

"The last question is whether the election of Chandra Shekhar Prasad Singh has been rightly declared to be void by the Tribunal. It was urged before the Tribunal that the election for both seats in the constituency in question was a single election and not two different elections and that, therefore, the entire election has to be set aside if the election of one of the candidates is held to be void.

The Tribunal held that if the nomination paper of Bhagwat Marmu had not been accepted, one of the other two scheduled tribe candidates would have been returned and that it was obvious, therefore, that due to the improper acceptance of the nomination paper of Bhagwat Murmu the result of the election must be considered to have been materially affected. Upon this ground the Tribunal accepted the argument advanced by the petitioner before it and set aside the election of Chandra Shekhar Prasad Singh also. Learned counsel for the respondent in this Court has supported the finding of the Tribunal and has relied upon the case of *Surendra Nath Khosla* v. *Dalip Singh* (5). He has submitted that the election in a double seat constituency is an integral whole and that if action has to be set aside the whole election should be declared void. It may be noticed that this decision of their Lordships of the

(7) A.I.R. 1959 Patna 450.

Supreme Court was one dealing with section 100 of Act XLIII of 1951 as it stood before it was amended by the Representation of the People (Second Amendment) Act (XXVII of 1956). Apart from the fact that the decision was dealing with a case of improper rejection of a nomination, section 100(1)(c) as it then stood, stated that 'the Tribunal shall declare the election to be wholly void'. Section 100 of Act XLIII of 1951 as it now stands, is substantially different in some of its aspects. The old section 100(1)(c) has been split up as follows :

'Section 100(1) * * * * ...

(c) that any nomination has been improperly rejected ; or

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

(i) by improper acceptance of any nomination, the Tribunal shall declare the election of the returned candidate to be void'. (Only the relevant portions have been quoted).

In this connection section 98 of the same Act may also be noticed. Section 98 as it stood before its amendment by the same Amending Act of 1956, stated as follows :

'At the conclusion of the trial of an election petition the Tribunal shall make an order—

(a) dismissing the election petition; or

(b) declaring the election of the returned candidate to be void; or

(c) declaring the election of the returned candidate to be void and the petitioner or any other candidate to have been duly elected; or

(d) declaring the election to be wholly void.'

Section 98 now stands thus :

'At the conclusion of the trial of an election petition, the Tribunal shall make an order—

(a) dismissing the election petition; or

(b) declaring the election of all or any of the returned candidates to be void, or

(c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected. The substantial change is the deletion of clause ;

(d) by which election could be declared wholly void. Therefore, in my opinion, sections 98 and 100 of Act XLIII of 1951, as they now stand, indicate that the improper acceptance of any nomination of a returned candidate cannot by itself be a good ground for declaring the election of any other candidate or candidates void. It may be noticed that no issue was framed for an enquiry as to whether the election of Chandra Shekhar Prasad Singh had been materially affected by the improper acceptance of the nomination of Bhagwat Murmu. The election of Chandra Shekhar Prasad Singh was declared void upon the general issues Nos. 10 and 11, quoted above. In spite of the finding of the Tribunal that Chandra Shekhar Prasad Singh was free from all blames suggested against him, his election was declared void on the ground that elections in a double member constituency are indivisible. In my opinion, the Tribunal has misdirected itself on this question. It must be held that the election of Chandra Shekhar Prasad Singh has been wrongly declared to be void."

(14) In reply to the abovesaid solitary argument advanced by Mr. Sibal on behalf of Mata Din, reliance was placed by Mr. Nand Lal Dhingra, the learned counsel for the writ petitioner-respondent on the Single Bench judgment of Tek Chand, J. in *Budha Mal and another* v. *The State of Punjab and others* (8). In order to appreciate the ratio of the judgment of Tek Chand, J. in Budha Mal's case. and to deal with the detailed submissions of Mr. Dhingra in this respect, it is necessary to set out at this stage relevant extracts from certain corresponding provisions of the 1951 Act (before its amendment in 1956) of the same Act as asended in 1956, and again as amended in 1961 as well as the relevant provisions of the Punjab Municipal Act, and the Election Rules.

(8) 1967 P.L.R. 974.

(15) It may be remembered that in the parliamentary contituencies as well in the constituencies for election to the State Legislatures, plural-member constituencies existed till the same were abolished in 1961. Section 63(1) of the 1951 Act provided that in plural-member constituencies every elector shall have as many votes as there are members to be elected, but no elector shall give more than one vote to any one candidate. Provision corresponding to sub-section (1) of section 63 of the 1951 Act is contained in Rule 31(1) of the Election Rules relating to Municipal elections. It states that in two-member constituencies, where one seat is reserved for a member of the Scheduled Caste, each elector shall have two votes, but no elector shall give more than one vote to any one candidate. The effect of these provisions is that an elector may cast both of his votes in favour of candidates for the reserved seat or both of his votes in favour of candidates for the general seat or one vote in favour of a reserved seat candidate and the other in favour of a general seat candidate so long as he does not cast both his votes in favour of the same candidate. Plural-member constituencies were abolished by operation of section 3 of the Two-Member Constituencies (Abolition) Act (I of 1961) so far as elections to the Parliament and the State Legislatures were concerned. Consequently, amendments were made in the 1951 Act by the Representation of the People (Amendment) Act 40 of 1961. Section 14 of Act 40 of 1961 stated that section 63 of the 1951 Act shall be omitted.

(16) Similarly section 54 which, *inter alia*, provided for the manner of declaring the results of plural-member constituencies was omitted from the 1951 Act by operation of section 12 of Act 40 of 1961. The corresponding Rule 40(b) of the Election Rules which is for all practical purposes the same as the erstwhile sub-section (4) of section 54 of the 1951 Act, and which is in the following terms continues to remain intact till today as double-member constituencies under the Punjab Municipal Act have not so far been abolished :—

> "40(b) In a constituency where the seats to be filled include one or more seats reserved for the Scheduled Castes (hereinafter referred to as "reserved seats") the candidates who, being qualified to be chosen to fill the reserved seats, have secured the largest number of valid votes to be duly elected to fill the reserved seats shall be declared first, and

then such of the remaining candidates as have secured the largest number of valid votes to be duly elected to fill the remaining seats shall be declared."

Though a statutory illustration had been given under section 54(4) of the 1951 Act and no such illustration had been given under Rule 40(b) of the Election Rules, yet there is no doubt that both the provisions were to operate in exactly the same manner. The illustration under section 54(4) of the 1951 Act was in the following terms :—

"*Illustration*—At an election in a constituency to fill four seats of which two are reserved there are six contesting candidates A. B. C. D. E. and F, and they secure votes in descending order, A securing the largest number, B, C and D are qualified to be chosen to fill the reserved seats, while A, E and F are not so qualified. The Returning Officer will first declare B and C duly elected to fill the two reserved seats, and then declare A and D (not A and E) to fill the remaining two seats."

The effect of the provision contained in rule 40(b) is that the persons securing the highest votes out of those contesting for the reserved seat has to be declared elected to the reserved seat and the votes secured by the remaining candidates whether contesting for the reserved seat or the general seat have to be considered together for declaring the election to the general seat.

(17) In the election to the two-member constituency with which we are concerned whereas Mohan Lal, Udmi Ram, Ghasi Ram, Banwari Lal, Lalji Ram and Bhagwati Pershad contested the election to the reserved seat, Mata Din appellant No. 2 and the other respondents fought for the general seat. Mohan Lal secured the highest number of votes, i.e., 582, and was declared elected to the reserved seat. Mata Din having secured the highest votes (515) out of all the remaining candidates was declared elected to the general seat. The contest to the general seat was rightly not confined to the candidates to that seat but had to be *en masse* thrown open to all the candidates including those for the reserved seat.

(18) Whereas the words "shall declare the election to be wholly void" in sub-section (1) of section 100 of the 1951 Act had been substituted, by the 1956 Amendment Act, by the words "shall declare the election of the returned candidate to be void", no such

amendment has been made in section 255 of the Punjab Municipal Act which provision continues to read :—

> "On receiving the report of the Commission (at the conclusion of the enquiry under section 254) the State Government shall pass orders either declaring the candidate duly elected or declaring the election to be void and such order shall be notified in the official gazette ....."

This provision shows that after the counting of the votes polled at a Municipal Election, a declaration has to be made by the State Government in respect of each candidate under section 255 of the Act. The declaration can either be that a candidate has been duly elected or that a particular election is void. So far as the phraseology of the corresponding statutory provisions is concerned, the one which was used in section 100(1) of the 1951 Act before its amendment by the 1956 Act, i.e., "to set aside the election" is to be found in section 255 of the Municipal Act and not the one which is confined to the setting aside of the election of the returned candidate only which now occurs in the amended section 100(1).

(19) Mr. Sibal relied on the language of the relevant part of sub-rule 1 of Rule 63 and on the provision contained in Rule 69 of the Election Rules for convassing the proposition that even in a two-member constituency in a municipal election, it is the election of that candidate alone whose nomination paper was wrongly accepted, that is to be set aside and the whole of the election from that ward is not liable to be set aside. Relevant part of Rule 63(1) has already been quoted in an earlier part of this judgment. It entitles the Commission to report "that the election of the returned candidate shall be deemed to be void". Similarly Rule 69 states that when as a result of any enquiry under the Election Rules the election of a candidate is daclared void the Commissioner or the Punjab Government as the case may be shall direct that a new election shall be held. Mr. Sibbal submitted that the phraseology of Rules 63(1) and 69 would take the case out of the purview of the judgment of the Supreme Court in *Surinder Nath Khosla's case* (5), as that judgment was given in respect of the unamended section 100(1) which envisaged the declaration of the whole election being void. We are unable to agree with this contention of Mr. Sibbal for more than one reason. The election rules have

been framed under the Punjab Municipal Act and have to be read subservient to the Municipal Act. As far as possible, effort should be made to reconcile the rules with the statutory provisions of the Act. If in any event, this is not possible, the rules will give way and the Act will prevail. Keeping these well-settled principles of interpretation of statutes in view, we are inclined to hold that consequent on the report which is submitted by the Commissioner under Rule 63(1), the declaration which has to be made by the State Government has to be in terms of section 255. The re-election to be directed by the Commissioner or by the Government, as the case may be, under Rule 69 has to be a re-election for the entire constituency.

(20) The real answer to the question depends on how the election from a two-member constituency takes place. I have already referred to rule 40(b) of the Election Rules which contains the provision regarding the manner of declaring the results of such an election. The statutory illustration under section 54(4) (to which reference has already been made) furnishes one illustration. Another instance of how such an election takes place is furnished by this very case. In order to appreciate the point, I will mention the votes secured by only some of the candidates at this election in the decending order :—

(i) Mohan Lal appellant No. 1 reserved seat; ... 582

(ii) Mata Din, appellant No. 2 general seat; ... 515

(iii) Raghubir Singh, respondent No. 19, general seat; ... 352

(iv) Lajpat Rai, respondent No. 14, general seat; ... 345

(v) Udmi Ram, respondent No. 7, reserved seat; ... 280

(vi) Ghasi Ram, respondent No. 3, reserved seat; ... 159

If the Returning Officer had not passed the incorrect orders and had refused to consider Mohan Lal as a candidate to the reserved seat, he could still be allowed to contest for the general seat according to the law laid down by the Supreme Court in *V. V. Giri* v. *D. Suri Dora and others* (9). It is nobody's case as to what would have

(9) A.I.R. 1959 S.C. 1318.

been his fate in that eventuality. In any event, he could not then have been declared elected to the reserved seat. In that case even if Mohan Lal had secured 582 votes, it is Udmi Ram securing 280 votes who would have been first declared elected to the reserved seat and then if Mohan Lal had secured 582 votes, he would have been declared elected to the general seat, but Mata Din would not have been declared elected to any seat at all. It may be noted at this stage that it has not even been suggested that Mohan Lal at any stage wanted to contest election to the general seat. Neither in his return to the writ petition nor in his grounds of appeal under clause 10 of the Letters Patent has Mohan Lal claimed that he should have been declared elected to the general seat. In any event, Mohan Lal having been found to have been not qualified to contest for the reserved seat, the election of Mata Din, who contested only for the general seat cannot possibly be upheld.

(21) A third illustration may now be seen relating to the present election on an assumed basis. Suppose the contestants to the election in dispute whose names have already been given above were to secure :—

(i) Mohan Lal (reserved seat);	..	300 votes.
(ii) Udmi Ram (reserved seat);	..	290 „
(iii) Mata Din (general seat);	..	280 „
(iv) Raghubir Singh (general seat);	..	275 „
(v) Lajpat Rai (general seat);	..	270 „
(vi) Ghasi Ram (reserved seat);	..	265 „

If everyone of the abovementioned candidates were qualified, Mohan Lal would be declared elected to the reserved seat, and Udmi Ram would be declared elected to the general seat. If after the election, Mohan Lal is found to be disqualified and the rest of the election were to be upheld, Udmi Ram would be declared elected to the reserved seat, and Mata Din would get elected to the general seat. The result of the perusal of these illustrations and several

others which can be worked out shows that it is impossible to sustain part of the election to a two-member constituency so long as the manner of declaring its result is on the pattern provided in rule 40(b).

(22) This controversy appears to us to have been indirectly settled by their Lordships of the Supreme Court in *V. V. Giri* v. *D. Suri Dora and others* (9) That case related to the general elections held in 1957, that is, after the amendment of section 100 by the 1956 Act and before the abolition of the plural-member constituencies. By the majority judgment, it was held by the Supreme Court in that case as follows :—

> "A member of the scheduled tribe is entitled to contest for the reserved seat and for that purpose he can and must make the prescribed declaration; but it does not follow that because he claims the benefit of the reserved seat and conforms to the statutory requirement in that behalf, he is precluded from contesting the election, if necessary, for the general seat. Once it is realised that the election is from the constituency as a whole and not by reference to two separate and distinct seats there would be no difficulty in accepting the view taken by the returning officer when he declared respondent 1 to have been duly elected for the general seat."

Once it is found, as indeed we are bound to hold in view of the pronouncement of the Supreme Court and even otherwise in the circumstances of this case, that the election to the two-member constituency was one integral indivisible whole, the election of Mata Din appellant must fall with that of Mohan Lal appellant on the finding that Mohan Lal was not qualified to contest for the reserved seat.

(23) Mr. Nand Lal Dhingra referred to a few judgments of Election Tribunals to which reference may also in all fairness to the learned counsel be made at this stage. In *Jagannath* v. *Pandurang and others* (10), the Election Tribunal, Jabalpur, held that in case of double-member constituency in which there is a general seat and a seat reserved for the Scheduled Caste, election

(10) IV E.L.R. 167.

to the general seat and the reserved seat are not two separate elections but one indivisible election in which candidates of Scheduled Castes are also contesting for election to the general seat and that the expression 'the election' in section 100(1)(c) of the 1951 Act should be interpreted in such a case as meaning the election to both the seats and if the improper rejection of a nomination for either of the two seats has affected the election, the election for both the seats should be set aside. Similarly in *Dharamvir* v. *Bhala Ram and others* (11), the Election Tribunal, Barnala, held that in a double-member constituency the whole election for the constituency for the reserved seat as well as for the general seat has to be declared void if the election to one of the seats is found to be void. The last case to which reference was made by Mr. Dhingra in this connection is the judgment of Election Tribunal, Nagpur in *Moreshwar Parashram* v. *Chaturbhuj Vithaldas Jasani and others* (12). There also the Tribunal held that in case of a double-member constituency if the nomination for the reserved seat is found to have been improperly rejected, the whole election including that of the general seat has to be declared to be void.

(24) We have held above that the election to the two-member constituency in question was "one election" and could not be equated to two separate elections. Election of Mohan Lal to the reserved seat has been rightly set aside as he did not fulfil the essential qualification prescribed under rule 11(2). The other part of the same election, i.e., the one relating to the general seat cannot be separated from the integral whole and cannot, therefore, be allowed to stand. In this view of the matter no fault can be found with the judgment of the learned Single Judge.

(25) No other point having been argued by the learned counsel for the parties, this appeal fails and is dismissed with costs. Counsel's fee Rs. 100.

MEHAR SINGH, C.J.—I agree.

(11) VII E.L.R. 64.

(12) VII E.L.R. 428.

N. K. S.