

Jameel Vs. Gul Mohammad and ors.

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Court : Rajasthan

Decided On : Feb-26-1980

Reported in : AIR1980Raj166; 1980()WLN555

Judge : P.D. Kudal, J.

Acts : Election Symbols (Reservation and Allotment) Order, 1968; Conduct of Election Rules, 1961 - Rule 10 and 10(4); [Constitution of India](#) - Articles 226 and 324; [Representation of the People Act, 1951](#) - Sections 80, 81, 81(3), 82 and 169

Appeal No. : Election Petn. No. 5 of 1977

Appellant : Jameel

Respondent : Gul Mohammad and ors.

Advocate for Def. : M.R. Calla, Adv.

Advocate for Pet/Ap. : V.S. Dave, Adv. for Election Commissioner; Ramesh Chand Swami, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

P.D. Kudal, J.

1. This election petition has been filed by an elector against the returned candidate Shri Gul Mohammad respondent No. 1. The petitioner claims himself to be an elector of the Rajasthan Legislative Assembly Constituency No. 42 (Johri Bazar, Jaipur) and, thus, claims himself to be entitled to file the petition. The election to the Johri Bazar Rajasthan Legislative Assembly Constituency No. 42, Jaipur was held on 13th June, 1977, and the result was declared on 14th June, 1977.

2. The Janata Party applied for the symbol of 'Haldhar within wheel' as the official symbol of the Janata Party. This symbol was allotted by the Election Commission to the Janata Party. The nomination could be filed within 11/5/1977 to 18/5/1977. The withdrawals could be made up to 3 p.m. on 21-5-1977. Originally, the Janata Party decided to adopt Gul Mohammad, respondent No. 1, as its official candidate from the Johari Bazar Constituency No. 42. A communication was sent to the Election Commission on behalf of the Janata Party to that effect. Later on, the Janata Party decided to field respondent No. 5, Shri Mohammad Sayeed Khan as an official candidate of the Janata Party. The decision of the Janata Party to adopt Shri Mohammad Sayeed Khan was communicated to the Election Commission by the General Secretary of the Janata Party. The Election Commission and in turn the Chief Electoral Officer Rajasthan issued and allotted the official symbol 'Haldhar within wheel' of the Janata Party to Shri Mohammad Sayeed Khan. The specimen of the symbol and identity card bearing candidature of the Janata Party was also given to Shri Mohammad Sayeed Khan, the list published under Section 37 of the [Representation of the People Act, 1951](#), showing therein Mohammad Sayeed Khan as the official candidate of the Janata Party, has been produced and has been marked as Annexure 1.

3. The General Secretary of the Janata Party, however, on 22-5-1977, again requested the Election Commission to allot the official symbol of the Janata Party to the respondent No. 1 Shri Gul Mohammad. The Chief Electoral Office, Rajasthan acting on the directions of the Election Commission allotted the official symbol of the Janata Party, i.e. 'haldhar within wheel' to Shri Gul Mohammed. The elections were held and Shri Gul Mohammad contested as the official candidate of the Janata Party on the authorised symbol 'haldhar within wheel' of the Janata Party. Shri Gul Mohammad was returned elected to the Rajasthan Legislative

Assembly. The main grievance of the petitioner is that in the year 1977, there was a great wave in favour of the Janata Party and whosoever was allotted the official ticket of the Janata Party won the elections. The contention of the petitioner is that the individuality of the candidate was of little consequence and votes were cast in favour of the individual who was officially adopted by the Janata Party. The petitioner has raised an important question of law -- whether the Election Commission could change an official candidate of a political party after the time limit fixed for withdrawal of the candidature had elapsed. In substance, the contention of the petitioner is that once the time-limit for withdrawal of candidature is over, the Election Commission is left with no discretion or jurisdiction to alter or change the official candidate or to allot them the official symbol reserved for recognised national political parties.

4. On the contrary, it has been contended by the respondents that the Election Commission has ample powers to entertain an application for changing the official candidate even after the period of withdrawal of the candidature is over. The contention is that para 13 of the Election Symbols (Reservation & Allotment) Order, 1968, postulates a limit on the rights of a political party to choose its official candidate for allotment of a symbol reserved for it. The provisions of this para, it was contended, are primarily meant at facilitating the work of smooth conduct of elections. The provisions of this para do not, however, impose any restrictions on the powers of the Chief Election Commissioner of India as vested in him under Article 324 of the [Constitution of India](#), or under Sub-rule (4) of Rule 10 of the Conduct of Election Rules, 1961, or under para 18 of the Election Symbols (Reservation & Allotment) Order, 1968, to recognise a candidate as an official candidate of a political party, and to allot him a reserved symbol even after the expiry of the last date fixed for, withdrawal of the candidature,

5. This stand has been practically taken by the respondents Nos. 3 and 4 also. On behalf of the respondent No. 5, Shri Mohammad Sayeed Khan, it has been contended that by wrongly allotting the official symbol of the Janata Party to the respondent No. 1 Shri Gul Mohammad the election results have been materially affected and, as such, the election of respondent No. 1 Gul Mohammad is liable to be set aside

6. Respondent No. 1 Shri Gul Mohammad has also contended that the petitioner is only an elector, and it is not understandable as to in what manner he has been adversely prejudiced by allotting the official symbol of the Janata Party to him as against the respondent No. 5 Shri Mohammad Sayeed Khan. It has also been contended that it is the respondent No. 5 who has actually sponsored the petitioner to file this election petition. The other objections regarding the supply of copies deposit of the security amount, and necessary parties have also been raised

7. The following issues were struck on 6th April 1978 :--

1. Whether the entry at serial No. 259 Part 42 Ward No. 26 of the Constituency No. 42 of the Rajasthan Legislative Assembly does not refer to the petitioner and he is not an elector within the meaning of Section 2(e) of the Representation of People Act, 1951?

2. Was it mandatory upon the Janata Party to inform the Returning Officer of its final choice of its official candidate latest by 3 p.m. on the date of withdrawal i.e. on May 21, 1977?

3. Whether the provisions of the law and the rules, quoted in para 7 of the election petition, are mandatory and the Returning Officer was bound to recognise respondent No. 5, Mohammad Sayeed Khan, as an official candidate of the Janata Party and assign its symbol to him and no change in the decision of the Janata Party could be communicated after the date and time of withdrawal of candidature (i.e. after 3 p.m. of May 21, 1977) and the order of the Returning Officer dated May 23, 1977 as contained in Annexure 2 is illegal?

4. Whether the decision of the Election Commission can be challenged by this petition?

5. Whether the electorates were misled in assuming Gul Mohammad, respondent No. 1, nominated on May, 22, 1977 as an official candidate of the Janata Party in place of Mohammad Sayeed Khan, respondent No. 5, who had been allotted the symbol of the Janata Party on May 21, 1977 and the result of the election has

been materially affected?

6. Whether the security money has been deposited in accordance with Rule 745-G of the Rajasthan High Court Rules, and, if not, what is its effect?

7. Whether this election petition has been filed by Shri Jameel having no locus standi, in collusion with Mohammad Sayeed Khan (Respondent No. 5) with an ulterior motive of unlawful gain and, if so, what is its effect?

8. Whether the Election Commission being a juristic person and the president and the Secretary of the Janata Party are necessary parties in the case and whether the petition suffers from the defect of non-joinder of necessary parties and is liable to be dismissed?

9. Whether the copy of the election petition supplied to the respondent No. 1 has not been properly attested and, if so what is its effect?

10. Whether the election petition has not been properly verified in accordance with Order 6, Rule 15, C. P..C. read with Section 83(1)(c) of the [Representation of the People Act, 1951](#), and if so, what is its effect?

11. Whether the respondent No. 5 could neither be deemed to be a candidate set up by the Janata Party nor could he have claimed the symbol of Haldhar in wheel, as he failed to make compliance of Rule 13 of the Election Symbol (Reservation and Allotment) Order, 1968. If so, what is its effect?

12. To what relief, if any, the petitioner is entitled?

On behalf of the petitioner, the statements of Jamil PW/1. Mohammad Hanif Khan PW/2, Vishnu Bahadur Srivastava PW/3, Mohammad Abdul Salam PW/4, Mohammed Jama Khan PW/5, Mohammad Yusuf PW/6, Abdul Mazid PW/7, Manak Lal PW/8, J.L. Behl PW/9, Mohd. Ibrahim Khan PW/10. Rasid PW/11, Abdul Gafoor PW/12, Shamsul Huda PW/13, Phool Chand Pandey PW/14, K.M. Kanungo PW/15 and Hari Dutt Bhargava PW/16 were recorded. The petitioner also produced Ex 1 to Ex. 46 in support of his case.

8. On behalf of the respondent No. 1, the statements of Gul Mohd., Maksur Ahmed, Mohd. Ismail, Hamidum Hassain Saddiqi, Sudarshan Lal Grower, Abdul Hamid Khan and Kama-ruddin were recorded. The respondent No. 1 also produced documentary evidence. The statement of Shri R.K. Hegde, General Secretary of the Janata Party was also recorded. After seeking some adjournments, the learned counsel for the respondent No. 1 closed his evidence.

9. No evidence was recorded on behalf of any other respondent.

Issue No. 1 :--

10. The petitioner has stated that he is an elector of the Rajasthan Legislative Assembly Constituency No. 42 Johari Bazar, Jaipur. His name appears at Srl. No. 259 in the Electoral Roll for the Rajasthan Legislative Assembly held in the year 1977. He has further stated that he used to reside in House No. 1920 in Mohalla Mominan, Choukari Topkhana Huzuri, Jaipur. Ex. R-I/5 is the copy of the relevant electoral list. The name of the petitioner appears at Srl. No. 259. The house No. also tallies to be 1920. The father's name of the petitioner also tallies. On behalf of the respondents no cross-examination has been done to rebut the presumption which arises from this statement. Under such circumstances, it is held that the petitioner is an elector within the meaning of Section 2(e) of the Representation of People Act, 1951.

Issue No. 2. :-- .

11. Para 13 of the Election Symbols (Reservation and Allotment) Order, 1968, reads as under :--

'13. When a candidate shall be deemed to be set up by a political party -- For the purposes of this order a candidate shall be deemed to be set up by a political party if, and only if,

(a) the candidate has made a declaration to that effect in his nomination paper;

(b) a notice in writing to that effect has not later than 3 P. M. on the last day of withdrawal of candidatures, been delivered to the returning officer of the

constituency, and

(c) the said notice is signed by the president, the secretary or any other office-bearer of the party and the president, secretary or such other office-bearer is authorised by the party to send such notice and the name and specimen signature of the president, the secretary or such other office-bearer are communicated in advance to the returning officer of the constituency and to the Chief Electoral Officer of the State.'

12. According to Sub-clause (b) of para 13, a notice in writing to the effect that a candidate has been set up by a recognised political party has to be delivered not later than 3 p.m. on the, last date of withdrawal of candidature to the returning officer of the constituency, and in Sub-clause (c) it is further provided that the said notice is to be signed by the president, secretary or any other office-bearer of the party.

13. So far as the Janata Party is concerned, it was mandatory for the party to inform the returning officer of the constituency of its official choice of the official candidate latest by 3 p.m. on the last date of withdrawal i.e. on May 21, 1977. Issue No. 3 :

14. This issue raises an important question of law. Initially, the respondent No. 1, Gul Mohammad, was adopted as the official candidate of the Janata Party; but later on the Janata Party changed its mind and adopted respondent No. 5 Shri Mohammad Sayeed Khan as the official candidate. There was no other communication before the returning officer upto 3 p.m. on the last day of withdrawal, i.e. May 21, 1977. Treating Mohammad Sayeed Khan, respondent No. 5 as the official candidate of the Janata Party, the returning officer allotted him the symbol of 'Haldhar within wheel' which was the official symbol of the Janata Party. Identity card and specimen ' of the symbol were also given to him. On May 22, 1977, the Janata Party approached the Election Commission and pleaded that their official candidate is Shri Gul Mohammad, respondent No. 1, and that the name of respondent No. 5 Shri Mohammad Sayeed Khan was wrongly written. As a matter of fact, the Janata Party pleaded that this was a typographical error. The Election Commission accepted the plea of the Janata Party and allotted the

symbol of 'Haldhar within wheel' to the respondent No. 1 Shri Gul Mohammad, and allotted a free symbol to the respondent No. 5. The question which arises for consideration is, whether the Election Commission was competent to accept the plea of the Janata Party to change its official candidate after the date of withdrawal, and whether the Election Commission had jurisdiction to issue directions to the returning officer to allot the official symbol to the respondent No. 1 Shri Gul Mohammad after cancelling the official symbol which was already allotted to the respondent No. 5 Shri Mohammad Sayeed Khan. Rule 5 of the Conduct of Elections Rules, 1961 provides that the Election Commission shall, by notification in the Gazette of India and in the Official Gazette of each State, specify the symbols that may be chosen by candidates at elections in parliamentary or assembly constituencies and the restrictions to which their choice shall be subject. It further provides that subject to any general or special direction issued by the Election Commission either under Sub-rule (4) or Sub-rule (5) of Rule 10, where at any such election, more nomination papers than one are delivered by or on behalf of a candidate, the declaration as to symbols made in the nomination paper first delivered, and no other declaration as to symbols, shall be taken into consideration under Rule 10 even if that nomination paper has been rejected.

15. Sub-rule (4) of Rule 10 provides that at an election in a parliamentary or assembly constituency, where a poll becomes necessary, the returning officer shall consider the choice of symbols expressed by the contesting candidates in their nomination papers and shall subject to any general or special direction issued in this behalf by the Election Commission (a) allot a different symbol to each contesting candidate in conformity as far as practicable, with his choice; and (b) if more contesting candidates than one have indicated their preference for the same symbol, decide by lot to which of such candidates the symbol will be allotted.

16. Sub-rule (5) provides that the allotment by the returning officer of any symbol to a candidate shall be final except where it is inconsistent with any directions issued by the Election Commission in this behalf in which case the Election Commission may revise the allotment in such manner as it thinks fit.

17. The political parties have been classified in para 6 of the Election Symbols (Reservation and Allotment) Order, 1968. Two categories of recognised political parties have been envisaged. If a political party has been recognised in four or more States, it shall have and enjoy the status of a 'National Party' throughout the whole of India; and if a political party is recognised as such in less than four States then it shall have and enjoy the status of a 'State Party'.

18. Para 8 of the said order deals with the choice of symbols by candidates of National and State parties and allotment thereof. Para 13 lays down the conditions as to when a candidate shall be deemed to be set up by a political party. Para 18 empowers the Election Commission to issue instructions and directions for the clarification of any of the provisions of this order and for the removal of any difficulty which may arise in relation to the implementation of any such provisions and in relation to any matter with respect to the reservation and allotment of symbols and recognition of political parties, for the purpose of smooth and orderly conduction of elections.

19. Article 324 of the [Constitution of India](#) reads as under :--

'324. Superintendence, direction and control of elections to be vested in an Election Commission :

(1) The Superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

(3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.

(4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioner as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by Clause (1).

(5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rules determine :

Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment;

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

(6) The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by Clause (1).'

20. The powers which have been vested in the Election Commission by virtue of Article 324 read with Sub-rule (4) of Rule 10 of the Conduct of Elections Rules, 1961 and para 18 of the Election Symbols (Reservation and Allotment) Order, 1998 clearly postulate that though a political party is debarred from making any representation to the returning officer for allotment of a symbol after 3 p.m. on the last date of withdrawal, yet the powers of the Election Commission are unfettered

to issue directions or instructions to the returning officer to change or allot a particular symbol to a particular candidate.

21. In the instant case, the Janata Party requested the Election Commission on May 22, 1977 for change of the official candidate. The Janata Party wanted to adopt respondent No. 1 Gul Mohammad as the official candidate in place of the respondent No. 5 Shri Mohammad Sayeed Khan who had been adopted earlier. This was wholly within the discretion of the Election Commission to accept the request of the Janata Party or to refuse it. If the Election Commission had refused to accept the request of the Janata Party, then, the Election Commission was well within its powers to have refused that request. But if the Election Commission chooses to accept the plea of a political party to change its official candidate even after the last date of withdrawal, then constitutionally or otherwise there is no impediment in the exercise of such discretion by the Election Commission. The Election Commission, under such circumstances, is quite competent to issue such a direction or instructions to the returning officer. In this case, the plea of the Janata Party was accepted by the Election Commission and directions were issued to the returning officer to allot the official symbol of the Janata Party to the respondent No. 1 Shri Gul Mohammad in place of respondent No. 5 Shri Mohammad Sayeed Khan.

22. The above view is fortified by the decision reported in *Ram Autar v. Satyabir*, AIR 1978 All 201 wherein it has been held as under :--

'Sub-rule (5) Rule 10 gives a power to the Commission to revise the allotment of a symbol by the Returning Officers in so far as the said allotment is inconsistent with the directions issued by the Commission. Sub-rule (5) of Rule 10 itself provides for an exception. The provision does not stop after the word 'final' but specifically provides that it would not be final where it is inconsistent with any general or special directive of the Election Commission. It is apparent that if there is a directive by the Election Commission and if that directive is contrary to the decision of the Returning Officer, the directive of the Election Commission would prevail.

Rule 10 of the Conduct of Election of Rules gives power to the Election Commission to issue special or general order. The exercise of such power would squarely come under Clause (b) of para 18. The Commission is empowered to issue instructions and directions for the removal of any difficulty which may arise in relation to the implementation of any such provision which means the provisions of the order. Para 18 uses the word 'instructions' or 'direction'. The Election Commission can, therefore, very well issue either an instruction or direction accordingly to the Returning Officer either directly or through the Chief Electoral Officer. The Election Commission therefore has power to issue instructions or directions even in the matter of alteration of allotment of symbols. And the instructions issued by it cannot be said to be contrary to the law and do not violate any provisions of the Act, Rule or the orders.'

23. Reference may also be made to *Mohinder Singh v. Chief Election Commissioner*, AIR 1978 SC 851, wherein it has been held as under :--

'Functions as referred to in Article 324(6) include powers as well as duties. It is incomprehensible that a person or body can discharge any functions without exercising powers. Powers and duties are integrated with function. The Chief Election Commissioner has to pass appropriate order on receipt of reports from the returning officer with regard to any situation arising in the course of an election and power cannot be denied to him to pass appropriate orders. Moreover, the power has to be exercised with promptitude. Whether an order passed is wrong, arbitrary or is otherwise invalid, relates to the mode of exercising the power and does not touch upon the existence of the power in him if it is there either under the Representation of the People Act or the rules made in that behalf, or under Article 324(1). The Commission is entitled to exercise certain powers under Article 324 itself in its own right, in an area not covered by Representation of the People Acts and the rules,

it is clear even from Section 58 and Section 64A of the Representation of the People Act (1951) that the legislature envisaged the necessity for the cancellation of poll and ordering of repoll in particular polling stations where situation may warrant such a course. When provision is made in the Act to deal with situations

arising in a particular polling station, it cannot be said that if a general situation arises whereby numerous polling stations may witness serious malpractices affecting the purity of the electoral process, the power can be denied to the Election Commission to take an appropriate decision. The fact that a particular Chief Election Commissioner may take certain decisions unlawfully, arbitrarily or with ulterior motive or in mala fide exercise of power, is not the test in such a case. The question always relates to the existence of power and not the mode of exercise of power. Although Section 58 and Section 64A mention 'a polling station' or 'a place fixed for the poll' it may, where necessary, embrace multiple polling stations. It is true that in exercise of powers under Article 324(1) the Election Commission cannot do something impinging upon the power of the President in making the notification under Section 14 of the Representation of the People Act, But after the notification has been issued by the President, the entire electoral process is in the charge of the Election Commission and the Commission is exclusively responsible for the conduct of the election without reference to any outside agency. There is no limitation in Article 324(1) from which it can be held that where the law made under Article 327 or the relevant rules made thereunder do not provide for the mechanism of dealing with a certain extraordinary situation, the hands of the Election Commission are tied and it cannot independently decide for itself what to do in a matter relating to an election. The Election Commission is competent in an appropriate case to order re-poll of an entire constituency where necessary. It will be an exercise of power within the ambit of its functions under Article 324.'

24. Reference may also be made to *Mani Lal v. Budhinath*, AIR 3962 Pat 18, wherein it has been held as under :--

'Under Rule 5 of the Rules, the Election Commission had allotted the symbol of a 'cock' to the Jharkhand Party of Bihar. A candidate declaring himself to be an official candidate of that party, filed his nomination before the Returning Officer, but as no official confirmation from the party could reach the officer in time the candidate was allotted the symbol of an 'elephant' instead of the party symbol of a cock. Later on, the Election Commission was moved in the matter and he issued, a special direction to the Returning Officer to allot the party symbol to the

candidate, on receipt of which the Returning Officer cancelled his previous order, and allotted the symbol of a cock to the candidate. The validity of the order of the Election Commission was disputed by an Election petition.

Held that it was not possible to hold that the Election Commission had no power either to issue a special direction in this behalf to the Returning Officer to revise the order of the Returning Officer.

Held further that the contention that the power of issuing a special direction conferred on the Election Commission in Rule 10 (1) was ultra vires, inasmuch as Section 169 of the Act, under which the Rules, were framed, contemplates conferment of the power of issuing general directions only on the Election Commission, could not be accepted. If under Section 169 of the Act, rules could be framed conferring power on the Election Commission to issue general directions, there was no reason to hold that the Election Commission could not have been vested with the power of issuing special directions also.

The contention that the Election Commission had no power to revise the order of the Returning Officer without hearing other candidates, is not valid. Even if it be assumed that in revising the allotment made by the Returning Officer of any symbol to any candidate, the Election Commission acting under Sub-rule (2) of Rule 10, was acting in a quasi-judicial capacity, it cannot be concluded that the Election Commission was bound to hunt for the other candidates and consider their views. The allotment of symbols was a matter between the Returning Officer and the candidate concerned, when no other candidate was claiming that particular symbol the order of revision of the allotment of symbols was in no way adverse to other candidate and it was not necessary for the Election Commission to hear him.

Held further that it was also not necessary that the Returning Officer should have heard the other candidates before passing his final order of reallocation, the other candidates had no such interest in this matter that the Returning Officer was bound to hear them before re-allotting the symbol to the candidate concerned.'

25. Lastly, it was contended that para 13 of the Election Symbols (Reservation and Allotment) Order, 1968 requires that the said notice must be signed by the President, Secretary or any other office-bearer of the party. In this connection the statement of Shri Ram Krishna Hegde, General Secretary of the Janata Party was recorded. He has stated that the letter of May 21, 1977, was signed by the Party President Shri Chandra Shekhar, and the name of Shri Mohammad Sayeed Khan was included in the list of May 21, 1977. He had further stated that both the names of the respondent No. 5 Mohammad Sayeed Khan and Shri Gul Mohammad were considered and final decision was taken on May 22, 1977. It was in consequence of the decision that he had written letter Ex. R-I/3 dated May 22, 1977. Shri Hegde has stated that the party President Shri Chandra Shekhar had written a letter to the Election Commissioner authorising him (Shri Hegde) to make last minute changes. The contention of the petitioner is that it was the party President alone who could have changed the names and it was beyond the competence of the General Secretary Shri Hegde to have done so. Sub-clause (c) of para 13 of the order 1968, requires that it should either be the President or the Secretary of the party who could make communications to the Election Commission. There is no reason to disbelieve the statement of Shri Hegde that the party President Shri Chandra Shekhar had written to the Election Commission in general authorising the General Secretary Shri Hegde to make last minute changes for the adoption of party candidates, and consequent changes in the allotment of party symbols.

26. At no stage it has been contended on behalf of the Janata Party that the respondent No. 1 Gul Mohammad was not their official candidate Shri Hegde has clearly stated that a final decision was taken on May 22, 1977 whereby Shri Gul Mohammad was adopted as official candidates. It was open to the Election Commission to have turned down the request of the Janata Party to change the symbol allotted to the respondent No. 5 Shri Mohammad Sayeed Khan but if the Election Commission in its discretion accepts the plea of a political party and issues directions to the Returning Officer to change the allotment of symbols then it cannot be said by any stretch of imagination that the Election Commission acted without jurisdiction, or in excess of the powers conferred on it by various provisions of law referred to above. It must also be said that if the letter dated May 22, 1977, was written by the General Secretary, and not by the President, the

Election Commission has in no way erred in treating that letter as one envisaged in Sub-clause (c) of para 13 of the 1968 order.

27. For the reasons stated above, issue No. 3 is decided against the petitioner and in favour of the respondent No. 1. Issue No. 4 :

28. It has been contended on behalf of the respondents that the decision of the Election Commission cannot be challenged by way of this election petition. The Election Commission has to work within the framework of Article 324 of the [Constitution of India](#) and subject to such other rules or orders which have been framed by virtue of the powers conferred under Section 169 of the [Representation of the People Act, 1951](#). If the Election Commission acts in a manner which is contrary to the mandatory provisions of law or of the rules or orders framed in consequence of the powers vested under Section 169 of the Representation of People Act, 1951, then this Court has jurisdiction to examine the correctness of the decision arrived at by the Election Commission. This Court shall not normally interfere with the decision of the Election Commission unless the instructions and directions issued by the Election Commission are manifestly perverse, arbitrary in nature, or against the principles of natural justice.

29. In the present case, the powers which have been exercised by the Election Commission are already held to be within the ambit of their jurisdiction and as such, no occasion arises in the instant case to interfere with the discretion of the Election Commission. Issue No. 5 :

30. As stated earlier, the symbol of the Janata Party was correctly allotted to the respondent No. 1 Shri Gul Mohammad. There is no question of the electorates being misled in assuming Shri Gul Mohammad to be the official candidate of the Janata Party. Reference may be made to Paokai v. Rishang, AIR 1969 SC 663, wherein it has been held as under :--

'The burden of proof in England is the exact reverse of that laid down by the Indian Statutes. There, the returned candidate has to prove that the non-compliance or mistake did not affect the result of the election. In India, the burden is upon the election petitioner to show affirmatively that the result of the election has been

materially affected.

In such cases, the Court has to see whether this burden has been successfully discharged by the election petitioner by demonstrating to the Court either positively or even reasonably that the poll would have gone against the returned candidate if the breach of the rules had not occurred and proper poll had taken place at all the polling stations including those at which it did not.

The casting of votes at an election depends upon a variety of factors and it is not possible for anyone to predicate how many or which proportion of votes will go to one or the other of the candidates. The general pattern of polling not only in this constituency but in the whole of India is that all the voters do not always go to the polls. Though statistics can be called in aid to prove such facts, it is open to Court in reaching their conclusion to pay attention to the demonstrated pattern of voting.

The fact that the election is in contravention of the Act and the Rules does not alter the position with regard to Section 100(1)(d)(iv) of the Act. That section requires that the election petitioner must go a little further and prove that the result of the election had been materially affected.

Where, therefore, in the election petition against a returned candidate from a Parliamentary Constituency it was proved that by change of certain polling centres and owing to firing by certain hostile elements a number of voters probably failed to record their votes which they would have done if polling had gone on smoothly and according to rules, but the election petitioner failed to prove that by such circumstances the election had been materially affected, the election of the returned candidate could not be avoided.'

31. In the instant case, as the symbol of the Janata Party was correctly allotted to Shri Gul Mohammad, respondent No. 1, there is no question of the result of the election being materially affected or the electorates being misled.

32. As a result of the above discussion, issue No. 5 is decided against the petitioner and in favour of the respondent No. 1. Issue No. 6 --

33. The security amount of Rupees 2,000/- was deposited on July 28. 1977, The amount was deposited in the Government Treasury, and there has been substantial compliance of Rule 745 (G) of the Rajasthan High Court Rules. Thus, there is no violation of Rule 745 (G) of the Rajasthan High Court Rules and, therefore, this issue is decided in favour of the petitioner and against the respondents.

Issue No. 7 :--

34. Shri Jameel is an elector and he has every locus standi to file the election petition. As the main contention of Shri Jameel regarding the allotment of official symbol of the Janata Party to Shri Gul Mohammad has been decided against the petitioner, it is not necessary to go into the details of issue No. 7. At any rate, the petitioner had locus standi to file the petition and there is not enough material on the record to hold that the petition has been filed in collusion with Shri Mohammad Sayeed Khan, respondent No. 5 with an ulterior motive. Issue No. 7 is decided in favour of the petitioner and against the respondents. Issue No. 8 :--

35. The Election Commission has been impleaded as respondent No. 2 in the election petition. The learned counsel for the respondents have not been able to satisfy as to how the President and Secretary of the Janata Party were necessary parties. In my considered opinion, only those persons could be impleaded as parties to the election petition as has been envisaged in Section 82 of the [Representation of the People Act, 1951](#). The President and the General Secretary of the Janata Party are neither necessary nor proper parties to the election petition, and the petition has been properly presented without impleading the President and the Secretary of the Janata Party. This issue is accordingly decided in favour of the petitioner and against the respondent.

Issue No. 9 --

36. The copies of the election petition which were supplied to the respondent No. 1, have been properly attested. All that is needed is that the respondents should get the true copies of the election petition. If 'true copy' has not been written it is a mere irregularity and does not in any way vitiate the election petition. Issue No. 9

is accordingly decided in favour of the petitioner and against the respondent No. 1.

Issue No. 10 : --

37 It has been contended on behalf of the respondents that the election petition has not been properly verified in accordance with Order 6, Rule 15 of the Civil P. C. read with Section 83(1)(c) of the [Representation of the People Act, 1951](#). The verification of the election petition has been carefully examined and, I have no hesitation in holding that the election petition has been properly verified. Issue No. 10 is accordingly decided in favour of the petitioner and against the respondents. ,

Issue No. 11 :--

38. It has been vehemently contended on behalf of the petitioner that the respondent No. 5 had filed three nomination papers, and in view of Sub-rule (2) of Rule 5 of the Conduct of Election Rules, 1961, the declaration as to symbol made in the nomination paper first delivered and no other declaration as to symbols, shall be taken into consideration under Rule 10 even if that nomination paper has been rejected. In the first nomination paper which was filed by the respondent No. 5 the symbol of 'haldhar within wheel' was not prayed for. It is on the basis of this provision of law that the respondent No. 1 contends that the symbol of 'haldhar within wheel' could not be allotted to the respondent No. 5. The choice of candidate is restricted by Rule 5 of the Conduct of Election Rules, 1961; but as stated earlier, the Election Commission has the overall jurisdiction for allotting a particular symbol to a candidate. In the present case, the contingency of exercising the overall superintendence of the Election Commission did not arise as the official symbol of the Janata Party was correctly allotted to the respondent No. 1. In view of these observations, the issue No. 11 is decided in favour of the respondent No. 1 and against the respondent No. 5. Issue No. 12 :--

39. For the reasons stated above, the petitioner is not entitled to any relief whatsoever.

40. In the result, the election petition is hereby dismissed. However, looking to the facts and circumstances of the case, the parties are left to bear their own costs.

