

SHRI CHARAN LAL SAHU AND ANR.

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v

SHRI K.R. NARAYANAN AND ANR.

NOVEMBER 24, 1997

[S.C. AGRAWAL, G.N. RAY, DR. A.S. ANAND, S.P. BHARUCHA
AND S. RAJENDRA BABU, JJ.]

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ELECTION LAW :

Presidential and Vice Presidential Elections Act, 1952 :

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Sections 2(d), 5-B, 5-C, 13(a) and 14-A—Election Petition—Filed before the Supreme Court—Maintainability—Locus standi of Petitioners—Election petition filed by two persons being candidates at the same election—Held, they must be or claim to have been duly nominated as candidates as defined in Section 13 (a) of the Act—Also nomination papers submitted by them should have been subscribed by the requisite number of proposers and seconders as required under Section 5-B (1)(a)—Petitioner No. 1 filing nominations without complying with the mandatory requirements of Section 5-B(1)(a) and Petitioner No. 2 filing nomination without complying with the requirements of Section 5-B (2)—Held, petitioners have no locus standi to maintain the petition.

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Sections 5-B and 5-C (prior to amendment and after the amendment by Act 35 of 1997)—Requirement under Section 5-B(1)(a) requiring the nomination paper being subscribed by a particular number of electors as proposers and seconders—Held, does not involve the infringement of the secrecy of ballots as incorporated under Article 55(3) of the Constitution—

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Constitution of India—Article 55(3)—Election of President—Nomination paper—Freedom of proposers and seconders to vote as per their conscience not affected.

Section 5-B(1)(a)—Provides that the nomination paper shall be subscribed by a particular number of electors as proposers and seconders—

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Proposers and seconders must be a Member of Parliament or State Legislature—Held, value of the votes of the members has no bearing on this requirement—Section 2(d)—Definition of 'elector'.

Section 14-A Election petition challenging Presidential election filed by persons whose similar petitions had been repeatedly dismissed earlier by

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A *this Court—Amounted to abuse of the process of law—Hence Petition dismissed with costs quantified at Rs. 10,000.*

B The present election petition was filed by two petitioners who were candidates at the same election, challenging the election of Respondent No. 1. The nomination papers of Petitioner No. 1 was filed without complying with the mandatory requirements of Section 5-B(1)(a) and nomination paper of Petitioner No. 2 was filed without complying with the provisions of Section 5-B(2) of the Presidential and Vice Presidential Elections Act. Similar petitions filed by the petitioners earlier were dismissed by this Court.

C **Dismissing the Petition, this Court**

D **HELD : 1.** The validity of the provisions of Sections 5-B and 5-C of the Presidential and Vice Presidential Elections Act as they stood prior to 5.6.1997, as well as after the introduction of amendments by the Amendment Ordinance 13 of 1997 and Amendment Act 35 of 1997 has already been upheld by this Court in its earlier decisions. [330-F-G]

Charan Lal Sahu v. Neelam Sanjeeva Reddy, [1978] 3 SGR 1; *Charan Lal Sahu v. Giani Zail Singh*, [1984] 2 SCR 6 and *Charan Lal Sahu v. Fakruddin Ali Ahmed*, AIR (1975) SC 1288, relied on.

E 2.1 The requirement of Section 5-B(1)(a) about the nomination paper being subscribed by a particular number of electors as proposers and seconders does not, in any way, involve the infringement of the secrecy of ballot at the election in as much as the elector who has subscribed the nomination paper of a person as proposer or a seconder is free to cast his vote in favour of any candidate and is not bound to vote for the person whose nomination paper he has subscribed as a proposer or seconder. The identity of the candidate in whose favour he has cast his vote is not to be disclosed. [330-H; 331-A-B]

G 2.2. Under Section 5-B(1)(a) what is required is that the nomination paper must be subscribed by 50 electors as proposers and by 50 as seconders. In relation to Presidential election the expression “elector” is defined in Section 2(d) of the Act to mean a member of the electoral college referred to in Article 54. Under Article 54 every elected member of the Legislative Assembly of the State is a member of the electoral college for election of the President. In other words, each member of the Legislative Assembly of a State is an elector under Section 2(d) of the Act. For the purpose of Section H 5-B(1)(a) of the Act the nomination paper must be subscribed by the requisite

number of members of the State Legislative Assemblies or Parliament as proposers and seconders and the value of the votes of the member has bearing on the said requirement laid down in Section 5-B(1)(a) of the Act.

[331-E-G]

3. In view of Section 14-A of the Act an election petition calling in question a Presidential election can be presented either by a candidate at such election or twenty or more electors joined together as petitioners. This petition has not been filed by twenty or more electors and the petitioners are claiming the right to file on the basis that they were candidates at the election. The said claim of the petitioners has to be examined on the basis of the definition of "candidates" as contained in Section 13(a) of the Act, whereunder a person who has been or claims to have been duly nominated as a candidate at an election is to be treated as a "candidate". The question for consideration is whether the petitioners, whose nomination papers did not satisfy the requirement of Section 5-B(1)(a) of the Act, can be regarded as persons who had been nominated or claim to have been nominated as "candidate" at the election in question. Neither of the petitioners was a "candidate" as defined in Section 2(d) of the Act since neither of them did comply with the mandatory requirement of Section 5-B(1)(a) of the Act and the nomination papers of Petitioner No. 2 was filed without complying with the requirements of Section 5-B(2) of the Act. Thus neither of the Petitioners has the locus standi to maintain the petition.[327-G-H; 328-A-B; 330-D-E]

Charan Lal Sahu v. Neelam Sanjeeva Reddy, [1978] 3 SCR 1; *Charan Lal Sahu v. Giani Zail Singh*, [1984] 2 SCR 6; *Mithilesh Kumar Sinha v. Returing Officer for Presidential Election*, [1992] Supp (1) SCR 651 and *Mithilesh Kumar v. R. Venkatramam*, [1988] 1 SCR 525, relied on.

4. The present election petition which has been jointly filed by the two petitioners suffers from the same defect as the earlier petitions filed by the petitioners. It seems that the petitioners are obsessed with a desire that they should find a place in some Books of Records. They find the temptation to file an election petition after the presidential election too difficult to resist. It is a matter of great regret that Petitioner No. 1, who happens to be an Advocate himself, has been persisting in the pastime knowing well that such conduct on his part amounts to an abuse of the process of law. This Court has so far refrained from imposing costs in the election petitions that were filed by the petitioners earlier. It is high time that the petitioners who have persisted in filing this petition in spite of the law laid down authoritatively by this Court in the earlier decisions are saddled with costs. The petitioners

A shall pay costs quantified at Rs. 10,000, which should be deposited with the Supreme Court Legal Service Committee. No petition filed by either of the petitioners in person shall be entertained in this Court unless the amounts of costs is paid. [333-F-H; 334-A-B]

B CIVIL ORIGINAL JURISDICTION : Presidential Election Petition
No. 1 of 1997.

(Under Article VI of the Constitution of India.)

C Ashok Desai, Attorney General, T.R. Andhyarujina, Solicitor General, Soli J. Sorabjee, (C.L. Sahu), in-person, (Dharti Pakar and M.L. Agarwal). In-persons, P.H. Parekh, Sameer Parekh, Ms. Ruchi Khurana, P.Parmeswarana, Mr. Pallav Shishodia, Subrat Birla, N.K. Kaul, Manoj Wad and A.M. Khanwilkar for the appearing parties.

The Judgment of the Court was delivered by

D **S.C. AGRAWAL, J.** This election petition has been filed jointly by two petitioners, namely, Charan Lal Sahu and Mithales Kumar. They have challenged the election of respondent No. 1 to the office of the President of India in the election that was held for the said Office in pursuance of the notification dated June 9, 1997 published by the Returning Officer, Shri S. Gopalan, Secretary General Lok Sabha. The said election was conducted under the provisions of the Presidential and Vice-Presidential Elections Act, **E** 1952 [hereinafter referred to as the Act.]

Part II of the Act (Sections 3 to 12) contains provisions relating to conduct of Presidential and Vice-Presidential elections. Section 3 provides for appointment of the Returning Officer and the Assistant Returning Officer/Officers by the Election Commission. Section 4(1) of the Act makes provision **F** for issuance of a notification by the Election Commission prescribing the last date for making nominations, the date for the scrutiny of nominations, the last date for the withdrawal of candidatures, the date on which a poll shall, if necessary, be taken. Section 5 provides for giving of a public notice of election by the Returning Officer after the issuance of the notification under sub-section (1) of Section 4. Section 5A prescribes that any person may be **G** nominated as a candidate for election to the office of President or Vice-President if he is qualified to be elected to that office under the Constitution. Section 5B provides for presentation of nomination papers and lays down the requirements for a valid nomination. Sub-Section (1) of Section 5B requires that the nomination paper completed in the prescribed form must be subscribed **H** by the candidate as assenting to the nomination. In clause (a) of sub-section

(1). as it stood prior to June 5, 1997 it was further prescribed that in the case of Presidential Election, the nomination papers shall also be subscribed by at least ten electors as proposers and at least ten electors as seconders. Sub-section (2) of Section 5B lays down that each nomination paper shall be accompanied by a certified copy of the entry relating to the candidate in the electoral roll for the parliamentary constituency in which the candidate is registered as an elector. A nomination paper to which such certified copy is not attached is required to be rejected under sub-section (4) of Section 5B. Section 5C, prior to June 5, 1997, prescribed that a candidate shall not be deemed to be duly nominated for election unless he deposits or causes to be deposited a sum of two thousand five hundred rupees. Section 5E makes provision for scrutiny of nominations and under sub-section (3) a nomination paper can be rejected by the Returning Officer on the grounds (a) to (e) of that sub-section. Ground (c) provides for rejection of a nomination paper on the ground that it is not subscribed by the required number of proposers or seconders and ground (e) provides for rejection on the ground that there has been a failure to comply with any of the provisions of Section 5B or Section 5C. Section 6 deals with withdrawal of candidature. Section 8 lays down the procedure in contested and uncontested elections. Section 9 provides for manner of voting at elections and Section 10 deals with counting of votes. Section 11 provides for declaration of result after the counting of votes has been completed.

Part III of the Act [Sections 13 to 20] contains provisions relating to disputes regarding elections. Sub-section (1) of Section 14 prescribes that no election shall be called in question excepting by presenting an election petition and under sub-section (2) this Court has been specified as the authority which shall have jurisdiction to try an election petition. Sub-section (1) of Section 14A lays down that an election petition can either be presented by any candidate at such election or, in the case of Presidential election, by twenty or more electors jointed together as petitioners. The expression "candidate" is defined in clause (a) of Section 13 to mean a person who has been or claims to have been duly nominated as a candidate at an election. Section 18 prescribes the grounds on which the election of a returned candidate can be declared to be void.

On June 5, 1997 the President of India Promulgated the Presidential and Vice-Presidential Elections (Amendment) Ordinance, 1997 (No. 13 of 1997), hereinafter referred to as 'the Ordinance' to further amend the Act. By the Ordinance clause (a) of sub-section (1) Section 5B was amended and for the

- A words “ten electors” the words “fifty electors” were substituted and as a result it became necessary that a nomination paper for Presidential election should be subscribed by at least fifty electors as proposers and at least fifty electors as seconders. By the Ordinance, Section 5C was also amended and for the words “two thousand five hundred rupees” the words “fifteen thousand rupees” were substituted and as a result the amount to be deposited as security was raised from two thousand five hundred rupees to fifteen thousand rupees. The Ordinance was replaced by the Presidential and Vice-Presidential Elections Amendment Act, 1997 [Act 35 of 1997], hereinafter referred to as ‘the Amendment Act’, which was enacted by Parliament on August 29, 1997. Charan Lal Sahu, petitioner No. 1. filed a writ petition [No. 293/97] in this Court under Article 32 of the Constitution wherein he challenged the validity of the Ordinance. The said writ petition was dismissed by the Court by the following order passed on June 9, 1997 :-

“The writ petition is dismissed”

- D Another writ petition [No. 322/97] was filed by one P.H. Parmar. The said writ petition was also dismissed by the Court by the following order passed on July 11, 1997 :-

“This writ petition under Article 32 is misconceived. So far as the challenge to the Ordinance is concerned, this stands concluded by dismissal of an earlier writ petition [W.P. No. 237/97 entitled *C.L. Sahu v. UOI & Ors.*]. We are constrained to observe that this is misuse of the PIL jurisdiction.

The writ petition is dismissed.”

- F After the enactment of the Amendment Act, petitioner No. 1 again filed a writ petition [No. D13334/97] to challenge the validity of the Amendment Act. The said writ petition was also dismissed by the Court by the following order passed on October 13, 1997 :-

“This writ is wholly misconceived. We are unable to appreciate the petitioner’s persistence with the same even after we told him so and also in view of the fact that a similar challenge has already been rejected earlier by orders dated 19/6/1997 and 11/7/1997 in W.P. (C) No. 293/97 and W.P. (C) No. 322/97 respectively. We have no doubt that this petition is a clear abuse of the process of the Court.

- H The writ is, therefore, dismissed.”

After the issuance of the notification under Section 4(1) of the Act by the Election Commission the Returning Officer published a notification dated June 9, 1997 under Section 5 of the Act for election of the President of India. In response to the said notification nomination forms were filed by a number of persons including the petitioners. The nominations of respondent Nos. 1 and 2 were accepted and the nominations of the rest, including the petitioners, were rejected by the Returning Officer. Since there was a contest between respondent Nos. 1 and 2, poll was taken and after counting of votes, respondent No. 1 was declared to have been elected to the office of the President of India on July 17, 1997. On August 14, 1997 the petitioners filed this election petition wherein they have prayed that the election of respondent No. 1 be declared void.

The petitioners have asserted that they were duly nominated candidates and are competent to file the election petition. They have claimed that their nomination was improperly rejected and the nomination of respondent Nos. 1 and 2 was improperly accepted. The petitioners have challenged the validity of the provisions contained in Sections 5B and 5C of the Act as they stood prior to the amendments introduced in the said provisions by the Ordinance and have also challenged the validity of the amendments made in Section 5B and 5C by the Ordinance. There is no averment in the election petition that the nomination form for nomination of petitioner No. 1 was subscribed by fifty electors as proposers and fifty electors as seconders as required by Section 5B(1)(a), as amended by the Ordinance. On the other hand, in the letter dated June 24, 1997 addressed by the petitioner No. 1 to the Returning Officer which has been filed as Annexure III to the Election petition, petitioner No. 1 has stated that his nomination paper was proposed by seven electors and that fifty proposers and fifty seconders were not required. As regards petitioner No. 2 it has been asserted in the Election petition that his nomination paper was signed by 64 proposers and 61 seconders.

During the pendency of the election petition the Ordinance was replaced by the Amendment Act. The petitioners have filed an application for amendment of the election petition to substitute the Ordinance by the Amendment Act at pages 5 and 40 of the election petition. The application is allowed and the petitioners are permitted to carry out the said amendment in the election petition.

In response to the notice issued on the Election petition an Affidavit-

A in-Opposition to the Election petition has been filed by respondent No.1 In the said Affidavit-in-Opposition a preliminary objection has been raised with regard to the maintainability of the Election petition by the petitioners on the ground that the petitioners were not candidates at the election and they are not entitled to maintain the Election petition under Section 14A of the Act. Reference has been made to the letter of petitioner No.1 dated June 24, 1997

B addressed to the Returning Officer (Annexure III to the Election petition) wherein petitioner No. 1 had claimed that he had seven proposers and did not claim any seconders at all and it is submitted that the said letter shows that petitioner No. 1 did not have fifty proposers and fifty seconders. As regards

C the nomination paper of petitioner No. 2 it is stated in the Affidavit-in-Opposition that in the nomination paper names of 64 proposers had been mentioned but 29 out of them had not subscribed their signatures at all and, therefore, the number of proposers was 35 only. Similarly, there were names of 61 seconders but out of them 28 did not sign and, therefore, there were only 33 seconders. It is also stated that the nomination of petitioner No. 2 was rejected on the threshold as it was not accompanied by the certified copy of the electoral roll as required under Section 5B(2) of the Act. In the said Affidavit-in-Opposition reply has also been given to the averments contained in the Election petition on merits and it is denied that the nomination paper of respondent No. 1 was wrongfully accepted and it is asserted that the certified copy of the entry in the electoral roll was filed as required under

D Section 5B(2) of the Act. As regards challenge to the validity of the Ordinance, reliance has been placed on the orders of this Court dismissing W.P. (Civil) No. 293 of 1997 filed by petitioner No. 1 and W.P. No. 322 of 1997 filed by Shri P.H. Parmar.

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Rejoinder affidavit of petitioner No. 1 has been filed in reply to the said

F Affidavit-in-Opposition of respondent No.1. In the said rejoinder affidavit the averments in the Affidavit-in-Opposition that the nomination paper of petitioner No.1 was only subscribed by 7 proposers and the nomination paper of petitioner N.2 was subscribed by 35 electors as proposers and 33 electors as seconders and that the nomination paper of petitioner No.2 was not accompanied by the certified copy of the electoral roll have not been

G controverted. We must, therefore, proceed on the basis that the nomination papers of both the petitioners did not fulfil the requirements of Section 5B(1)(a) of the Act inasmuch as neither of these nomination papers was subscribed by the requisite number of fifty electors as proposers and fifty electors as seconders and that in so far as petitioner No.1 is concerned, his

H nomination paper was not even subscribed by ten proposers but was

subscribed by seven proposers only and further that the nomination paper of petitioner No.2 was filed without complying with the requirements of Section 5B(2) of the Act. A

Rules governing election petition filed under Part III of the Act are contained in Order XXXIX of the Supreme Court Rules, 1966. Rule 34 of Order XXXIX provides that subject to the provisions of the said order or any special order or direction of the Court the procedure on an election petition shall follow, as nearly as may be, the procedure in proceedings before the Court in the exercise of its original jurisdiction. As regards proceedings in the exercise of the original jurisdiction of the Court Order XXIII Rule 6 provides that the plaint shall be rejected (a) where it does not disclose a cause of action, or (b) where the suit appears from the statement in the plaint to be barred by any law. B C

The preliminary objection raised by respondent No.1 in the Affidavit-in-Opposition is that the petitioners are not entitled to maintain the Election petition in view of Section 14A of the Act since they were not candidates at the election. If the said preliminary objection is accepted, the election petition will be liable to be rejected as being barred by law, i.e., Section 14A of the Act. We have, therefore, heard the petitioners as well as the learned counsel for respondent No.1 and the learned Attorney General of India on the said preliminary objection. D E

Section 14A of the Act relating to the presentation of the election petition provides as follows :-

“14A. (1) An Election petition calling in question an election may be presented on one or more of the grounds specified in sub-section (1) of Section 18 and section 19 to the Supreme Court by any candidate at such election, or- F

- (i) in the case of Presidential election, by twenty or more electors joined together as petitioners;
- (ii) in the case of Vice-Presidential election, by ten or more electors joined together as petitioners. G

(2) Any such petition may be presented at any time after the date of publication of the declaration containing the name of the returned candidate at the election under section 12 but not later than thirty days from the date of such declaration.” H

A The word "candidate" is defined in section 13(a) of the Act as under:-

"(a) "candidate" means a person who has been or claims to have been duly nominated as a candidate at an election;"

The word "elector" is defined in section 2(d) of the Act in these terms:

B "(d) "elector", in relation to a Presidential election, means a member of the electoral college referred to in article 54, and in relation to a Vice-Presidential election, means a member of the electoral college referred to in article 66;"

C Shri Sorabjee, the learned senior counsel appearing for respondent No.1, arguing in support of the preliminary objection, has urged that an election petition calling in question the Presidential election can either be filed by a candidate at such election or by twenty or more electors joined together as petitioners. In the present case the election petition has not been filed by twenty or more electors joined together as petitioners but has been filed by two petitioners only. It can be entertained only if either of the petitioners can be held to be a "candidate". Referring to the definition of "candidate" contained in Section 13(a) of the Act, Shri Sorabjee has submitted that neither of the petitioners was duly nominated candidate nor could he claim to have been duly nominated as a candidate at an election since the nomination papers submitted by both of them were not subscribed by fifty proposers and fifty seconders as required under Section 5B(1)(a) of the Act, as amended by the Amendment Act. It is, therefore, submitted that the petitioners have no locus standi to file this election petition and it should be dismissed as not maintainable. It has also been urged that the question as to the validity of Sections 5B and 5C of the Act, cannot be raised in an election petition filed under Section 14A of the Act and that an Election petition can be maintained only on any of the grounds mentioned in Section 18 of the Act. It has also been submitted that in any event the validity of Sections 5B and 5C, as the said provisions stood prior to June 5, 1997, requiring that the nomination should be subscribed by ten electors as proposers and ten electors as seconders has been upheld in *Charan Lal Sahu v. Neelam Sanjeeva Reddy*, [1978] 3 SCR 1, decided by a bench of 7 Judges of this Court and that the challenge to the validity of the amendments introduced in Section 5B and 5C by the Ordinance and the Amendment Act has been negated by this Court while dismissing the three writ petitions to which reference has been made earlier and that two of these writ petitions were filed by petitioner No.1

H himself.

The learned Attorney General has also taken the same stand and has submitted that since neither of the petitioners can be held to be a candidate under Section 13(a) of the Act they are not entitled to maintain the Election petition under Section 14A of the Act and that the same is liable to be dismissed at the threshold.

Petitioner No.1, Charan Lal Sahu, has argued the case as petitioner-in-person and as counsel representing petitioner No. 2. He has submitted that both the petitioners were candidates under section 13(a) of the Act since they were duly nominated candidates. It has been urged that the requirement that the nomination paper for the Presidential election should be subscribed by ten electors as proposers and ten electors as seconders contained in Section 5B(1)(a), as it stood prior to the amendment introduced in the said provision by the Ordinance and the Amendment Act and the requirement introduced in the said provision by the Ordinance and the Amendment Act that the nomination paper should be subscribed by fifty electors as proposers and fifty electors as seconders, is unconstitutional and void. The submission of the petitioners is that they are entitled to challenge the validity of the provisions contained in Section 5B, as it stood prior to the amendments introduced by the Ordinance and the Amendment Act and also the amendment made therein by the Ordinance and the Amendment Act in the election petition and that such a challenge is not barred. It has been contended that the earlier decisions negating the challenge to the validity of Section 5B did not take into consideration the provision regarding secrecy of ballot contained in Article 55(3) of the Constitution and that in view of the said provision in the Constitution the earlier requirement that the nomination paper must be subscribed by ten proposers and ten seconders and the present requirement about subscription by fifty proposers and fifty seconders is unconstitutional. It is urged that if the said provision in Section 5B is held to be unconstitutional then the petitioners must be regarded as duly nominated candidates and they are entitled to file this Election petition.

In view of section 14A of the Act an election petition calling in question a Presidential election can be presented either by a candidate at such election or twenty or more electors joined together as petitioners. This petition has not been filed by twenty or more electors and the petitioners are claiming the right to file the petition on the basis they were candidates at the election. The said claim of the petitioners has to be examined on the basis of the definition of "candidate" as contained in section 13(a) of the Act whereunder a person who has been or claims to have been duly nominated as a candidate at an

A election is to be treated as a 'candidate'. The question for consideration is whether the petitioners, whose nomination papers did not satisfy the requirements of Section 5B(1)(a) of the Act, can be regarded as persons who had been nominated or can claim to have been duly nominated 'candidate' at the election in question.

B In *Charan Lal Sahu v. Neelam Sanjeeva Reddy*, [supra], this Court has dealt with the question of locus standi of the petitioner (petitioner No. 1 here in) who had filed the Election petition. In that case also the Election petition was filed by a person whose nomination was not subscribed by the requisite number of proposers and seconders as per the provisions contained in Section C 5B(1)(a) applicable at that time. This Court held that the petitioner had no locus standi to challenge the election and to maintain the petition. After stating that the petitioner had admitted in the petition that he was not nominated as provided by Section 5B of the Act and had also not deposited the sum of money as required by Section 5C of the Act, the Court has held:-

D "Thus on the very admissions in the petition or plaint, the petitioner was not a candidate either duly nominated, or one who could claim to be so nominated." [pp.5-6]

E Again in *Charan Lal Sahu & Ors. v. Giani Zail Singh & Anr.*, [1984] 2 SCR 6, it was found that the nomination papers of the two petitioners who had filed the election petition were not subscribed by ten electors as proposers and ten electors as seconders. It was contended on behalf of the petitioners that even if it is held that they were not duly nominated as candidates, the election petitions could not be dismissed on that ground since they were "claiming to have been duly nominated as candidates". Rejecting the said contention this Court said :-

F "It is true that in the matter of claim to candidacy, a person who claims to have been duly nominated is on par with a person who, in fact, was duly nominated. But the claim to have been duly nominated cannot be made by a person whose nomination paper does not comply with the mandatory requirement of Section 5B(1)(a) of the Act. That is to say, a person whose nomination paper, admittedly, was not subscribed by the requisite number of electors as proposers and seconders cannot claim that he was duly nomination. Such a claim can only be made by a person who can show that his nomination paper conformed to the provisions of Section 5B and yet it was rejected, that is, wrongly G H rejected by the Returning Officer. To illustrate, if the returning Officer

rejects a nomination paper on the ground that one of the ten subscribers who had proposed the nomination is not an elector; the petitioner can claim to have been duly nominated if he proves that the said proposer was in fact an 'elector'." A

"Thus, the occasion for a person to make a claim that he was duly nominated can arise only if his nomination paper complies with the statutory requirements which govern the filing of nomination papers and not otherwise. The claim that he was 'duly' nominated necessarily implies and involves the claim that his nomination paper conformed to the requirements of the statute. Therefore, a contestant whose nomination paper is not subscribed by at least ten electors as proposers and ten electors as seconders, as required by Section 5B (1)(a) of the Act, cannot claim to have been duly nominated, any more than a contestant who had not subscribed his assent to his own nomination can. The claim of a contestant that he was duly nominated must arise out of his compliance with the provisions of the Act. It cannot arise out of the violation of the act. Otherwise, a person who had not filed any nomination paper at all but who had only informed the Returning Officer orally that he desired to contest the election could also contend that he 'claims to have been duly nominated as a candidate'." [pp. 15-16] B C D

In *Mithilesh Kumar Sinha etc. v. Returning Officer for Presidential Election & Ors. etc.*, [1992] 1 SCR Supp. 651, the same question arose with regard to the election petition filed by petitioner No.2 whose nomination paper had been rejected on the ground that it was not subscribed by the requisite number of proposers and seconders since some of the proposers and seconders who had subscribed to the nomination paper of petitioner No.2 had earlier subscribed to the nomination paper of another candidate and the subsequent signatures of such proposers and seconders had become inoperative on the nomination paper of petitioner No.2. The Election petition filed by petitioner No. 2 was rejected by this Court on the ground that since the nomination paper of petitioner No.2 did not comply with the mandatory requirements of Section 5B(1)(a) he had no locus standi to file the petition. It has been held :- E F G

"To be entitled to present an election petition calling in question an election the petitioner should have been a 'candidate' at such election within the meaning of section 13(a) for which he should have been 'duly nominated as a candidate' and this he cannot claim unless the H

A mandatory requirements of Section 5B (1)(a) and section 5C were complied with by him. Where on undisputed facts there was non-compliance of any of these mandatory requirements for a valid nomination, the petitioner was not a 'candidate' within the meaning of Section 13(a) and, therefore, not competent according to Section 14A to present the petition."

B "It is also settled by the decisions of this Court that in order to have the requisite locus standi as a 'candidate' within the meaning of Section 13(a) for being entitled to present such an election petition in accordance with section 14A of the act the petitioner must be duly nominated as a candidate in accordance with section 5B(1)(a) and Section 5C. Unless it is so the petitioner cannot even claim to have been duly nominated as a candidate at the election as required by section 13(a). [pp.685-686]

C In view of the decisions referred to above, it must be held that neither of the petitioners was a 'candidate' as the said expression is defined in Section 2(d) of the Act since neither of them had been duly nominated nor could he claim to have been nominated as a candidate inasmuch as the nomination papers filed by both of them did not comply with the mandatory requirements of Section 5B(1)(a) of the Act and the nomination paper of petitioner No.2 was filed without complying with the requirements of Section 5B(2) of the Act. On that view it must be held that neither of the petitioners has the locus standi to maintain the petition.

D As regards the submission urged on behalf of the petitioners regarding the validity of the provisions of Sections 5B and 5C as they stood prior to June 5, 1997, it may be stated that the validity of the said provisions has been upheld by this Court in *Charan Lal Sahu v. Shri Fakruddin Ali Ahmed & Ors.*, AIR [1975] SC 1288; *Charan Lal Sahu v. Neelam Sanjeeva Reddy* (supra) and *Charan Lal Sahu v. Giani Zail Singh*, [supra]. Petitioner No.1 was a party to all these decisions. The challenge to the validity of the amendments introduced by the Ordinance and the Amendment Act has been negatived by this Court in the three writ petitions referred to above, two out of which were filed by petitioner No.1. The petitioners have urged that in this petition the challenge to the validity of Section 5B is based on the ground that it violates the principle of secrecy of ballot incorporated in Article 55(3) of the Constitution and that this ground has not been considered in the earlier decisions. We do not find any merit in this contention. The requirement in Section 5B(1)(a) about the nomination paper being subscribed by particular number of electors

as proposers and seconders does, not, in any way, involve the infringement of the secrecy of ballot at the election inasmuch as the elector who has subscribed the nomination paper of a person as a proposer or as a seconder is free to cast his vote in favour of any candidate and is not bound to vote for the person whose nomination paper he has subscribed as a proposer or seconder. The identity of the candidate in whose favour he has cast his vote is not to be disclosed.

In order to get over the requirements of Section 5B(1)(a) of the Act petitioner No.1 has submitted that his nomination paper was subscribed by seven members of the Legislative Assembly of Uttar Pradesh as proposers and six members of the said Assembly as seconders. It has been pointed out that as per the statement of value of votes of elected members of the State Legislative Assemblies issued as per the provisions of Article 55(2) of the Constitution the value of vote of a member of the Legislative Assembly of Uttar Pradesh is 208 while the value of a member of the Legislative Assembly of Arunachal Pradesh is 8. The submission is that the combined value of the votes of the seven members of the Legislative Assembly of Uttar Pradesh who had subscribed the nomination paper of petitioner No.1 as proposers and six members who had subscribed as seconders is much more than the value of votes of 50 members of the Legislative Assembly of Arunachal Pradesh and, therefore, the nomination paper of petitioner No. 1 must be treated as having been subscribed by 50 electors as proposers and seconders. Under Section 5B(1)(a) what is required is that the nomination paper must be subscribed by 50 electors as proposers and by 50 electors as subscribers. In relation to Presidential election the expression "elector" is defined in Section 2(d) of the Act to mean a member of the electoral college referred to in Article 54. Under Article 54 every elected member of the Legislative Assembly of the State is a member of the electoral college for election of the President. In other words, each member of the Legislative Assembly of a state is an elector under Section 2(d) of the Act. For the purpose of Section 5B(1)(a) of the Act the nomination paper must be subscribed by the requisite number of members of the State Legislative Assemblies or Parliament as proposers and seconders and the value of the votes of the member has no bearing on the said requirement laid down in Section 5B(1)(a) of the act.

For the reasons aforementioned, it must be held that since the nomination papers of the petitioners did not fulfil the mandatory requirements of section

A 5B(1)(a) of the act and petitioner No.2 also failed to comply with the requirements of Section 5B(2) of the Act, the petitioners were not duly nominated as candidate at the election and they cannot also claim to be duly nominated as candidate at the election and they cannot be regarded as “candidate” under Section 13(a) of the Act. The preliminary objection raised by respondent No.1 that the petitioners cannot maintain the election petition must, therefore, be accepted and the election petition must be dismissed on this ground alone.

Before we conclude, we would like to advert to an aspect which cannot be ignored. Before filing this election petition, petitioner no.1 had earlier filed three election petitions challenging the election of the returned candidates in the Presidential elections held in the years 1974, 1977 and 1982. All these election petitions were dismissed on the ground that petitioner had no locus standi to maintain the election petition. [See : *Charan Lal Sahu v. Shri Fakruddin Ali Ahmed & Ors.*, [supra]; *Charan Lal Sahu v. Shri Neelam Sanjeeva Reddy*; and *Charan Lal Sahu v. Gaini Zail Singh* [supra]. Similarly petitioner No.2 had earlier filed two election petitions challenging the election of the returned candidates in the Presidential elections held in the years 1987 and 1992. Both these election petitions were dismissed on the ground that petitioner had no locus standi to maintain the Election petition. [See : *Mithilesh Kumar v. Sri R. Venkataraman & Ors.*, [1988] 1 SCR 525 and *Mithilesh Kumar Sinha. v. Returning Officer for Presidential Election* (supra)]. In *Charan Lal Sahu v. Giani Zail Singh* [supra] this Court, while referring to the Election petition filed by petitioner No.1, had observed :

“It is regrettable that election petition challenging the election to the high office of the President of India should be filed in a fashion as cavalier as the one which characterises these two petitions. The petitions have an extempore appearance and not even a second look, leave alone a second thought appears to have been given to the manner of drafting these petitions or to the contentions raised there in. In Order to discourage the filing of such petitions, we would have been justified in passing a heavy order of costs against the two petitioner. But that is likely to create a needless misconception that this Court, which has been constituted by the Act as the exclusive forum for deciding election petition where by a Presidential or Vice-Presidential election is challenged, is loathe to entertain such petitions. It is of the essence of the functioning of a democracy that election to public offices must be open to the scrutiny of an independent

tribunal. A heavy order of costs in these two petitions, howsoever justified on their own facts, should not result in nipping in the bud a well-founded claim on a future occasion. Therefore, we refrain from passing any order of costs and, instead, express our disapproval of the light-hearted and indifferent manner in which these two petitions are drafted and filed.”[17]

In *Mithilesh Kumar v. Sri R. Venkataraman & Ors.*, [supra], this Court had observed :

“While we expect every conscientious citizen eligible to file an election petition to question an election on the grounds prescribed by the Act, we do not wish that any petitioner should make use of this Court as a forum to file a petition without giving adequate thought to its contents and also to the provisions of law governing the case merely to seek some cheap publicity. We regret to say that seeing one's name in newspapers everyday has lately become the worst intoxicant and the number of people who have become victims of it is increasing day by day.” [537]

In *Mithilesh Kumar Sinha v. Returning Officer for Presidential Election*, it was observed by this Court as follows :

“.....Experience has shown that the solemnity and significance attaching to such petitions has been reduced to a farce by the cavalier fashion in which resort is had to this remedy. The mere fact that the entire gamut of both these petitions is fully covered by several earlier decisions of this Court to some of which these very petitioners were parties shows that the existing provisions are inadequate to prevent such abuse of the process of law.” [p.698]

We find that these observations have had no effect. This election petition which has been jointly filed by the two petitioners shows no improvement. It suffers from the same defects as the earlier petitions filed by the petitioners. It seems that the petitioners are obsessed with a desire that they should find a place in some Book of Records. They find the temptation to file an election petition after the Presidential election too difficult to resist. It is a matter of regret that petitioner No. 1, who happens to be an advocate himself, has been persisting in this past time knowing well that such conduct on his part amounts to an abuse of the process of law. This Court has so far refrained from imposing costs in the election petitions that were filed by the petitioners earlier. It is high time that the petitioner who have persisted in

- A** filing this petition in spite of the law laid down authoritatively by this Court in the earlier decisions are saddled with costs.

The Election petition is accordingly dismissed with costs. The costs are quantified at Rs.10,000 [Rupees ten thousand only]. The said amount of costs shall be deposited with the Supreme Court Legal Services Committee. It is also directed that no petition filed by either of the petitioners in person shall be entertained in this Court till the amount of costs imposed is paid.

B

R.K.S.

Petition dismissed.