

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

EP-1-2012

Date of Decision: April 7, 2015

Darbara Singh Guru

...Petitioner

Versus

Mohammad Sadique

...Respondent

CORAM: HON’BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. S.P. Jain, Senior Advocate, with
Mr. Dheeraj Jain, Advocate,
for the petitioner.

Mr. Bhoop Singh, Advocate,
for the respondent.

1.	Whether Reporters of local papers may be allowed to see the judgment?	YES
2.	To be referred to the Reporters or not?	YES
3.	Whether the judgment should be reported in the Digest?	YES

NARESH KUMAR SANGHI, J.

PRAYER IN THE ELECTION PETITION

1. Prayer in this election petition, filed by the petitioner, Darbara Singh Guru, under Sections 80-83 read with Section 100 of the Representation of the People Act, 1951 (for brevity, 'the 1951 Act') and all other enabling provisions in this behalf, is for setting aside the election of the respondent, Mohammad Sadique, to the Punjab Legislative Assembly, from 102-Bhadaur (Scheduled Caste) Assembly Constituency (for brevity, 'Bhadaur Constituency'), the result of which was declared on 06.03.2012 and further to order fresh election for the said Constituency.

FACTS

2. Brief facts as culled out from the petition filed by the petitioner are that the general elections to the Punjab Legislative Assembly were held in January, 2012. As per Section 3 of the Constitution (Scheduled Castes) Order, 1950 (for brevity, 'the 1950 Order'), no person who professes a religion different from the Hindu, the Sikh or the Buddhist shall be deemed to be a member of a Scheduled Caste. As per Section 5(a) of the 1951 Act, the qualification to be elected to the Legislative Assembly from a seat reserved for the 'Scheduled Castes', the person must belong to one of the 'Scheduled Castes' specified for the said

State.

3. The election schedule for the Punjab Legislative Assembly was announced in December, 2011. As per the election schedule, the nomination papers were to be submitted on or before 12.01.2012. The scrutiny of the nomination papers was to be held on 13.01.2012 and the last date for withdrawal of the candidature was 16.01.2012. The polling was held on 30.01.2012. The votes were counted on 06.03.2012 and on the same day the result was declared.

4. The Bhadaur Constituency was reserved for the Scheduled Castes in the State of Punjab. The petitioner, Darbara Singh Guru, had filed his nomination papers as a candidate of Shiromani Akali Dal while the respondent Mohammad Sadique was a candidate from Indian National Congress. There were total 19 candidates.

5. On 14.01.2012, one Badal Singh submitted a representation to the Returning Officer, Bhadaur Constituency, alleging that the nomination papers filed by the respondent, Mohammad Sadique, had to be rejected on the premise that he (Mohammad Sadique) was a *Muslim* and, as such, did not belong to the Scheduled Caste. The said Badal Singh had also approached this Court by way of Civil Writ Petition No. 985 of

2012, titled “Badal Singh v. State of Punjab and others”, with a prayer for issuance of directions to the Returning Officer, Bhadaur Constituency, to decide the representation/objections, dated 14.01.2012. The said petition was dismissed as not pressed since remedy of filing an election petition was available. The said Badal Singh had also sent a representation to the Election Commission of India alleging that the respondent, Mohammad Sadique, being a *Muslim* could not contest the election from Bhadaur Constituency and requested the Election Commission for issuance of necessary direction/orders to stop/prevent him (Mohammad Sadique) from contesting the election from the said Constituency. The Election Commission of India vide its letter dated 29.01.2012, requested the Chief Electoral Officer, Punjab, to send a factual report in that regard. Badal Singh also submitted a similar representation, dated 31.01.2012, to the Chief Electoral Officer, Punjab. Few more persons had represented to the Deputy Commissioner-cum-Election Officer, District Barnala, to cancel the nomination papers of the respondent, Mohammad Sadique, on the premise that Mohammad Sadique being a *Muslim*, could not avail the benefits available to the Scheduled Castes. In turn, the Deputy Commissioner-cum-Election Officer, District Barnala, forwarded

the said representation to the Returning Officer, Bhadaur Constituency, for inquiry and necessary action as per rules. However, nothing has come on record as to what happened to the various representations presented before different election authorities. In the meantime, seven independent candidates withdrew their candidature and, as such, only twelve candidates including the petitioner and the respondent were left in the fray.

6. The election was held on 30.01.2012. Out of total 1,34,667 votes in the Constituency, 1,13,233 votes including 83 postal ballots were polled. The counting was held on 06.03.2012. Out of the total votes polled, 36 votes were rejected and one was a tender vote. 52,825 votes were polled in favour of the respondent, Mohammad Sadique, while 45,856 votes were polled for petitioner, Darbara Singh Guru. Each remaining candidate got less than 5,000 votes and, as such, the respondent, Mohammad Sadique, was declared elected to the Punjab Legislative Assembly from Bahadaur Constituency on 06.03.2012.

CASE OF THE PETITIONER

7. The main grouse of the petitioner is that the respondent, Mohammad Sadique, being a *Muslim*, does not belong to a Scheduled Caste and, as such, he was not qualified to

be elected from the Bahadur Constituency or any other seat reserved for Scheduled Castes in the State of Punjab.

8. To support his averment, the petitioner alleged that the respondent was born in a family following *Islam*; his parents as well as family members professed Islam and used to perform the due ceremonies and rituals of Islam; the paternal great-grand father, paternal grand father, real brothers, real sisters, wife and daughters of the respondent, Mohammad Sadique, were all having the names which are prevalent amongst *Muslims*; neither the respondent nor his family members used "*Singh*" or any other word associated with 'Sikh' religion in their names; the respondent during his interview to Shri Gulzar Singh Shaunki (PW-6) had admitted that he (Mohammad Sadique) was a *Muslim*; the said interview was published by Shri Gulzar Singh Shaunki in his book titled "*Sada Bahaar Gaayak – Mohammad Sadique: Jeevan Te Geet*" (Ex. PK), published through Sangam Publications, Samana; as per the records of Dashmesh High School, Ludhiana, in which the daughters of the respondent had studied, it was mentioned that the respondent and his family had professed Islam; father of the respondent had died on 18.11.2005 and his dead body was buried in village Kupkalan, Tehsil Malerkotla, as per *Muslim* rites and customs; similarly after death, the dead

body of the wife of the respondent was also buried as per *Muslim* rites; in the nomination papers the respondent wrongly declared that he belonged to a Scheduled Caste in the State of Punjab; the Returning Officer had wrongly accepted the nomination papers of the respondent; vide an application dated 13.07.2006, the respondent had applied for issuance of a Scheduled Caste certificate by claiming himself that he belonged to "*Doom (Marasi)*" caste, which was granted under the orders of the then Tehsildar, Ludhiana (West); when the said fact came to light, the then Commissioner, Patiala Division, Patiala, ordered an inquiry and thereafter a direction was issued to the respondent to return the said Scheduled Caste certificate in the office of the Tehsildar by 19.12.2006, but the same was not obeyed by the respondent and, as such, the Government of Punjab vide its Order No. 15/MC, dated 11.01.2007, cancelled the said certificate; in the meantime, the respondent applied for issuance of a Scheduled Caste certificate claiming himself to be of "*Doom*" caste only and a certificate to that effect was issued on 25.08.2006; the Joint Secretary, Welfare, Government of Punjab, vide his Memo. No. 1/32/2008-RS-1, dated 17.11.2008, issued directions to all the Deputy Commissioners in the State of Punjab, to the effect that a person belonging to Islam was not legally

entitled to get a Scheduled Caste certificate; thereafter on the representation of Shri Dalip Singh Pandhi, Member, Punjab State Scheduled Castes Commission, a direction was issued by the then Secretary, Welfare, Government of Punjab, vide letter dated 16.03.2009, that certificates issued to *Muslims*, mentioning '*Doom Caste*' were illegal and liable to be cancelled immediately; it was further directed to all the Deputy Commissioners in the State of Punjab, to provide information within three months regarding all such Scheduled Caste certificates issued with effect from 01.01.1980; vide Memo dated 24.09.2009, the Government of Punjab issued directions to all the Sub Divisional Magistrates and Tehsildars in the State of Punjab, not to issue scheduled caste certificate to any *Muslim* and if any official issues such certificate, action would be taken against him; and that Bahadaur Constituency was reserved for the members of the Scheduled Castes, therefore, the respondent was lacking the essential conditions and, as such, was not competent to contest the election.

STAND TAKEN BY THE RESPONDENT

9. The respondent, Mohammad Sadique, filed reply, dated 04.09.2012, and the petitioner filed replication dated 02.10.2012. The respondent filed the rejoinder dated 16.10.2012

to the replication of the petitioner and thereafter issues were framed. In the meantime, an application under Order VI Rule 17 C.P.C., for amendment of fourth line in paragraph 24 of the reply, was presented for substitution of the word "*Sikh*" with the word "*Doom*", which was allegedly mentioned due to typographical mistake. After hearing the learned counsel for the parties, the said application for amendment of the reply, filed by the respondent, was allowed and consequently the amended reply was taken on record.

10. In his amended reply, the respondent pleaded that in spite of specific reference in the election petition, the documents referred therein were neither enclosed with the election petition nor supplied to the respondent and, as such, the paragraphs containing such references were liable to be struck off; the verification of the election petition was defective, inasmuch as, the same was not in accordance with the provisions of Order VI Rule 15 C.P.C. and, hence, the election petition was liable to be rejected; paragraph 3 of the Order 1950 was unconstitutional, discriminatory and void being violative of Articles 14, 15 and 16 of the Constitution of India; no objection was raised regarding the nomination papers of the respondent by any person including the petitioner; the respondent belonged to scheduled

caste and, as such, was qualified to contest the election from Bhadaur Constituency; the respondent belonged to '*Doom*' caste, which was a scheduled caste in the State of Punjab; the respondent professed Sikh religion and performed their due ceremony, rituals and rites since he had never offered prayer in the Mosque, never observed *Rozas* or offered *Namaaz*, had never gone to *Hajj* after attaining the age of discretion; from his childhood the respondent was singing songs and came in association with Sikh writers, artists, singers and producers; the respondent used to go to Gurdwara to pay obeisance and developed faith in Sikh religion and started following the rites, rituals and customs of Sikh religion; at every stage-show, he used to start his programme with religious songs in praise of Guru Sahibans; during his bad time, at the advice of Sikh gentlemen, the respondent got performed '*Sampath Path*' from Sant Baba Sucha Singh along with other *Ragis* at his (respondent) residence at Ludhiana for seven days in the year 2000, which further strengthened his faith and belief in Sikh religion; his two daughters had solemnized marriage with Hindu boys as per Hindu rites and ceremonies at the advice of their in-laws; on 13.04.2006, the respondent embraced Sikh religion from his heart, soul and conscience and declared himself to be a Sikh; a

public notice in that regard was published in the newspapers – ‘The Hindustan Times’, Chandigarh’ and ‘Daily Akali Patrika’, Jalandhar’, dated 04.01.2007 and since then the respondent is following the rituals, rites, traditions, ceremonies and customs of Sikh religion with utmost sincerity and devotion; since the respondent was a famous singer by the name of Mohammad Sadique, therefore, he did not change his name; after embracing Sikh religion, the respondent was accepted and welcomed by the Sikh community and there was no objection by anyone in that regard; Smt. Raffikan @ Seeto, wife of the respondent had expired on 17.12.2007. She being a follower of *Islam*, was buried, however, the respondent as per his Sikh religion, got performed ‘*Akhand Path*’ from 04.01.2008 to 06.01.2008 in a Gurdwara at Ludhiana and the *bhog of Akhand Path, Kirtan and Antim Ardas* were held at his (respondent) residence; the obituary to that effect was published in various newspapers on 04.01.2008 and 05.01.2008; the ceremony was largely attended by prominent Sikh persons; Smt. Parsanni Devi, mother of the respondent had expired on 16.12.2009. She being a follower of *Islam*, was buried, however, the respondent as per his religion got performed *Akhand Path* and *Bhog of Akhand Path* on 27.12.2009 in a Gurdwara Sahib at village Kupkalan; the said

ceremony was also attended by prominent personalities from the Sikh community; late Waliat Ali, father of the respondent also had inclination towards the Sikh religion since he was a *Ragi* and used to perform Kirtan in a Gurdwara Sahib; the respondent had never given any interview to Shri Gulzar Singh Shaunki, in which he admitted the fact that he (respondent) was a *Muslim*; the school admission forms of his daughters were never filled by his wife Smt. Raffikan @ Seeto or daughter Ms Nasreen Akhtar; correct declaration was incorporated in the nomination papers that the respondent was a '*Doom*' and belonged to scheduled caste in the State of Punjab; the Returning Officer had rightly accepted the nomination papers of the respondent; the respondent had got his application and affidavit typed from a typist who wrongly mentioned the caste of the respondent as "*Doom (Marasi)*"; the same typographical mistake was repeated in the affidavit and without noticing the same, the respondent signed the said documents and presented before the Tehsildar, Ludhiana, and in turn the caste certificate was issued to him describing his caste as '*Doom (Marasi)*'; as soon as the respondent knew about the said error, he contacted the Tehsildar on 25.08.2006 and thereafter a fresh caste certificate mentioning his caste as '*Doom*' was issued; his daughters were

also issued the scheduled caste certificates in the years 1989 and 1991; the respondent denied the receipt of letter/order dated 30.11.2006 directing him (respondent) to deposit the scheduled caste certificate by 19.12.2006; it was also denied that he ever received any notice with regard to the inquiry of issuance of wrong caste certificate; it was also denied that caste certificate issued to him was later withdrawn by the Government; the representations made by Dalip Singh Pandhi were also denied; and in the end of the reply it was pleaded that the respondent was competent to contest the election from a seat reserved for scheduled castes and, as such, the election petition was devoid of merits and deserves to be dismissed.

OTHER PLEADINGS OF THE PARTIES

11. The petitioner filed amended replication to the amended reply and reiterated the facts enshrined in the election petition.

12. The respondent was still not satisfied and proposed to file his rejoinder to the amended replication and reiterated the stand taken in the amended reply.

ISSUES

13. After hearing learned counsel for the parties and on the basis of their pleadings, the following issues were framed on

08.01.2013:

- “1. Whether the respondent being Muslim was not qualified to contest the election from 102-Bhadaur Assembly Constituency reserved for the members of the Scheduled Castes? OPP*
- 2. Whether the respondent is a Sikh and professes Sikh religion? OPR*
- 3. Whether the election petition is not verified in accordance with Order VI Rule 15 of the Code of Civil Procedure, 1908? If so, its effect. OPR*
- 4. Whether no material fact can be pleaded in the replication after expiry of the period of limitation for filing an election petition? OPR*
- 5. Whether paragraph Nos. 12 to 15, 22(vii)(viii)(ix)(x)(xiii)(xiv) and 27 to 28 of the election petition are liable to be struck off on the ground mentioned in the Preliminary Objection No. 1 of the written statement? OPR*
- 6. Relief.”*

14. At that time, learned counsel for the respondent had insisted that Issue Nos. 3 and 5 be treated as preliminary issues. After hearing the learned counsel for the parties, it was held that

the said issues cannot be decided in isolation and, as such, on the basis of the evidence to be led, all the issues would be decided together.

15. Learned counsel for the parties exchanged the list of witnesses to be produced in support of their respective claims.

EVIDENCE LED BY THE PETITIONER

16. To prove his case, the petitioner examined the following witnesses:

**PW1 Tejinder Pal Singh, Science Teacher,
Dashmesh Senior Secondary School, Ludhiana :**

He had brought the summoned record relating to the admissions of Taskeen Akhtar, Nasreen Akhtar, Javed Akhtar, Shehnaz Akhtar and Naseem Akhtar, all daughters of the respondent. He had also brought the admission and withdrawal register of the above said students. He proved the true photostat copies of the admission forms and the entries in the admission and withdrawal register from the original documents. He also proved the original school leaving certificate of Taskeen Akhtar. It was deposed by the witness that when the said students were admitted in 9th class, then

fresh admission forms were presented by Smt. Seeto wife of Mohammad Sadique, Mohammad Sadique himself or their elder daughter Nasreen Akhtar. At the time of admission in the 9th class, the names of the above stated students were entered in the admission and withdrawal register.

PW-2 Arvinder Pal Singh, Tehsildar, Ludhiana

(West) : On the basis of summoned original record he, *inter alia*, deposed that Mohammad Sadique had applied for issuance of a caste certificate on 13.07.2006 (Ex. PF) and 25.08.2006 (Ex.PG). On the basis of Ex. PF, certificate (Ex. PF/6) was issued on 13.07.2006 itself. He also deposed that vide order dated 04.01.2007, caste certificate (Ex. PF/6) was cancelled. On the basis of application (Ex.PG), caste certificate (Ex.PG/2) was issued to the respondent. A Demi Official, dated 31.01.2012, was received by the then Tehsildar seeking information regarding the certificates issued to the persons belonging to 'Doom' community and the same was complied with. On 02.02.2012, Additional Deputy Commissioner (G), Ludhiana, had put a query (Ex.PG/5) to Balwinder Pal

Singh, the then Tehsildar, regarding the issuance of the caste certificate to Mohammad Sadique. The office of the Tehsildar was not authorized to issue caste certificates to the *Muslims*. During cross-examination, the witness denied the suggestion that Mohammad Sadique was not a '*Musalman*'. He further denied the fact that certificate (Ex.PG/2) was rightly issued to Mohammad Sadique since he belonged to 'Doom' caste.

PW-3 K.S. Bhatnagar, Joint Director, Directorate of Census Operations, Punjab : The witness was given up at a later stage by learned counsel for the petitioner, vide his statement dated 11.07.2014.

PW-4 Ms. Anjana Sandhu, Deputy Director, Department of Welfare of Scheduled Castes and Backward Classes, Punjab : She had brought letter No. 1/32/2008-RS-I-1411, dated 17.11.2008 (Ex. PJ) issued by the Joint Secretary, Welfare, Government of Punjab. She had also brought the photostat copy of letter (Ex.PJ/1) dated 16.03.2009, issued by the Secretary, Welfare, Government of Punjab. An objection was raised by learned counsel for the

respondent with regard to the photostat copy of Ex. PJ/1, but her cross-examination was deferred and on the next date of hearing i.e. 04.09.2013, when she was re-called for cross-examination, then she had brought the original of Ex. PJ/1, which was taken on record as Ex. PJ/1/1.

PW-5 Balraj Singh Sekhon, Additional Secretary, Revenue Department, Punjab : He had brought the original summoned record consisting of a letter dated 24.09.2009 (Ex.PH) written by the Deputy Secretary, Revenue, Punjab, to all the Sub Divisional Magistrates and Tehsildars in the State of Punjab. The said letter was accompanied by a document (Ex.PH/1).

PW-6: Gulzar Singh Shaunki : He, *inter alia*, deposed that he had retired from Education Department and had scribed about 30 books. He had edited the book, namely, "*Sada Bahaar Gaayak – Mohammad Sadique: Jeevan Te Geet*" (Ex. PK). Page Nos. 34 to 62 of that book were based upon the interview of Mohammad Sadique, which was taken by the witness. At page Nos. 129 and 130, the witness had written about Smt. Raffikan, wife of the

respondent. At page Nos. 188 to 191, the interview taken by the witness from Waliat Ali, father of the respondent, was reproduced. The book (Ex. PK) was released by Mohammad Sadique in the month of May, 2009 at village Bure Khara, District Ludhiana. The witness also identified the photographs of Mohammad Sadique and his father Waliat Ali at page Nos. 96 and 97 of Ex. PK. It was also stated by the witness that only one edition of the book (Ex.PK) was published in the year 2009 by Sangam Publications.

It is pertinent to mention herein that the mode of proof of the book (Ex. PK) was objected to by learned counsel for the respondent and at that time the said objection was kept open.

PW7- Darbara Singh Guru (petitioner) : He not only tendered his affidavit (Ex.PL) in his evidence, but also produced certified copy of the suit under Section 2 of the Dissolution of Muslim Marriage Act, 1939, for the decree of dissolution of marriage between Taskeen Akhtar and Dilshad Ali (Mark 'A'); an affidavit of Taskeen Akhtar including her cross-examination (Mark 'B'); affidavit of Mohammad Sadique including

his cross-examination (Mark 'C'); and the certified copy of the judgment and decree dated 16.01.2007 (Ex.PL/1), passed by learned Additional Civil Judge (Senior Division), Ludhiana.

In his affidavit, the petitioner had reiterated the stand taken by him in the election petition. During cross-examination, nothing material which could deviate the petitioner from his stand could be brought on record. However, he fairly conceded that at the time of scrutiny of the nomination papers, he did not raise the objection since he had no legal knowledge that a *Muslim* could not be of a scheduled caste.

EVIDENCE LED BY THE RESPONDENT

17. To rebut the case of the petitioner and substantiate his own case, the respondent, Mohammad Sadique, examined the following witnesses:

RW-1 Virendra Tiwari : He was the Deputy Manager in the English daily newspaper 'The Hindustan Times' being published from Chandigarh. He had produced the copy (Ex. RA) of a public notice (Mark 'A') in the shape of an advertisement, published on 04.01.2007 in the said newspaper on behalf of Mohammad Sadique.

In the cross-examination, he deposed that he was not aware of the veracity of the contents of the advertisement at Mark 'A' in Ex. RA.

RW-2 Harpreet Singh : He was an Advertisement Manager in daily Punjabi newspaper '*Ajit*', being published from Jalandhar. He had brought the original script (Ex.RB) of the newspaper, dated 04.01.2008, which contained an advertisement (Mark 'A') regarding the obituary of Bibi Raffikan. In the cross-examination, he admitted that the advertisement of obituary was sent by Mr. Ravinder Singh Nijjar, Correspondent at Ludhiana. No other supportive documents except the printed form was received for publication of the above obituary.

RW-3 Ranjit Singh : He was a Sub-Editor of the daily newspaper '*Akali Patrika*', being published from Jalandhar. He had brought the newspaper (Ex. RC) where an advertisement (Mark 'A') on behalf of Mohammad Sadique was published. In the cross-examination, the witness admitted that the said advertisement was received from Green Line Advertisement Agency, Ludhiana. He also admitted

that he did not know regarding the correctness or the genuineness of the advertisement (Mark 'A') published in the newspaper (Ex. RC).

RW-4 Sarabjit Walia : He was Senior Sub-Editor with daily newspaper '*Ajj Di Awaaz*', being published from Jalandhar. He deposed that an advertisement (Mark 'A') was published in the document (Ex. RW4/A) regarding *Akhand Path and Antim Ardas* of Smt. Raffikan. In the cross-examination, he fairly admitted that requisite original record was not available in his office. He also admitted that he had no personal knowledge regarding the obituary of Smt. Raffikan @ Seeto, published in the newspaper.

When re-called for further examination on 22.03.2014, he deposed that the advertisement with regard to obituary of Smt. Raffikan @ Seeto was published at Mark 'A' of Ex. RW4/A.

RW-5 Mohammad Sadique, respondent : He tendered his affidavit dated 21.01.2014 (Ex. RD), to be read in evidence. He also tendered the photographs Mark 'D', 'E', 'F', 'G', 'H', and 'I'; original video-tape (Mark 'J'); and VCD (Mark 'K'); original newspaper '*Ajj*

Di Awaaz' (Mark 'L'), dated 05.01.2008, consisting of eight pages, where at Mark 'A', the obituary of Smt. Raffikan @ Seeto was published. The cross-examination of the witness is running into several pages. The relevant portion of the cross-examination would be discussed in the succeeding paragraphs of this judgment at an appropriate place.

RW-6 Rachhpal Singh : He was the Secretary of Gurdwara Sahib, Kupkalan, and had brought the register and the receipt book of the said Gurdwara Sahib. He deposed that Smt. Parsanni Devi was mother of Mohammad Sadique and her *Bhog* ceremony and *Antim Ardas* was performed in the Gurdwara Sahib at Kupkalan. A sum of Rs. 2,100/- (Rupees two thousand and one hundred) was received vide receipt (Ex. RW6/A) and offerings (Bainth) of Rs.4,280/- (Rupees four thousand, two hundred and eighty) were also received. The corresponding entry was entered in the register (Mark 'A') on 27.12.2009. The photostat of the same was Ex. RW6/B.

RW-7 Lalit Sharma : He was a Sales Clerk in the office of the Tehsildar (East), Ludhiana. He had

brought the summoned register containing Sr. No. 3883, dated 01.08.1989, relating to Shehnaz Akhtar, daughter of Mohammad Sadique. But during examination-in-chief, at the request of learned counsel for the respondent, the witness was discharged.

RW-8 Harsimran Singh, Tehsildar (East), Ludhiana:

He too was discharged at the request of learned counsel for the respondent.

RW-9 Major Sher Singh (Retd.) : He deposed that he knew Mohammad Sadique from his childhood, who was visiting Gurdwara from his childhood with the witness. He had neither seen the respondent visiting the Mosque nor seen him offering *Namaaz* or observing *Roza*. After joining army in the year 1963, the witness was occasionally meeting the respondent and it was observed that the respondent was following the tenets of Sikhism, but he (witness) did not know that during the said period the respondent was also following the Islam. Even after retirement, they were meeting in the family functions. The marriages of the two daughters of the respondent were solemnized

according to Sikh religion while the marriages of two other daughters were solemnized according to *Saptapadi*. The witness had not attended the marriage of Nasreen Akhtar, which was solemnized in the year 1992. The witness had attended the *Antim Ardas* of Smt. Seeto, which took place as per Sikh rites. He had also attended the *Antim Ardas* of the mother of the respondent, held in Gurdwara Sahib at village Kupkalan. In his cross-examination, the witness admitted that there was no ban for a non-Sikh to visit Gurdwara; non-Sikh could perform *Antim Ardas* in the Gurdwara after obtaining permission; and that non-Sikh could also be presented '*Siropa*', provided the local committee approved it.

RW-10 Ms Sukhjeet Kaur : She was a lady singer and came in contact with the respondent in the year 1999 and started learning singing at the house of the respondent. From the year 2000, she started singing with the respondent and participated in numerous functions in and outside India. Mohammad Sadique was visiting Gurdwara with her for paying obeisance. He (Mohammad Sadique) used to perform '*Nityanem*'

after taking bath. She had never seen the respondent following *Muslim* customs and rites. The marriages of the two daughters of the respondent were solemnized as per Sikh rites while the two others as per *Saptapadi*. The *Akhand Path* of Smt. Seeto was performed prior to *Antim Ardas* at a Gurdwara Sahib at Ludhiana. The *Bhog* and *Antim Ardas* of Smt. Parsanni Devi was attended by the witness at Gurdwara Sahib in village Kupkalan. As per her assessment, Mohammad Sadique was a follower of Sikhism.

RW-11 Darshan Singh, Ex-Sarpanch of village Kupkalan, District Sangrur : He, *inter alia*, deposed that he knew Mohammad Sadique and his parents. The parents of the respondent were residing at village Kupkalan. Mohammad Sadique was following Sikh religion. He was paying obeisance in Gurdwara Sahib and took *Parshad* and offered '*Darshan Bhet*'. He had never seen Mohammad Sadique observing *Roza*, offering *Namaaz* and celebrating *Id* in and outside mosque. The *Antim Ardas* ceremony of Smt. Parsanni, mother of the respondent was performed in the Gurdwara Sahib of the village of the witness and he

had attended the said ceremony. In the cross-examination, the witness fairly conceded that there was no bar for the follower of any other religion than the Sikh to visit Gurdwara for paying obeisance. He further conceded that a person of any religion could visit Gurdwara for taking *Parshad* and offer *Darshan Bhet*.

RW-12 Pargat Singh, retired Government servant :

He deposed that for the last 20 years, he was the President of the institution known as "Professor Mohan Singh Memorial Foundation". He was amongst the founder members of the said institution. He knew Mohammad Sadique for the last 30-35 years. The respondent was a prominent singer of Punjab and performed stage shows. He (Mohammad Sadique) was following Sikh religion, its culture, customs and rites. At the beginning of his performance, Mohammad Sadique would recite the religious songs. The witness has not seen the respondent offering *Namaaz* or observing *Roza* or visiting Mosque. The *Bhog* ceremony of the mother of the respondent was arranged in the Gurdwara of village Kupkalan. The

witness had also attended the *Bhog* ceremony of the wife of the respondent which was performed in the presence of *Shri Guru Granth Sahib* as per Sikh customs and rites. In the year 1999, when the respondent was in trouble and at the suggestion of Sant Sucha Singh, a holy Saint, *Sampath Path* of *Shri Guru Granth Sahib* was arranged at his residence by the respondent and thereafter he was relieved of his troubles. Out of three marriages of the daughters of the respondents, two were performed according to *Saptapadi* while third one was according to Sikh rites.

RW-13 Paramjit Singh : He is the Ex-Sarpanch of village Salar, Tehsil Malerkotla, District Sangrur. He worked with the respondent as a singer from 1979 to 1988. During the course of stage show, the witness used to stay with the respondent for 3 to 4 days. During the said period they would visit the nearby Gurdwara Sahib for paying obeisance. The witness had not seen the respondent offering *Namaaz*, observing *Roza* or visiting the Mosque. It was also deposed by the witness that at the starting of his stage show the respondent would sing "*Waha Waha Guru*

Gobind Singh Aape Guru Chela”, for paying respect to the 10th Guru of the Sikhs. The witness had attended the *Bhog* ceremony of Smt. Parsanni, which was arranged in a Gurdwara Sahib in village Kupkalan. In the presence of the witness, the respondent never visited Mosque.

RW-14 Sant Shamsheer Singh Jageda : He was the President of “*International Sant Samaj*” and “*Sant Sipahi Dal*”. Mohammad Sadique had taken birth as Mohammedan, but later he started following Sikhism. After reading the newspaper that Mohammad Sadique had embraced Sikhism and started believing Sikhism, then the witness had honoured and presented a *Siropa* to the respondent. The witness had seen Mohammad Sadique visiting Gurdwara, paying obeisance and offering *Darshan Bhet*. Sant Kartar Dass ji had also presented a *Siropa* to the respondent. The photographs (Mark ‘H’ and ‘I’) were of the occasion of presentation of *Siropas* to the respondent. In his cross-examination, the witness admitted that there was no bar for a non-Sikh to visit Gurdwara and accept *Parshad*. The non-Sikh could also offer

Darshan Bhet. It was also admitted that there was no bar in Sikhism to present a *Siropa* to a non-Sikh.

RW-15 Sant Kartar Dass Ji, Mahant of Dera Udaseen Sampardai of Sikh religion : The witness knew the respondent for the last 20-25 years, who was visiting his *Dera* for paying obeisance. In the year 2007, the witness had presented a *Siropa* to the respondent and Mark 'I' was the photograph of the said function. As per the witness, the respondent had professed Sikhism and was following its customs and rites. The respondent was not visiting Mosque, observing *Roza* or celebrating *Id*.

RW-16 Sanjeev Bhardwaj : He is the son-in-law of the respondent. His marriage was solemnized with Shehnaz Akhtar, daughter of the respondent, according to Hindu customs and rites, as per the wishes of father of the witness. The respondent wanted to get the marriage solemnized in accordance with Sikh customs and rites. The marriage of the younger brother of the witness was solemnized with Javed Akhtar, yet another daughter of the respondent, in accordance with Hindu customs and rites.

Mohammad Sadique followed Sikh religion and customs. The respondent had affixed a photograph of Sikh Guru at his residence.

RW-17 Prem Rattan Kalia : He is also a son-in-law of the respondent. His marriage was solemnized with Naseem Akhtar on 14.08.2001 as per Sikh customs and rites in *Sri Kalgidhar Gurdwara Sahib* at Ludhiana. The respondent was following Sikh religion and customs. Bhog ceremony of Smt. Seeto, mother-in-law of the witness was arranged as per Sikh customs and rites. The witness had prepared video tapes (Exs. RW-17/A and RW-17/B) of the *Bhog* ceremony. The VCD of the said *Antim Ardas* was Ex. RW-17/C. The witness had played video tapes (Exs. RW-17/A and RW-17/B) from his camera and deposed that those were same video tapes which were prepared by him at the time of *Antim Ardas* ceremony of Smt. Seeto on 06.01.2008.

RW-18 Amzad Parvez : He is nephew of the respondent. He deposed that in the month of May, 2000, Baba Sucha Singh had performed *Sampat Path* for a week at the resident of the respondent. The witness had clicked the photographs (Exs. RW18/A,

RW18/B, RW18/C and RW18/D). Sant Sucha Singh was seen in the exhibited photographs except in Ex. RW18/C.

RW-19 Kulwant Singh : He was the President of Gurdwara *Sri Kalgidhar Sahib*, Ludhiana. He deposed that *Anand Karaj* of Prem Rattan with Naseem Akhtar was not performed on 14.08.2001 at Gurdwara *Sri Kalgidhar Sahib*. There was an entry in the register in the names of Prem Rattan and Naseem Akhtar, but the same was not with regard to *Anand Karaj* and the said entry was also not signed by the *Granthi*.

At the request of learned counsel for the respondent, the witness was declared hostile and was permitted to be cross-examined by the respondent. The true photostat copy of the register of the entry of Prem Rattan and Naseem Akhtar was Ex. RW19/A.

RW-20 Mohammad Majid : He was the Imam of Maszid Kupkalan. He knew the respondent being a resident of the village Kupkalan. The parents and sister of the respondent used to reside in the house adjoining the mosque in village Kupkalan. The respondent was also visiting the village Kupkalan and

stayed there, but he never visited the mosque for paying obeisance. The respondent even visited village Kupkalan in the month of *Ramzan*, but he (respondent) neither observed *Roza* nor recited *Namaaz*. The *Bhog* and *Antim Ardas* of the mother of the respondent were arranged in the Gurdwara in village Kupkalan. The witness did not attend the said ceremony. According to the witness, Mohammedans do not visit Gurdwara for paying obeisance. However, Mohammad Sadique used to visit Gurdwara for paying obeisance. He followed Sikhism and not the Mohammedan religion. In the cross-examination, the witness deposed that he had no knowledge regarding Sikh religion and its rituals. He denied the suggestion that Mohammad Sadique was a Mohammedan and following Mohammedan rituals and customs and that he does not follow Sikhism and its customs and rituals.

18. After tendering original Scheduled Caste Certificates of Shehnaz Akhtar (Ex. RE), Javed Akhtar (Ex. RF) and Nasreen Akhtar (Ex. RG), daughters of Mohammad Sadique, learned counsel for the respondent closed his evidence vide statement dated 12.05.2014. Thereafter, the counsel for the petitioner vide

his statement dated 11.07.2014, proposed not to lead any evidence in rebuttal and closed the case of the petitioner.

EXHIBITED AND MARKED DOCUMENTS

19. For the purpose of convenience and ready reference, the detail of the exhibited and marked documents produced on behalf of the parties is as under:-

Documents produced on behalf of the petitioner

Sr. No.	Description	Exhibit/Mark
1	Admission form of Taskeen Akhtar	Ex. PA
2	Admission form of Shahnaz Akhtar	Ex. PA/1
3	Admission form of Javed Akhtar	Ex. PA/2
4	Admission form of Naseem Akhtar	Ex. PA/3
5	Admission form of Nasreen Akhtar	Ex. PA/4
6	Copy of entry of admission and withdrawal register relating to Taskeen Akhtar	Ex. PB
7	Copy of entry of admission and withdrawal register relating to Shahnaz Akhtar	Ex. PB/1
8	Copy of entry of admission and withdrawal register relating to Javed Akhtar	Ex. PB/2

9	Copy of entry of admission and withdrawal register relating to Naseem Akhtar	Ex. PB/3
10	Copy of entry of admission and withdrawal register relating to Nasreen Akhtar	Ex. PB/4
11	School leaving certificate of Taskeen Akhtar	Ex. PC
12	Fresh admission form of Taskeen Akhtar	Ex. PD
13	Fresh admission form of Nasreen Akhtar	Ex. PD/1
14	Fresh admission form of Javed Akhtar	Ex. PD/2
15	Fresh admission form of Shahnaz Akhtar	Ex. PD/3
16	Fresh admission form of Naseem Akhtar	Ex. PD/4
17	Copy of entry of admission and withdrawal register relating to Taskeen Akhtar	Ex. PE
18	Copy of entry of admission and withdrawal register relating to Nasreen Akhtar	Ex. PE/1
19	Copy of entry of admission and withdrawal register relating to Javed Akhtar	Ex. PE/2
20	Copy of entry of admission and withdrawal register relating to Shahnaz Akhtar	Ex. PE/3
21	Copy of entry of admission and withdrawal register relating to Naseem Akhtar	Ex. PE/4

22	Application dated 13.07.2006 for issuance of caste certificate	Ex. PF
23	Affidavit of Mohammad Sadique	Ex. PF/1
24	Form-III: Licence for the possession of Arms and ammunition	Ex. PF/2
25	No document, hence, no exhibit, as per order dated 10.04.2013	Ex. PF/3
26	No document, hence, no exhibit, as per order dated 10.04.2013	Ex. PF/4
27	No document, hence, no exhibit, as per order dated 10.04.2013	Ex. PF/5
28	Scheduled Caste Certificate, dated 13.07.2006	Ex. PF/6
29	Proceedings for cancellation of caste certificate	Ex. PF/7
30	Notice regarding return of original caste certificate	Ex. PF/8
31	Notice regarding cancellation of Scheduled Caste Certificate	Ex. PF/9
32	Proceedings for cancellation of Caste Certificate	Ex. PF/10
33	Application for issuance of 'Doom' caste certificate, dated 25.08.2006	Ex. PG
34	Affidavit of Mohammad Sadique	Ex. PG/1
35	Scheduled Caste Certificate (Doom), dated 25.08.2006	Ex. PG/2

36	List of persons of <i>Muslim</i> Doom Community	Ex. PG/3
37	Letter dated 29.02.2012 for clarification of name	Ex. PG/4
38	Noting/query dated 02.02.2012	Ex. PG/5
39	Letter dated 03.02.2012 addressed to the Deputy Commissioner by the Tehsildar, Ludhiana (West)	Ex. PG/6
40	Letter dated 02.04.2012 from the Chief Electoral Officer, Punjab, Chandigarh to the District Election Officer, Barnala	Ex. PG/7
41	Letter dated 24.09.2009, written by the Deputy Secretary, Revenue Department, Punjab, to all the Sub-Divisional Magistrates and Tehsildars in the State of Punjab	Ex. PH
42	Letter dated 16.03.2009, addressed to all the Financial Commissioners etc. by the Joint Secretary Welfare, Punjab	Ex. PH/1
43	Letter No. 1/32/2008-RS-1/1411, dated 17.11.2008, issued by the Joint Secretary, Welfare, Government of Punjab	Ex. PJ
44	Photostat copy of the letter dated 16.03.2009, issued by the Secretary, Welfare, Government of Punjab	Ex. PJ/1

45	Letter dated 16.03.2009, issued by the Secretary, Welfare, Government of Punjab	Ex. PJ/1/1
46	Book titled " <i>Sadabahar Gayak - Mohammad Sadique(Jeevan Te Geet)</i> " Portion A to A/1 Portion B to B/1	Ex. PK
47	Affidavit of Shri Darbara Singh Guru (petitioner)	Ex. PL
48	Certified copy of suit under Section 2 of the Dissolution of Muslim Marriage Act, 1939, for the decree of dissolution of marriage between Taskeen Akhtar and Dilshad Ali	Mark 'A'
49	Affidavit of Taskeen Akhtar including her cross-examination	Mark 'B'
50	Affidavit of Mohammad Sadique including his cross-examination	Ex. PM/Mark 'C'
51	Book titled " <i>Dhoori Di Sahitak Leher</i> "	Ex. PM
52	Certified copy of judgment and decree dated 16.01.2007, passed by learned Additional Civil Judge (Senior Division) Ludhiana	Ex. PL/1
53	Picture/Photograph	Mark (Ex.)-RW-10/A
54	Picture/Photograph	Mark (Ex.)-RW-10/B
55	Picture/Photograph	Mark (Ex.)-RW-10/C
56	Picture/Photograph	Mark (Ex.)-RW-10/D

57	Picture/Photograph	Mark (Ex.)-RW-10/E
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Documents produced on behalf of the respondent

Sr. No.	Description	Exhibit/Mark
1	Attested photostat copy of the newspaper clip, dated 04.01.2007	Ex. RA & Mark 'A'
2	Original script of newspaper, dated 04.01.2008	Ex. RB & Mark 'A'
3	Photostat copy of newspaper clip, dated 04.01.2007	Ex. RC & Mark 'A'
4	Photostat copy of news item of newspaper Daily ' <i>Ajj Di Awaaz</i> ', dated 05.01.2008	Ex./Mark R4/A & Point/Mark 'A'
5	Evidence by way of affidavit of Mohammad Sadique, son of Late Shri Walait Ali, aged about 75 years, resident of House No. 44, Adarsh Colony Barewal Awana, Ludhiana.	Ex. RD
6	Photograph	Mark 'D'
7	Photograph	Mark 'E'
8	Photograph	Mark 'F'
9	Photograph	Mark 'G'
10	Photograph	Mark 'H'
11	Photograph	Mark 'I'
12	Video Tape	Mark 'J'
13	V.C.D.	Mark 'K'

14	Newspaper ' <i>Ajj Di Awaaz</i> ', dated 05.01.2008	Mark 'L'
15	Photocopy of Receipt No. 828, dated 27.12.2009	Ex. RW6/A
16	Photocopy of Corresponding Entry dated 27.12.2009, at Mark 'A'	Ex. RW6/B
17	Picture/Photograph	Mark (Ex.) RW10/A
18	Picture/Photograph	Mark (Ex.) RW10/B
19	Picture/Photograph	Mark (Ex.) RW10/C
20	Picture/Photograph	Mark (Ex.) RW10/D
21	Picture/Photograph	Mark (Ex.) RW10/E
22	Video Tape of Bhog Ceremony	Ex. RW17/A (Mark 'J')
23	Video Tape of Bhog Ceremony	Ex. RW17/B (Mark 'J')
24	VCD of <i>Antim Ardas</i>	Ex. RW17/C (Mark 'K')
25	Photographs	Ex. RW18/A (Mark 'D')
26	Photographs	Ex. RW18/B (Mark 'E')
27	Photographs	Ex. RW18/C (Mark 'F')
28	Photographs	Ex. RW18/D (Mark 'G')
29	Photostat of register of the entry of Prem Rattan Kalia & Naseem Akhtar	Ex. RW19/A
30	Original Scheduled Caste Certificate of Shahnaz Akhtar	Ex. RE
31	Original Scheduled Caste Certificate of Javed Akhtar	Ex. RF
32	Original Scheduled Caste Certificate of Nasreen Akhtar	Ex. RG

20. On 13.10.2014, Video Tapes (Ex. RW17/A and RW17/B) were played in the Conference Room of the High Court, in the presence of learned counsel for the parties and the technical staff of this Court dealing with Computers etc. The Compact Disc (Ex. RW17/C) was prepared from Exs. RW17/A and RW17/B. The video-tapes were allegedly prepared on 06.01.2008, at the time of Bhog ceremony of Smt. Seeto, wife of the respondent.

ARGUMENTS ON BEHALF OF THE PETITIONER

21. Learned senior counsel for the petitioner submitted that Bhadaur Constituency was reserved for Scheduled Castes and no person who professed a religion different from the Hindu, the Sikh or the Buddhist could contest the election from the said constituency. In support of his argument, he referred to Section 3 of the 1950 Order, which reads as under:-

“3. Notwithstanding anything contained in paragraph 2, no person who professes a religion different from the Hindu, the Sikh or the Buddhist shall be deemed to be a member of a Scheduled Caste.”

22. He also referred to Section 5(a) of the 1951 Act, which provides that to be elected to the Legislative Assembly from a seat reserved for the Scheduled Castes, the person must belong

to one of the Scheduled Castes specified for that State. To elaborate his argument, Shri S.P. Jain, learned senior counsel for the petitioner submitted that there is no dispute that Bhadaur Constituency was reserved for the Scheduled Castes and the persons belonging to the Scheduled Castes, as applicable to the State of Punjab, could contest the election from the said constituency. He further argued that the respondent was born in a family following *Islam* in the State of Punjab and this fact has not been denied. He further submitted that not only the parents, but even the wife and children of the respondent were following *Muslim* customs, rites and rituals. Even their names clearly spell out that they were Mohammedans. During 2003 to 2008, Gulzar Singh Shaunki (PW6) had taken interview of the respondent, which was published in the book titled "*Sada Bahaar Gaayak – Mohammad Sadique: Jeevan Te Geet*" (Ex. PK), which was published by Sangam Publications, Samana, in which it was admitted by the respondent that he was a *Muslim*. Learned senior counsel further referred to the school admission forms of the daughters of the respondent wherein it was specifically mentioned that the respondent and his family members were follower of *Islam*. He further pointed out that after their deaths, father, mother and wife of the respondent were buried as per

Muslim customs and rites. He further submitted that no caste system is prevalent in *Islam* and, as such, the caste certificate, dated 25.08.2006 (Ex. PG/2), showing that the respondent was a “*Doom*”, was withdrawn by the Government vide letter No. 1259/WBN, dated 03.02.2012. In support of his contention in that regard, learned counsel has referred to the documents (Exs. PG/1, PG/3, PG/5 and PG/6).

23. Learned senior counsel further pointed out that initially the respondent had obtained a Scheduled Caste Certificate, dated 13.07.2006 (Ex. PF/6), on the basis of wrong averments in his affidavit dated 13.07.2006 (Ex. PF/1), showing his caste to be “*Doom (Marasi)*” and the said Caste Certificate was also cancelled by the Government after issuing notices (Exs. PF/8 and PF/9). Learned senior counsel has also referred to the depositions of Ms. Anjana Sandhu (PW4), Deputy Director, Department of Welfare of Scheduled Castes and Backward Classes, Punjab, and Balraj Singh Sekhon (PW5), Additional Secretary, Revenue Department, Punjab, to substantiate the fact that Scheduled Caste Certificates dated 25.08.2006 (Ex. PG/2) and 13.07.2006 (Ex. PF/6), were cancelled.

24. Learned senior counsel further pointed out that during the election process, one Badal Singh had submitted a

representation to the Returning Officer, Bhadaur Constituency, alleging that the nomination papers filed by the respondent had to be rejected on the premise that he (respondent) being a *Muslim*, could not claim himself to be a person belonging to a Scheduled Caste. The said Badal Singh had also approached this Court by way of Civil Writ Petition No. 985 of 2012, titled “Badal Singh v. State of Punjab and others”. However, the said petition was dismissed as not pressed since remedy of filing of Election Petition was available. It was also pointed out that the representation in that regard to the Election Commission of India was also sent and in response thereof the Chief Electoral Officer, Punjab, was directed to send a report in that regard, but the result thereof was not made available.

25. Learned Senior counsel further pointed out that the respondent as per his own admission is about 75 years of age and is un-likely to change his religion and embrace Sikhism at the age of 66 years. He further argued that the version put up by the respondent that he had embraced Sikhism is a patent lie which is being used only to create a defence in the present petition so that his election is not set aside on the premise that he was a *Muslim* and, as such, could not have contested the election from a constituency reserved for the Scheduled Castes. He also

pointed out that the affidavit dated 11.08.2014, tendered before this Court by the respondent declaring that he (respondent) was a Sikh, is absolutely belated and an after thought. The said affidavit has not been got attested from the Magistrate and, as such, cannot be considered as a declaration as provided under Section 2(9) of the Sikh Gurdwara Act, 1925 (for brevity, 'the 1925 Act'). Learned counsel further pointed out that in the said affidavit, dated 11.08.2014, it has not been mentioned as to on what date the respondent had embraced Sikhism and further it is also not averred that he had denounced *Islam*. It has further been submitted that even if it is assumed that the affidavit dated 11.08.2014 executed by the respondent is correct, then also it will be substantiated that the respondent had embraced Sikhism on 11.08.2014, the day on which the affidavit was executed. If it is so, then on the date of filing of nomination papers and scrutiny thereof, the respondent was not competent to contest the election from a constituency reserved for Scheduled Castes.

26. Learned Senior counsel also pointed out that there was no caste system in *Muslims* and, as such, the respondent could not claim that he being a *Muslim* belonged to "Doom" caste.

27. Learned Senior counsel further pointed out that

respondent, being a *Muslim* and presumably from a 'Doom' caste, was not competent to contest the election from a constituency reserved for Scheduled Castes. After embracing Sikhism the respondent would not acquire a right which was not originally available to him being a 'Doom' and a *Muslim*.

28. It was also pointed out that during cross-examination the respondent fairly admitted that he was not wearing five 'Kakkars', i.e. *kachh*, *karha*, *karpan*, *kangha* and *kesh*, which was mandatory for a Sikh to wear all the time. He also pointed out that during cross-examination, the respondent had admitted that he was not a baptised Sikh as he had not taken "*Amrit*" (*Amrit Nahi Chaka*).

29. Learned Senior counsel further pointed out that a person who denounces his religion and embraces Sikhism with a motive to contest the election from the constituency reserved for Scheduled Castes, should not be extended the benefit of change of religion. Learned Senior counsel further stressed that the practice of change of religion for personal gains such as performing multiple marriages or for contesting election should not be encouraged.

30. He further pointed out that from the deposition of Sant Kartar Dass Ji (RW-15) it is evident that the respondent was

visiting the Dera of Udaseen Sampardai, which is not a Sikh Sect.

31. In support of his contentions, learned Senior counsel has also referred to Sections 5 and 100 of the 1951 Act; Section 3 of 1950 Order; Article 341 of the Constitution of India; Sections 101 to 104 of the Indian Evidence Act, 1872 (for brevity, 'the Evidence Act'); provisions of the 1925 Act; and certain provisions from the Election Law Manual, Volume-I and II; and placed reliance on the following judgments:

I. Gurleen Kaur and others v. State of Punjab and others, 2009 (3) R.C.R. (Civil) 324 (FB) :

Hon'ble Full Bench of this Court amongst others had posed and decided the issues as to whether a person who trims, shaves, plucks etc. or otherwise removes or reduces/shortens his/her bodily hair is not a Sikh?; Whether a person who does not include a word 'Singh' (in case of male) and 'Kaur' (in case of female) in his/her name is not a Sikh?; Whether all Amritdhari Sikhs, Sehajdhari Sikhs, Keshadhari Sikhs and Patits are within the larger definition of Sikh as contained in Section 2(9) of the Sikh Gurdwara Act, 1925, if not, whether the division of Sikhs into Amritdhari Sikhs, Sehajdhari Sikhs,

Keshadhari Sikhs and Patits in Section 2(10), 2(10A), 2(11) respectively of the Sikh Gurdwara Act, 1925, is ultra vires the provisions of Section 2(9) of the said Act? and whether the classification of Sikhs in four categories is a valid classification.

The Hon'ble Full Bench held that *"if a question arises whether a person is or is not a Sikh, he will be deemed to be a Sikh, if he files an affidavit in the format stipulated in the aforesaid provision itself. The prescribed format requires the concerned person to affirm that he is a Sikh. Would a person who falsely files such an affidavit, have the right to be treated as a Sikh? Undoubtedly, only a true affirmation can lead to such an inference. To be a Sikh, one will have to follow the prescribed tenets of the Sikh religion. Having dealt with the historical background of the Sikh religion, legislative enactments involving the Sikh religion, the tenets of the Sikh religion which have been prescribed in the "Sikh rehat-maryada" (the Sikh code of conduct and conventions), the "Sikh Ardas" and the views expressed by scholars of Sikhism, we have already recorded our conclusion above, that retaining hair*

unshorn is an important and essential tenet of the Sikh religion. We must, however, notice here another aspect of the matter projected before us during the course of hearing. Efforts were made to persuade us to arrive at the conclusion, that a true Sikh must have on his person at all times the five prescribed “kakkars” (articles of faith) or Ks. The five “kakkars” include “kesh/keshas” (unshorn hair), “kirpan” (sword), “kachhera” (knicker bocker), “kara” (steel ring) and “kangha” (comb). Can a person who does not even follow the most basic and elementary requirement of having on his person at all times the five “kakkars”, be accepted as a Sikh ? The “Sikh rehat-maryada” considers an act of dishonouring hair as the gravest of the tabooed practices, as it is mentioned as the first of such tabooed practices. Can a person who dishonours bodily hair, by trimming them or by plucking them, be accepted as a Sikh ? Through the “Sikh ardas”, a Sikh every morning and evening, and at all important occasions, addresses a prayer to God, seeking besides others, the blessing of retaining bodily hair unshorn to his last breath. Can a person who does not maintain his hair unshorn be accepted to be

truthfully a Sikh? In our considered view, only a truthful affirmation in the format depicted under section 2(9) of the Gurdwara Act of 1925, can alone confer the claim of being a Sikh. And that, if the affirmation is untrue, no such inference can be drawn. Needless to mention that an affidavit is a written statement on oath, and as such, an affidavit is acceptable only if it is true.

We have repeatedly concluded hereinabove, and shall also be recording the same conclusion hereinafter, while dealing with the other submissions advanced on behalf of the petitioners, that retaining bodily hair unshorn, is one of the most essential tenets of the Sikh religion and as such, if a Sikh organisation or body, decides not to extend any benefit which is otherwise available to a Sikh, to a person who does not maintain his hair unshorn, its determination would be perfectly legitimate. In view of the above, we are of the considered view that an affidavit sworn at the hands of an individual, under section 2(9) of the Gurdwara Act of 1925, who does not keep his hair unshorn, may legitimately be considered to have filed a false affidavit.”

**II. Valsamma Paul v. Cochin University and others,
(1996) 3 SCC 545 (Paras 33 and 34) :**

Hon'ble the Supreme Court held that a candidate who had the advantageous start in life, being born in Forward Caste, and had march of advantageous life but is transplanted in Backward Caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Article 15(4) or 16(4), as the case may be. Acquisition of the status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution.

III. Lily Thomas and others v. Union of India and others, (2000) 6 SCC 224 (Para 38) :

Hon'ble the Supreme Court in this case held that religion is a matter of faith stemming from the depth of the heart and mind. Religion, faith or devotion are not easily interchangeable. If the person feigns to have adopted another religion just for some worldly gain or benefit, it would be religious bigotry.

Looked at from this angle, a person who mockingly adopts another religion where plurality of marriage is permitted so as to renounce the previous marriage and desert the wife, cannot be permitted to take advantage of his exploitation as religion is not a commodity to be exploited.

IV. Satrucharla Vijay Rama Raju v. Nimmaka Jaya Raju, (2006) 1 SCC 212 :

Hon'ble the Supreme Court held that a person seeking election from a reserved constituency must be a true representative of that reserved community. On the basis of the material available, it was further held that the appellant could not be considered to be a true representative of a tribe included in the Presidential Order deserving special protection.

V. Mahender Pratap v. Krishan Pal, (2003) 1 SCC 390 (Para 23) :

Hon'ble the Supreme Court held that "in election petition, if the parties are found to have made incorrect statements in their pleadings, affidavits or depositions and there is thereby an intention on their

part to mislead the Court, appropriate deterrent action like dismissal of their cases with costs, prosecution for perjury or initiation of contempt proceedings should be taken by the Court, lest the judicial process would continue to be polluted and misused by undeserving parties who have no real grievance or cause for seeking aid of judicial forums. Such false cases not only contribute to the workload of the Court and kill its precious time but create hurdles in the way of genuine litigants who sincerely need assistance of the Court for obtaining justice.”

VI. Lilly Kutty v. Scrutiny Committee, SC & ST and others, (2005) 8 SCC 283 :

Hon’ble the Supreme Court held that caste scrutiny committee, on the basis of expert agency report and relevant record, recorded a finding that the appellant was not belonging to Hindu Pulayan Scheduled Caste and the certificate was obtained fraudulently by misrepresentation of facts with a view to obtain benefit as Scheduled Caste. The decision of cancelling the caste certificate was held justified.

VII. K.P. Manu v. Chairman, Scrutiny Committee for Verification of Community Certificate (Civil Appeal No. 7065 of 2008, decided on 26.2.2015) :

In para 34 of the judgment, it was held that three things need to be established by a person who claims to be a beneficiary of the caste certificate are:

- (i) there must be absolutely clear cut proof that he belongs to the caste that has been recognised by the 1950 Order;
- (ii) there has been reconversion to the original religion to which the parents and earlier generations had belonged; and
- (iii) there has to be evidence establishing the acceptance by the community.

Each aspect is very significant, and if one is not substantiated, the recognition would not be possible.

VIII. Pritam Dass Mahant v. Shiromani Gurdwara Prabandhak Committee, (1984) 2 SCC 600 (Para 21):

Hon'ble the Supreme Court held that

Udasis are not Sikhs for the purposes of Sikh Gurdwara Act. No reconciliation between the Sikhs and the Udasis ever took place. The Udasis are not Sikhs, but schismatics who separated in the earliest days of Sikhism and never merged with the followers of the Gurus.

IX. Shiromani Gurdwara Prabhandhak Committee, Amritsar v. Mahant Kirpa Ram and others, (1984) 2 SCC 614 (Para 19) :

In this case it was held that Udasis form an independent sect. They are midway between Sikhs on the one hand and Hindus on the other. In an institution of Udasi Sect, one can visualise reading of Granth Sahib or veneration of Sikh scriptures. But that itself is not decisive of the character of the institution. On the contrary, if the succession was from guru to chela and those gurus were followers of Udasi faith and the institution was known as Dera of Udasi Bhekh and they followed some of the practices of Hindu traditional religion that would be completely destructive of the character of the institution as a Sikh Gurdwara.

X. Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore and others, AIR 1964 SC 1545 (Paras 8, 14):

Hon'ble the Supreme Court held that a defect in the contents of verification of election petition is a matter which comes within clause (c) of sub-section (1) of Section 83 of the 1951 Act. The defect can be removed in accordance with the principles of the Code of Civil Procedure, 1908. Such a defect does not attract sub-section (3) of Section 90, inasmuch as that sub-section does not refer to non-compliance with the provisions of Section 83 as a ground for dismissing an election petition. Hence, reading the relevant sections in Part VI of the 1951 Act, it is impossible to accept the contention that a defect in verification which is to be made in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings as required by clause (c) of sub-section (1) of Section 83 of the 1951 Act is fatal to the maintainability of the petition.

XI. Neena Vikram Verma v. Balmukund singh Gautam and others, (2013) 5 SCC 673 (Para 32) :

Hon'ble the Supreme Court reiterated that

it is settled law that a defect in the verification in the matter of election petition can be removed in accordance with the principles of CPC, and that it is not fatal to the election petition.

XII. Umesh Challiyill v. K.P. Rajendran, (2008) 11 SCC 740 (Paras 8 to 12) :

Hon'ble the Supreme Court held that an election petition cannot be dismissed under Section 86(1) of the 1951 Act at the outset on the ground of technical or cosmetic defects, however, the same can be dismissed on the ground that it was not constituted as required under provisions of CPC.

XIII. K. Prabhakaran v. P. Jayarajan, (2005) 1 SCC 754 :

One of question for determination before Hon'ble the Supreme Court in the case under reference was as to whether a nomination had been improperly accepted, had to be determined by reference to the date fixed for the scrutiny of nomination. It was held that the decisive dates were the date of election and of scrutiny of nomination and not the date of judgment in an election petition or in

appeal there against.

ARGUMENTS ON BEHALF OF THE RESPONDENT

32. While controverting the arguments of learned counsel for the petitioner, Shri Bhoop Singh, learned counsel for the respondent submitted that wish of the public should be honoured; since the mandate has gone in favour of the respondent, therefore, in comparison to the grounds mentioned in the petition and brought on record by the petitioner, the public mandate in favour of the respondent be accepted; the onus to prove his case on the petitioner is as heavy as on the prosecution in a criminal case; only on the strong circumstances the election can be set aside; the petitioner cannot be permitted to take fresh plea in the replication, otherwise the very purpose of prescribing of the limitation of 45 days of filing of the election petition would be frustrated; the school admission certificates belonging to the daughters of the respondent, produced on record, do not bear his (respondent) signatures and, as such, the same are not binding on him; the caste certificate, dated 13.07.2006 (Ex. PF/6) was cancelled by the Government on the premise that the caste of the respondent was mentioned as “*Doom (Marasi)*” and not on the premise that the respondent was following *Islam*; the book (Ex. PK) could not be proved to be the

original script and, as such, no value could be attached to the said book; when the respondent appeared as a witness for himself, then the relevant portion of the said book was not put to him (respondent), which was contrary to Section 145 of the Evidence Act; the deposition of the petitioner was wholly conjectural, hearsay, unreliable and misleading, therefore, no importance can be attached to the said deposition; the petitioner has miserably failed to substantiate that the respondent was a *Muslim*; and that the petition should be dismissed on the sole ground that the same was not verified in accordance with Order VI Rule 15(2) CPC, and Section 83 of the 1951 Act.

33. It was also pointed out by learned counsel for the respondent that the judgments relied upon by learned counsel for the petitioner were not applicable to the facts and circumstances of the case. He further pointed out that the affidavit produced alongwith CM-10-E-2014 regarding declaration embracing Sikhism by the respondent, was sufficient to assume that he had embraced Sikhism. He also referred to Section 2(9) of the 1925 Act and Rule 3 of the Sikh Gurdwara Rules, 1925, to assert that the declaration regarding embracing Sikhism could be oral or in writing. He further submitted that the affidavit dated 11.08.2014, attested by the Notary, was sufficient

compliance under the Notaries Act, 1952, for attestation of an affidavit.

34. In support of his submissions, learned counsel for the respondent has placed reliance on the following judgments:

I. S. Anbalagan v. B. Devarajan and others, AIR 1984 SC 411 :

In this case, the first respondent was elected to the Lok Sabha from a constituency which was reserved for the Scheduled Castes. The appellant challenged the election of the first respondent on the ground that he was not a member of the Scheduled Castes. The election Tribunal found that the first respondent belonged to the Scheduled Caste and upheld the election. Hence, appeal was filed. The appellant urged before Hon'ble the Supreme Court that the parents and the sisters of the respondent were shown to be Christians and the respondent was born a Christian and there was no way he could acquire a caste and become an Adi Dravida on conversion to Hinduism.

Dismissing the appeal it was held that at all relevant time, the first respondent was a Hindu Adi

Dravida and professed no religion other than Hinduism. The precedents particularly those from South India, clearly establish that no particular ceremony is prescribed for reconversion to Hinduism of a person who had earlier embraced another religion. Unless the practice of the Caste makes it necessary no expiatory rites need be performed and, ordinarily, he regains this caste unless the community does not accept him. In fact, it may not be accurate to say that he regains his caste, it may be more accurate to say that he never lost his caste in the first instance when he embraced another religion. The practice of caste however irrational it may appear to our reason and however repugnant it may appear to our moral and social sense, is so deep-rooted in the Indian people that its mark does not seem to disappear on conversion to a different religion. If it disappears, it disappears only to reappear on reconversion. The mark of caste does not seem to really disappear even after some generations after conversion.

II. Kailash Sonkar v. Smt. Maya Devi, AIR 1984 SC**600:**

The questions that came up for consideration before Hon'ble the Supreme Court in this case were:

- (i) as to what happens if a member of the scheduled caste or scheduled tribe leaves his present fold, namely Hinduism and embraces Christianity or Islam?
- (ii) as to whether it would amount to a complete loss of the original caste, to which, he belonged for ever? and
- (iii) as to whether there would be revival of the original caste, if he or his children subsequently choose to abjure the new religion and get re-converted to the old religion ?

The Supreme Court posed the following questions to itself :

- (i) is membership in a caste or tribe to be determined solely by birth or by allegiance or by the opinion of its members

or of the neighbourhood ? and

- (ii) does one lose his caste on conversion or by ex-communication ?

After analyzing the import of various decisions, the Supreme Court held that *"the caste to which a Hindu belongs, is essentially determined by birth and that if a Hindu is converted to Christianity or another religion, which does not recognise caste, the conversion amounts to a loss of the said caste."*

It was further held that *"In our opinion, when a person is converted to Christianity or some other religion, the original caste remains under eclipse and as soon as during his/her life time, the person is reconverted to the original religion, the eclipse disappears and the caste automatically revives."*

III. Punjabrao v. Dr. D.P. Meshram and others, AIR 1965 SC 1179 :

Hon'ble the Supreme Court observed that clause (3) of the 1950 Order, contemplates that for a person to be treated as one belonging to a Scheduled Caste within the meaning of that order he must be one who professes either Hindu or Sikh religion. After

referring to the meaning of the word “profess”, as given in Webster's New World Dictionary and Shorter Oxford Dictionary, it was held that “a declaration of one's belief must necessarily mean a declaration in such a way that it would be known to those whom it may interest. Therefore, if a public declaration is made by a person that he has ceased to belong to his old religion and has accepted another religion he will be taken as professing the other religion. In the face of such an open declaration, it would be idle to enquire further as to whether the conversion to another religion was efficacious. The word “profess” in the Presidential Order appears to have been used in the sense of an open declaration or practice by a person of the Hindu (or the Sikh) religion. Where, therefore, a person say, on the contrary that he has ceased to be a Hindu he cannot derive any benefit from that Order.”

IV. Harikrishna Lal v. Babu Lal Marandi, AIR 2004 SC 1067:

On the issue of burden of proof, their

Lordships' of Hon'ble the Supreme Court held that the success of a winning candidate is not to be lightly interfered with. The burden of proof, lies on the one who challenges the election to raise necessary pleadings and adduce evidence to prove such averments as would enable the result of the election being set aside on any of the grounds available in the law. In an election petition if nobody adduces evidence, it is the election-petitioner who fails.

V. Ganpat v. Presiding Officer and others, AIR 1975 SC 420:

In this case, the main plank of challenge was that the elected candidate was not a member of a Scheduled Caste as he had ceased to be a Hindu and had become a Buddhist. There was failure to raise such an objection at the time of scrutiny of nomination papers. It was held that though there is no bar to raise the question in the election petition questioning the election of the elected candidate that he was not a member of the Scheduled Caste, but such failure would considerably weaken the objection.

VI. R.P. Moidutty v. P.T. Kunju Mohammed and another, AIR 2000 SC 388:

In this case, the defect in verification was pointed out by raising a plea in the written statement. The objection was pressed and pursued by arguing the same before the Court. However, the petitioner persisted in pursuing the petition without proper verification which the petitioner should not have been permitted to do. It was opined by Hon'ble the Supreme Court that unless the defect in verification was rectified, the petition could not have been tried.

VII. Regu Mahesh @ Regu Maheswar Rao v. Rajendra Pratap Bhanj Dev and another, AIR 2004 SC 38:

On the point of improper verification, after noticing the provisions enshrined in the 1951 Act and the Code of Civil Procedure, 1908, and various earlier pronouncements, in para 18 of the judgment it was held that an election petition is intended to bring to focus any illegality attached to an election. It essentially and basically puts a question mark on the purity of election, casts doubt on fairness thereof and

seeks a declaration that mandate of people has been obtained by questionable means. In a democracy the mandate has sacrosanctity. It is to be respected and not lightly interfered with. When it is contended that the purity of electoral process has been polluted, weighty reasons must be shown and established. The onus on the election petitioner is heavy as he has to substantiate his case by making out a clear case for interference both in the pleadings and in the trial. Any casual, negligent or cavalier approach in such serious and sensitive matter involving great public importance cannot be countenanced or glossed over too liberally as for fun.

VIII. Ajay Kumar Poeia v. Shyam and others, 2004 (1) R.C.R. (Civil) 327:

Hon'ble the Supreme Court held that defective verification of an election petition may not be a ground to dismiss the petition at the threshold, but if the petitioner does not make any effort to correct the same, the verification of facts as “verified to be based on the legal advise” is no verification of the averments to satisfy the requirement of Section

81(1) of the 1951 Act.

**IX. Baldev Singh v. Shinder Pal Singh and another,
2006 (4) R.C.R. (Civil) 891:**

Hon'ble the Supreme Court in para No. 21 of the judgment has held that the verification of an election petition must be done strictly in terms of Order VI Rule 15 of the Code of Civil Procedure and it has to be specifically stated as to which statements made in the election petition were true to knowledge and which were true to belief. A factual averment made in the election petition cannot be both true to the knowledge and belief of the deponent.

**X. M. Chandra v. M. Thangmuthu and another, AIR
2011 SC 146:**

On the issue of proof by secondary evidence, it was held by Hon'ble the Supreme Court that it is true that a party who wishes to rely upon the contents of a document must adduce primary evidence of the contents, and only in the exceptional cases will secondary evidence be admissible. However, if secondary evidence is admissible, it may be adduced in any form in which it may be available,

whether by production of a copy, duplicate copy of a copy, by oral evidence of the contents or in another form. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. It should be emphasized that the exceptions to the rule requiring primary evidence are designed to provide relief in a case where a party is genuinely unable to produce the original through no fault of that party.

XI. Bank of India v. M/s Allibhoy Mohammed and others, AIR 2008 Bombay 81:

Hon'ble the Supreme Court held that the document produced as primary or secondary evidence has to be proved in a manner laid down in Sections 67 to 73 of the Evidence Act. With regard to secondary evidence, it has been held that the same cannot be accepted unless sufficient reason given for non-production of original. The loss of original document must be shown in order to lead secondary evidence. Secondary evidence of the document can be allowed to be lead only where original is proved to have existed but was lost or misplaced. The prior

permission of the Court is required to be taken for producing secondary evidence of the documents on the grounds that original documents were lost. When anybody wants to lead secondary evidence, two things are required to be proved; there must be evidence of the existence of the original documents and there must be evidence of their loss.

XII. Smt. J. Yashoda v. Smt. K. Shobha Rani, AIR 2007 SC 1721:

In this case, the documents in question were admittedly photocopies and there was no possibility of said documents being compared with original as same were with another person. On the point of admissibility of such documents as secondary evidence, it was held by Hon'ble the Supreme Court that conditions in Section 65(a) of the Evidence Act had not been satisfied, therefore, the documents cannot be accepted as secondary evidence. It was further observed that Section 65 of the Evidence Act permits secondary evidence to be given of the existence, condition or contents of documents under

the circumstances mentioned. The conditions laid down in the said Section must be fulfilled before secondary evidence can be admitted. Secondary evidence of the contents of a document cannot be admitted without non-production of the original being first accounted for in such a manner as to bring it within one or other of the cases provided for in the Section.

XIII. Kaliya v. State of Madhya Pradesh, 2013 (3) R.C.R. (Criminal) 958:

Hon'ble the Supreme Court held that Section 65(c) of the Evidence Act provides that secondary evidence can be adduced relating to a document when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason, not arising from his own default, or neglect, produce it in reasonable time. The court is obliged to examine the probative value of documents produced in court or their contents and decide the question of admissibility of a document in secondary evidence. It was further

observed that however, the secondary evidence of an ordinary document is admissible only and only when the party desirous of admitting it has proved before the court that it was not in his possession or control of it and further, that he has done what could be done to procure the production of it. Thus, the party has to account for the non-production in one of the ways indicated in the section. The party further has to lay down the factual foundation to establish the right to give secondary evidence where the original document cannot be produced. When the party gives in evidence a certified copy/secondary evidence without proving the circumstances entitling him to give secondary evidence, the opposite party must raise an objection at the time of admission. In case, an objection is not raised at that point of time, it is precluded from being raised at a belated stage. Further, mere admission of a document in evidence does not amount to its proof and mere marking of exhibit on a document does not dispense with its proof, which is otherwise required to be done in accordance with law.

XIV. Pratap Kishore and another v. Gyanendranath, AIR 1951 Orissa 313:

A Division Bench of Orissa High Court in this case has held that where certain documents have been marked as exhibits in a case without objection but the contents thereof have not been put to the persons connected with them either in their chief examination or cross-examination, it is not possible to make use of the statements made therein for the purpose of drawing inferences one way or the other.

XV. P.A. Mohammad Riyas v. M.K. Raghavan and others, AIR 2012 SC 2784 :

In this case, although allegations as to corrupt practices were alleged to have been employed by the respondent in the body of the petition, but the petition itself had not been verified in the manner specified in Order VI Rule 15 of the Code of Civil Procedure. In para 24 of the judgment, it was held by Hon'ble the Supreme Court that Sub-Section (4) of Section 123 of the 1951 Act defines "corrupt practice" and the publication of various statements

against the respondent which were not supported by affidavit, could not, therefore, have been taken into consideration by the High Court while considering the Election Petition. In the absence of proper verification, it has to be accepted that the Election Petition was incomplete as it did not contain a complete cause of action. It was further held as under:-

“25. Of course, it has been submitted and accepted that the defect was curable and such a proposition has been upheld in the various cases cited by Mr. Venugopal, beginning with the decision in Murarka Radhey Shyam Ram Kumar’s case (supra) [AIR 1964 SC 1545] and subsequently followed in F.A. Sapa’s case (supra)[AIR 1991 SC 1557], Sardar Harcharan Singh Brar’s case (supra) [AIR 2005 SC 22] and K.K. Ramachandran Master’s case (supra)[2010 AIR SCW 4583], referred to hereinbefore. In this context, we are unable to accept Mr. Venugopal’s submission that despite the fact that the proviso to Section 83(1) of the 1951 Act provides that where corrupt practices are alleged, the Election Petition shall also be accompanied by an affidavit in the prescribed form, it could not have been the intention of the legislature that two affidavits would be required,

one under Order VI Rule 15(4) CPC and the other in Form 25. We are also unable to accept Mr. Venugopal's submission that even in a case where the proviso to Section 83(1) was attracted, a single affidavit would be sufficient to satisfy the requirements of both the provisions. Mr. Venugopal's submission that, in any event, since the Election Petition was based entirely on allegations of corrupt practices, filing of two affidavits in respect of the self-same matter, would render one of them redundant, is also not acceptable. As far as the decision in F.A. Sapa's case (*supra*) is concerned, it has been clearly indicated that the Petition, which did not strictly comply with the requirements of Section 86(1) of the 1951 Act, could not be said to be an Election Petition as contemplated in Section 81 and would attract dismissal under Section 86(1) of the 1951 Act. On the other hand, the failure to comply with the proviso to Section 83(1) of the Act rendered the Election Petition ineffective, as was held in Hardwari Lal's case (*supra*) and the various other cases cited by Mr. P.P. Rao.

26. In our view, the objections taken by Mr. P.P. Rao must succeed, since in the absence of proper verification as contemplated in Section 83, it cannot be said that the cause of action was complete. The consequences of Section 86 of the 1951 Act come into play immediately in view of

Sub- Section (1) which relates to trial of Election Petitions and provides that the High Court shall dismiss the Election Petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the 1951 Act. Although, Section 83 has not been mentioned in Sub-Section (1) of Section 86, in the absence of proper verification, it must be held that the provisions of Section 81 had also not been fulfilled and the cause of action for the Election Petition remained incomplete. The Petitioner had the opportunity of curing the defect, but it chose not to do so.

27. In such circumstances, we have no other option, but to dismiss the appeal.”

However, the above cited judgment was overruled by a 3-Judge Bench of Hon'ble the Supreme Court in the matter of **G.M. Siddeshwar v. Prasanna Kumar,** **2013 (2) R.C.R. (Civil) 340**, to the following extent:

“2. The principal question of law raised for our consideration is whether, to maintain an election petition, it is imperative for an election petitioner to file an affidavit in terms of Order VI Rule 15(4) of the Code of Civil Procedure, 1908 in support of the averments made in the election petition in

addition to an affidavit (in a case where resort to corrupt practices have been alleged against the returned candidate) as required by the proviso to Section 83(1) of the Representation of the People Act, 1951. In our opinion, there is no such mandate in the Representation of the People Act, 1951 and a reading of P.A. Mohammed Riyas v. M.K. Raghavan & Ors., (2012) 5 SCC 511 which suggests to the contrary, does not lay down correct law to this limited extent.”

It was held that a defect in the verification of an affidavit cannot be a sufficient ground for dismissal of the petition summarily. Such affidavit can be allowed to be filed at a later stage also. A defect in verification of an affidavit is not fatal to the election petition and it could be cured. Non-compliance with the proviso to Section 83(1) of the 1951 Act was not 'fatal' to the maintainability of an election petition and the defect could be remedied. It would follow that if an election petition did not comply with the proviso to Section 83(1) of the 1951 Act, it would still be called an election petition.

XVI. Kamal Narain Sarma v. Dwarka Prasad Mishra and others, AIR 1996 SC 436:

Hon'ble the Supreme Court has held that

the affidavit sworn before the District Clerk of Court, who undoubtedly was a Commissioner of Oaths could only be excluded by taking an extreme and technical view which was not justified.

XVII. T.A. Abdul Kadir v. Union of India and others, AIR 1999 Kerala 235:

In this case, challenge was made to the restriction imposed by the respondent Authorities on the notary public regarding attestation of the affidavit to be furnished alongwith the application for Passport. It was held by a Single Judge of Kerala High Court that when the Notaries Act and Rules permits a notary to prepare affidavits and attest the same, there could be no prohibition for the notaries in attesting an affidavit like Annexure-F. Such a restriction imposed is violative of Articles 14 and 19(1)(g) of the Constitution of India, as it is discriminatory and interferes with the right to practice any profession and hence, it is liable to be quashed.

XVIII. Sita Ram Bhau Patil v. Ramchandra Nago Patil (dead) by LRs. and another, AIR 1977 SC 1712:

One of the issue for determination before

Hon'ble the Supreme Court in this case was "Admission when can be used against the person making it". In para 16 of the judgment it was held as under:-

"16. If admission is proved and if it is thereafter to be used against the party who has made it the question comes within the provisions of Section 145 of the Evidence Act. The provisions in the Indian Evidence Act that 'admission is not conclusive proof' are to be considered in regard to two features of evidence. First, what weight is to be attached to an admission? In order to attach weight it has to be found out whether the admission is clear, unambiguous and is a relevant piece of evidence. Second, even if the admission is proved in accordance with the provisions of the Evidence Act and if it is to be used against the party who has made it, "it is sound that if a witness is under cross examination on oath, he should be given an opportunity if the document are to be used against him, to tender his explanation and to clear up the point of ambiguity or dispute. This is a general salutary and intelligible rule" (see Bal Gangadhar Tilak v. Shrinivas Pandit 42 Indian Appeals 135 at page 147). The Judicial Committee in that case said, "it has to be observed with regret and with surprise that the general principle and the specific statutory provisions have not

been followed". The general principle is that before any person is to be faced with any statement he should be given an opportunity to see that statement and to answer the same. The specific statutory provision is contained in Section 145 of the Indian Evidence Act that "A witness may be cross examined as to previous statements made by him in writing or reduced into writing, and relevant matters in question, without such writing being shown to him or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him". Therefore, a mere proof of admission, after the person whose admission is alleged to be has concluded his evidence, will be of no avail and cannot be utilised against him."

**XIX. Udham Singh v. Ram Singh and another, (2007) 15
SCC 529:**

Hon'ble the Supreme Court has held that no doubt admission is the best evidence against the person who is said to have made it, but it can always be explained. One whose previous statement is to be treated as an admission or it is sought to be used, he has to be confronted with such a statement. The

admission has to be clear, unambiguous and proved conclusively. It is a question which needs to be considered as to what weight is to be attached to an admission and for that purpose it is necessary to find out as to whether it is clear, unambiguous and a relevant piece of evidence, and further it is proved in accordance with the provisions of the Evidence Act. It would be appropriate that an opportunity is given to the person under cross-examination to tender his explanation and clear the point on the question of admission.

**XX. Rangammal v. Kuppuswami and another, 2011 (4)
R.C.R. (Civil) 251 (Para 14):**

Hon'ble the Supreme Court held that the burden of proving a fact always lies upon the person who asserts. Until such burden is discharged, the other party is not required to be called upon to prove his case. Court cannot proceed on the basis of weakness of the other party. Misplacing burden of proof would vitiate judgment. Para 14 of the judgment reads as under:-

“14. Section 101 of the Indian Evidence Act, 1872 defines ‘burden of proof’ which clearly lays down that whosoever desires any court to give judgment as to any legal right or law dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person. Thus, the Evidence Act has clearly laid down that the burden of proving fact always lies upon the person who asserts. Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom burden lies has been able to discharge his burden. Until he arrives at such conclusion, he cannot proceed on the basis of weakness of the other party. In view of this legal position of the Evidence Act, it is clear that in the instant matter, when the plaintiff/respondent No.1 pleaded that the disputed property fell into the share of the plaintiff by virtue of the sale deed dated 24.2.1951, then it was clearly for the plaintiff/respondent No.1 to prove that it was executed for legal necessity of the appellant-while she was a minor. But, the High Court clearly took an erroneous view while holding that it is the defendant/appellant who should have challenged the sale deed after attaining majority as she had no reason to do so since the plaintiff /respondent

No.1 failed to first of all discharge the burden that the sale deed in fact had been executed for legal necessity of the minor's predecessor mother was without permission of the court. It was not the defendant/respondent who first of all claimed benefit of the sale deed or asserted its genuineness, hence the burden of challenging the sale deed specifically when she had not even been dispossessed from the disputed share, did not arise at all."

35. I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

FINDINGS:

36. Before dealing with the issues and recording issue-wise findings, this Court considers it appropriate to first decide the objection which was raised by learned counsel for the respondent and kept open while recording the deposition of Gulzar Singh Shaunki (PW6), i.e. with regard to the mode of proof of the book titled "*Sada Bahaar Gaayak – Mohammad Sadique: Jeevan Te Geet*"(Ex. PK). Only one edition of the book (Ex.PK) was published and the documents printed in the same process would be the original of another. The original book (Ex.PK) was presented during evidence and the scribe of the said book had

deposed that it was scribed by him. The judgments cited by learned counsel for the respondent in this regard are absolutely on different footing and do not strictly apply to the issue under discussion. As per Section 62 of the Evidence Act, primary evidence means the documents itself produced for the inspection of the Court. Explanation No. 2 of the said Section explains that where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but, where they are all of copies of a common original, they are not primary evidence of the contents of the original. Since Gulzar Singh Shaunki (PW6), who had authored the book (Ex. PK), which was published by Sangam Publications, Samana, and only one edition was issued, then it can very safely be inferred that the document (Ex. PK), which was produced before this Court in the form of a book, was the primary evidence. It is, however, made clear that what weightage has to be attached to the contents of the book (Ex. PK), as referred to or relied upon by the petitioner would be a matter of discussion hereinafter. Thus, the objection raised by learned counsel for the respondent does not hold good and the same is overruled.

RE: ISSUE NOS. 1 & 2 :

37. Since Issue Nos. 1 and 2 that the respondent being *Muslim* was not eligible to contest the election from the Bhadaur Constituency, reserved for scheduled castes, or that the respondent had professed the Sikh religion and, as such, was competent to contest election from the said constituency, are dependent on the fate of each other and, as such, both these issues are being discussed, analyzed and decided together.

38. Tejinder Pal Singh (PW-1), a Science Teacher in Dashmesh Senior Secondary School, Ludhiana, very well proved that Taskeen Akhtar, Shahnaz Akhtar, Javed Akhtar, Naseem Akhtar and Nasreen Akhtar, all daughters of the respondent, had studied in the said school. At the time of admission of the daughters of the respondent named hereinabove, admission forms (Exs. PA, PA/1, PA/2, PA/3 and PA/4) were filled in and presented before school authorities by Smt. Seeto wife of the respondent or their daughter Nasreen Akhtar. Perusal of Column No. 6 of the document (Ex. PA) would find mention the word "*Musalman*"; in Column No. 6 of Ex. PA/1 the word mentioned as "*Qureshi (Musalman)*"; Column No. 6 of Ex. PA/2 also contains the word "*Musalman*"; Column No. 6 of Exs. PA/3 and PA/4 contains the word "*Qureshi*". Similarly, in the applications for admission

(Exs. PD, PD/1, PD/2, PD/3 and PD/4) the word “*Musalman*”, has been mentioned in Column No. 6. In admission and withdrawal registers (Exs. PE, PE/1 and PE/2) the word “*Musalman*”; and in Ex. PE/3 the words “*Musalman (Qureshi)*” are mentioned in the column of caste.

39. Arvinder Pal Singh (PW-2), Tehsildar, Ludhiana (West), had, *inter alia*, deposed that caste certificate (Ex. PF/6) was issued to the respondent on 13.07.2006, but the same was cancelled vide order dated 04.01.2007. He further deposed that yet another caste certificate (Ex. PG/2) was issued to the respondent later and an inquiry was initiated and it was found that the Tehsildar was not authorized to issue ‘*Doom*’ caste certificate to a *Musalman*. During his cross-examination, he denied the suggestion that caste certificate (Ex. PG/2) was rightly issued to the respondent.

40. Ms. Anjana Sandhu (PW-4), Deputy Director, Department of Welfare of Scheduled Castes and Backward Classes, Punjab, had produced the document (Ex. PJ/1/1) regarding verification of the certificates issued to the ‘Scheduled Castes’.

41. Balraj Singh Sekhon (PW-5), Additional Secretary, Revenue Department, Punjab, had produced the letter dated

24.09.2009 (Ex. PH), issued by the Deputy Secretary, Revenue, Punjab, which was addressed to all the Sub Divisional Magistrates and Tehsildars in the State of Punjab, on the subject of issuance of Scheduled Caste certificates to the persons belonging to Islam. The letter/instructions dated 16.3.2009 (Ex. PH/1) was attached with the letter (Ex. PH). The said letter was in Punjabi. The English version of its operative part reads as under:-

“ It has come to the notice of the Government that different officers are issuing Scheduled Caste certificates to the persons belonging to Islam, in the State of Punjab while as per Constitution (Scheduled Caste) Order, 1950, a person belonging to Islam is not entitled to Scheduled Caste certificate. As per the Constitution (Scheduled Caste) Order, 1950, only Hindu, Sikh and Buddhist are entitled to Scheduled Caste certificates. In the said Order there is no reference regarding the recognition of the persons belonging to Islam, to be a person belonging to Scheduled Castes. Hence, a person belonging to Islam holding Scheduled Caste and getting benefits, is liable to be prosecuted on the criminal side. The certificates which have been issued to the persons following Islam are liable to be cancelled.

Therefore, it is instructed that if any officer issues Scheduled Caste certificate to any person belonging to

Islam in contravention of the Constitution (Scheduled Caste) Order, 1950, strict action would be initiated under the Rules.”

42. Gulzar Singh Shaunki (PW-6) had deposed that he had taken interview of the respondent, which he incorporated in Page Nos. 34 to 62 of his book (Ex. PK) “*Sada Bahaar Gaayak – Mohammad Sadique: Jeevan Te Geet*”. The said book was released by the respondent in the month of May, 2009 at village Bure Khara, District Ludhiana. During interview, the respondent and father of the respondent had admitted that they were following *Islam*. There was no reason for the said witness to depose against the respondent. The book was published much prior to the election in question.

43. During his deposition while appearing as PW-7, the petitioner tendered his affidavit (Ex. PL) in which it was averred that the respondent was a *Musalman* and he never embraced Sikhism.

44. Though the respondent had produced as many as 20 witnesses including himself to substantiate the fact that he (Mohammad Sadique) had taken birth in a family following *Islam*, but from his childhood he was interested to follow Sikhism and ultimately in the year 2006 he formally embraced Sikhism. The respondent further led the evidence to the effect that at the time

of the death of his mother and wife, Bhog and Antim Ardas ceremonies were performed in Gurdwara Sahib at Ludhiana and Kupkalan respectively; the Bhog ceremony of Smt. Seeto was video-graphed vide Exhibits RW-17/A and RW-17/B; the public notices with regard to embracing of Sikhism were published in the newspapers (Exs. RA, RB, RC and R4/A); the oral evidence was also produced to substantiate the fact that the respondent never visited Mosque, did not observe Roza or recite Quran; the oral evidence was further produced to show that the respondent was a popular Punjabi folk singer and at the starting of his stage shows he always used to pay respect to 10th Guru of the Sikhs by singing "*Waha Waha Guru Gobind Singh Aape Guru Chela*"; the respondent used to perform '*Nityanem*' after taking bath, visiting Gurdwara for paying obeisance and offering '*Darshan Bhet*' and getting '*Kara Parshad*'.

45. During his cross-examination, the respondent very fairly admitted that he was not wearing five '*Kakkars*', i.e. *Kachh*, *Karha*, *Karpan*, *Kangha* and *Kesh*, which was mandatory for a Sikh to wear all the time. He also admitted that he did not change his original name after embracing Sikhism. During examination of his own witnesses it had also come on record that he was also visiting Dera of Udasi Sampardai of Sikh religion. In this regard

reference can be made to the deposition of Sant Kartar Dass Ji (RW-15), who was Mahant of Dera Udaseen Sampardai of Sikh religion.

46. The petitioner has led the evidence to substantiate the fact that the respondent had taken birth in a family following *Islam* and he never embraced Sikhism, but to derive benefit the respondent pretended that he belonged to *Doom* caste and after embracing Sikhism he was eligible to contest the election from Bhadaur Constituency, while the respondent projected the case that originally he had taken birth in a family belonging to *Doom* caste (recognized as Scheduled caste) following *Islam*, but he had embraced Sikhism and, hence, his *Doom* caste would go alongwith him even after embracing Sikhism.

47. Perusal of para 17 of a Division Bench judgment of Hon'ble Madras High Court in the matter of **G. Michael v. S. Venkateswaran**, AIR 1952 Mad. 474, would reveal that the general rule is that conversion operates as an expulsion from caste; in other words, a convert ceases to have any caste. Para 17 of the judgment is reproduced as under:-

“17. Christianity and Islam are religions prevalent not only in India but also in other countries in the world. We know that in other countries these religions do not recognise a system of castes as an

integral part of their creed or tenets. Is it different in India? Mr. Venkatasubramania Aiyar frankly confessed that so far as Islam is concerned there is no question that it does not tolerate any difference based on caste distinction. A member of one of the castes or sub-castes when he is converted to Islam ceases to be a member of any caste. He becomes just a Mussalman and his place in Muslim society is not determined by the caste to which he belonged before his conversion. Learned counsel also conceded that generally this is so even when there has been a conversion to Christianity. But he said that there were several cases in which a member of one of the lower castes who has been converted to Christianity has continued not only to consider himself as still being a member of the caste, but has also been considered so by other members of the caste who had not been converted. I am prepared to accept that instances can be found in which in spite of conversion, the caste distinctions might continue. This is somewhat analogous to cases in which even after conversion certain families and groups continue to be governed by the law by which they were governed before they became converts. But these are all cases of exception and the general rule is conversion operates as an expulsion from the caste; in other words, a convert ceases to have any caste."

48. Same view was expressed by Single Bench of Hon'ble Madras High Court in the matter of **S. Yasmine v. The Secretary,**

Tamilnadu Public Service Commission, Chennai and another (Writ Petition No. 6430 of 2013, decided on 13.06.2013) and in para No. 20 of the judgment it was held as under:-

“20. Therefore, the inevitable conclusion of the above discussion appears to be that upon conversion, the petitioner lost her community status as belonging to a backward community. It is more pronounced in the case of the writ petitioner, since she got converted from Christianity to Islam, both of which are more rigid in their denial of the division of the society into castes and communities. Hence, the respondents were right in treating the category, to which the petitioner belongs, as 'other communities'. The decision rendered by me in W.P.Nos.9150 and 10859 of 2012 dated 10.1.2013 does not appear to represent the correct position in law.”

49. The Nagpur Bench (Division Bench) of Hon'ble Bombay High Court in the matter of **Sadique Hussain Sheikh Azim Qureshi v. Divisional Caste Certificate Scrutiny Committee and another**, 2012 (2) BCR 799, held that the petitioner, who was a *Muslim* by religion, cannot claim to be a member of Scheduled Caste.

50. The reported cases cited by learned counsel for the respondent were regarding reconversion of the candidate from a

religion which did not recognize the caste system to Hinduism or to a religion which recognized the caste system and, therefore, the Hon'ble Courts held that the reconversion to the original religion would facilitate the person to join the original caste.

51. The case in hand is of conversion and not of reconversion. In the considered view of this Court, as a general rule, the conversion from one religion to another would disentitle the person to carry his caste with him after conversion.

52. This Court has also evaluated the material available on record to find out as to whether the respondent had taken birth in the family which was a Scheduled Caste as per the 1950 Order and finds that the respondent being a *Muslim* cannot derive any benefit of Scheduled Caste. Even if for the sake of argument it is assumed that the respondent was a *Doom* before conversion, he was not eligible to contest the election from Bhadaur Constituency. Even if it is further presumed that the respondent embraced Sikhism, then how can it be also presumed that he was a Scheduled Caste and he would carry his *Doom* caste along with him at the time of conversion. It is apposite to mention here that a person even if belonging to Scheduled Caste and a *Muslim* was not eligible to contest the election, then how would he become eligible after embracing

Sikhism. However, the case law cited in the preceding paras would reveal that the person embracing another religion would not carry his caste with him as a general rule. No special circumstances have been brought on record so that this Court may presume that the respondent had carried his *Doom* caste along with him after embracing Sikhism. In fact, on the basis of the evidence led by both the parties, this Court is not even convinced that the respondent had embraced Sikhism. It was fairly admitted by the respondent during his cross-examination that his forefathers as well as his wife were following *Islam*; he was not wearing five '*Kakkars*', i.e. *Kachh*, *Karha*, *Karpan*, *Kangha* and *Kesh*, which was mandatory for a Sikh to wear all the time; the sound of his name would clearly spell out that he belonged to a family following *Islam*; the school admission forms of the daughters of the respondent would also show that their caste/religion was *Muslim*; the respondent had given interview to Gulzar Singh Shaunki (PW-6) admitting the fact that he was following *Islam*; the caste certificates issued in the name of the respondent were canceled since he was a *Muslim*; and the affidavit dated 11.08.2014, tendered before this Court by the respondent declaring that he was a Sikh, is absolutely belated, i.e. after the election was over and, as such, cannot be

considered as a declaration as provided under Section 2(9) of the 1925 Act. The respondent was required to prove that on the date of the scrutiny of the nomination papers he was a Sikh belonging to a Scheduled Caste.

53. As far as the evidence led by the respondent to the effect that the marriages of his two daughters were performed as per Hindu rituals and the marriage of yet another daughter was performed as per Sikh customs and rituals and that the respondent himself was paying obeisance in Gurdwara Sahib, would not be sufficient for this Court to assume that he had embraced Sikhism.

54. In this part of the country (North region, i.e. Punjab, Haryana, Chandigarh, Himachal Pradesh and Jammu and Kashmir) people belonging to one religion are usually visiting the places of worship of other religions. It is also a common experience that inter-religion marriages are frequent in the States of Punjab, Haryana and U.T. Chandigarh.

55. The submission of learned counsel for the respondent that the voters of Bhadaur Constituency had delivered mandate in favour of the respondent and, as such, the election be not set aside does not carry weight with this Court. As this Court holds that the respondent was not eligible to contest the election from

the said constituency, in that eventuality the argument raised by learned counsel for the respondent cannot be upheld.

56. Once this Court, on the basis of the evidence led by the petitioner is of the opinion that the respondent was a *Muslim* and the respondent had asserted that he had embraced Sikhism, then the burden to prove that fact would shift on the respondent. It was also for the respondent to prove that caste system was prevalent amongst *Muslim* and he (respondent) belonged to *Doom* caste, considered to be a Scheduled Caste as per the 1950 Order. In the considered opinion of this Court, even if the whole evidence led by the respondent is taken at its face value, then also he has not been able to substantiate the fact that caste system was prevalent amongst *Muslims* and that the respondent belonged to *Doom* caste.

57. As a result of the above discussion and on the basis of the evidence led by the respondent, this Court cannot hold that he (respondent) had embraced Sikhism after denouncing *Islam*. Resultantly, Issue No. 1 that the respondent being *Muslim* was not qualified to contest the election from Bhadaur Constituency reserved for the members of the Scheduled Castes, has to be decided in favour of the petitioner. Issue No. 2 that the respondent was a Sikh and professed Sikh religion is also to be

decided against the respondent.

RE: ISSUE NO. 3 :

58. Learned counsel for the respondent had pressed hard that the election petition was liable to be dismissed since the same was not verified in accordance with Order VI Rule 15 of the C.P.C. In support of his argument, he has also cited the case law which has been fully described in the preceding paras where the entire case law cited by him has been discussed. On this issue, learned Senior counsel for the petitioner had placed reliance on the judgment of Hon'ble the Supreme Court in the case of **Murarka Radhey Shyam Ram Kumar (supra)** in which it was held that a defect in the verification in the matter of election petition can be removed in accordance with the principles of the Civil Procedure Code. Similar view was expressed by Hon'ble the Supreme Court in the case of **Neena Vikram Verma (supra)**. In the case of **Umesh Challiyill (supra)**, Hon'ble the Supreme Court held that election petition cannot be dismissed at the outset on the ground of technical or cosmetic defects, but the election petition can be dismissed if not properly constituted as per the provisions of CPC.

59. After analyzing the case law cited by both the parties on the issue, this Court comes to the conclusion that the present

election petition cannot be rejected merely on the ground that there was some defect in the verification clause. It is also apposite to mention here that a similar defect was there in the affidavit dated 11.08.2014, tendered by the respondent before this Court stating that he had embraced Sikhism. Such affidavit was required to be verified by a Magistrate, but the learned counsel for the respondent pointed out that the verification by a Notary Public or other competent authority was sufficient and the same cannot be ignored on the ground of verification.

60. As a sequel to the above discussion, Issue No. 3 has to be decided against the respondent and in favour of the petitioner.

RE: ISSUE NO. 4 & 5 :

61. The onus to prove these issues were on the respondent. Though while addressing his arguments, initially learned counsel for the respondent cited some judgments relating to these issues, but eventually he stated at the bar that he did not want to press Issue Nos. 4 and 5. Thus, these issues are decided accordingly.

RE: ISSUE NO. 6 -RELIEF:-

62. For the reasons recorded above, the present petition is

accepted by holding that at the time of filing of the nomination papers from Bhadaur Constituency, the respondent, Mohammad Sadique, was a *Muslim* and, as such, he was not competent to contest the election from the said Constituency, which was reserved for Scheduled Castes. Hence, Issue No. 1 is decided in favour of the petitioner and against the respondent.

63. Issue No. 2 that the respondent had embraced Sikhism before he contested the election from Bhadaur Constituency, is decided against the respondent.

64. Issue No. 3 that the election petition was not verified as per the provisions of Order VI Rule 15 of the Code of Civil Procedure, 1908, is also decided against the respondent.

65. Issue Nos. 4 and 5 were not pressed upon during course of arguments by the respondent and, as such, there was no necessity to discuss the said issues.

66. It is, thus, concluded that the respondent being a *Muslim* on the target dates cannot held to be a person belonging to the Scheduled Caste and, as such, he (respondent) was not competent to contest the election to the Punjab Legislative Assembly from 102-Bhadaur (Scheduled Caste) Assembly Constituency. Consequently, the result dated 06.03.2012, declaring the respondent, Mohammad Sadique, as elected

candidate to the Punjab Legislative Assembly from 102-Bhadaur (Scheduled Caste) Assembly Constituency, is hereby set aside.

67. In the facts and circumstances of the case, there is no order as to costs.

(NARESH KUMAR SANGHI)
JUDGE

April 7, 2015
Pkapoor/meenu