

HIGH COURT OF CHHATTISGARH, BILASPUR**EP No. 14 of 2014**

- Ajit Pramod Kumar Jogi S/o K.P. Jogi Aged About 68 Years R/
Anugrah, Sagun Bungalow, Civil Lines, Raipur (C.G.)

---- Petitioner**Versus**

1. Chandulal Sahu S/o Late Punitram Sahu Aged About 54 Years R/o Shivaji Chowk, Aamapara, Rajim, Distt. Gariyaband C.G.
2. Kanhaiyalal Sahu S/o Mohanlal Sahu Aged About 51 Years R/o Ramsagarpara, Aamatalab Road, Dhamtari, Distt. Dhamtari C.G.
3. Smt. Abha Pandey W/o Purushottam Pandey Aged About 32 Years R/o Professors Colony, Street No. 15, Sector-3, Raipur C.G.
4. Smt. Kumari @ Preeti Dhruv D/o Pankuram Aged About 33 Years W/o Jai Prakash Dhruv, R/o Hardi, Post- Ghonch, Tah. Pithora, Distt. Mahasamund C.G.
5. Mohanlal Patel S/o Jaijai Patel Aged About 51 Years R/o Bajibahal, Post- Singhora, Tah. Saraipali, Distt. Mahasamund C.G.
6. Laxman Masturiya S/o Kundan Das Masturiya Aged About 64 Years R/o Sector-1, Durga Chowk, House No. 160, Professors Colony, Raipur C.G.
7. Shridhar Chandrakar S/o Manharan Lal Chandrakar Aged About 42 Years R/o Ward No. 13, Purani Basti, Kurmipara, Jagannathi Chowk, Mahasamund C.G.
8. Gangadhar Patel S/o Bodhram Patel Aged About 53 Years R/o Chuipali, Post- Singhora, Via- Saraipali, Distt. Mahasamund C.G.
9. Chanduram Sahu S/o Nakul Sahu Aged About 56 Years R/o Ghonch, Tah. Pithora, Distt. Mahasamund C.G.
10. Chanduram Sahu S/o Rambharosa Sahu Aged About 58 Years R/o Durgpali, Tah. Pithora, Mahasamund C.G.
11. Chandu Ram Sahu S/o Pilauram Sahu Aged About 60 Years R/o Tundra, Post- Tundra, Distt. Baloda Bazar C.G.
12. Chandu Lal Sahu S/o Awadh Ram Sahu Aged About 25 Years R/o Garhsivni, Tah. Mahasamund, Distt. Mahasamund C.G.
13. Chandu Lal Sahu S/o Tiju Ram Aged About 26 Years R/o Bhatigarh, Post- Bhatigarh, Thana- Mainpur, Distt. Gariyaband C.G.
14. Chandulal Sahu S/o Parmanand Sahu Aged About 61 Years R/o

Toulidih, Tah. Bhatgaon, Distt. Baloda Bazar C.G.

15. Chandulal Sahu S/o Balchand Sahu Aged About 32 Years R/o Manjitha, Tah. Aarang, Distt. Raipur C.G.
16. Chandulal Sahu S/o Samelal Sahu Aged About 40 Years R/o Goindra, Post- Goindri, P.S. Pathariya, Distt. Mungeli C.G.
17. Champalal Patel S/o Somnath Patel Aged About 47 Years R/o Mararkasi Bahra, P.O. Charoda Bandh, Tah. Bagbahra, Distt. Mahasamund C.G.
18. Chandulal Sahu S/o Nathuram Sahu Aged About 40 Years R/o Tarpongi, Post- Mohandi, Distt. Mahasamund C.G.
19. Chandulal Sahu S/o Sonulal Sahu Aged About 42 Years R/o Temri, Tah. Dharsiwa, Distt. Raipur C.G.
20. Dev Prasad Kelkar S/o Kodu Kelkar Aged About 50 Years R/o Barekelkala, Post- Bartora, Mahasamund C.G.
21. Motilal Sahu S/o Bajarharam Sahu Aged About 35 Years R/o Bauli, Tah. Pathariya, Distt. Mungeli C.G.
22. Motilal Sahu S/o Sonlal Sahu Aged About 35 Years R/o House No. 295g, Naya Mangal Bazaar, Gudhiyari, Raipur C.G.
23. Rupanand Sui S/o Gourango Sui Aged About 38 Years R/o Village- Rajasewaiya, Khurd, Tah. Pithora, Distt. Mahasamund C.G.
24. Vijay Kumar Patel S/o Santosh Patel Aged About 44 Years R/o Rimji, Post- Kalenda, Saraipali, Distt. Mahasamund C.G.
25. Sukhnandan Deshkar S/o Sudarshan Deshkar Aged About 43 Years R/o Harnadadar, Post- Chuapali, Tah. Bagbahra, Distt. Mahasamund C.G.
26. Hemant Pradhan S/o Meghnath Pradhan Aged About 53 Years R/o Durgpali, Tah. Basna, Distt. Mahasamund C.G.

---- Respondents

For the applicants:	Dr. N.K. Shukla, Sr. Advocate with Mr. Shiv Shankar Tiwari, Advocate.
For Respondent No.1	Mr. U.N.Awasthy, Sr. Advocate with Mrs. Raksha Awasthi, Mr. Ramakant Mishra & Mr. Surendra Kumar Dewangan, Advocates
For Respondent No.9	Mr. Kshitiz Sharma, Advocate.
For Respondent No.13	Mr. Maneesh Sharma, Advocate

Hon'ble Shri Justice Goutam Bhaduri

CAV JUDGMENT

19.07.2016

1. The instant petition is concerned with the election to the Parliament of India of Mahasamund Parliamentary Constituency bearing No.9. In such constituency, the petitioner contested the election and was sponsored on behalf of Indian National Congress Party whereas respondent No.1 Chandulal Sahu, son of late Punitram Sahu contested for and on behalf of Bhartiya Janta Party. The election was held as per the following schedule.

- | | | |
|-------|---|------------|
| (i) | Last Date of filing of nomination paper | 26.03.2014 |
| (ii) | Date of scrutiny of nomination papers | 27.03.2014 |
| (iii) | Last date of withdrawal of nominations | 29.03.2014 |
| (iv) | Date of Polling | 17.04.2014 |
| (v) | Date of counting | 16.05.2014 |
| (vi) | Date of declaration of election result | 16.05.2014 |

2. Respondent No.1 was declared elected as returned candidate who secured the total votes of 503514 whereas the petitioner secured votes of 502297. Apart from respondent No.1 Chandulal Sahu, son of Punitram Sahu, 9 other similarly named candidates contested the election in the name of Chandulal Sahu or Chanduram Sahu.

3. The primary challenge made by the petitioner is that the nomination papers of six other similarly named persons i.e., Chandulal Sahu or Chanduram Sahu were improperly accepted by the returning officer in violation of Article 84 of

the Constitution of India which mandates that a person shall not be qualified to be chosen to fill a seat in parliament unless he is citizen of India and makes and subscribes before some person authorized in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in third schedule. During the course of submission Shri N.K. Shukla, learned Senior Advocate appearing for the petitioner would submit that Article 84 of the Constitution of India is framed in negative phraseology, therefore, on reading Article 84 of the Constitution of India along-with section 100 of the Representation of the People Act, 1951 (hereinafter referred to as the Act, 1951), would indicate that as per Section 100(1)(d)(i) if improper acceptance of any nomination is made, then it would fall within the ambit of Section 100 which stipulates the grounds for declaring the election to be void. It is stated that six persons were not administered oath as per Article 84. The counsel would submit that on 26.03.2014 at 3 p.m., six persons were said to have administered oath at the same time. It is contended that on bare evaluation, it would lead to show that the oath was not actually administered. Referring to the evidence of D.W.1, the returning Officer, the counsel would submit that according to the Returning officer, the oath was administered at 3 p.m., and the nomination papers were also submitted at 3 p.m., which would be evident from Ex.P.7 onwards to Ex. P-20. It is contended that the time of administration of oath is recorded along-with time of submission of nomination papers, therefore, any oral evidence as against this would not be inadmissible in view of

section 91 of the Evidence Act.

4. Placing reliance in **AIR 1984 SC Pg. 146**, it is stated that the votes of candidates whose nominations were improperly accepted were of 21745 and since their nominations were improperly accepted as such the same has materially affected the result of election, therefore, the entire election becomes void. It is further stated that while exercising jurisdiction by the Election Tribunal, the Tribunal exercises its jurisdiction on its original side, therefore, the petitioner would be at liberty to raise any grounds which are against Article 84 of the Constitution of India. He further submitted that in reply to election petition, evasive reply has been made, therefore, the same amounts to admission and the facts enumerated in the election petition would amount to acceptance and accordingly the election be set aside.
5. Per contra, learned counsel for respondent No.1 Shri U.N. Awasthi, Sr. Advocate, would submit that on evasive grounds and presumption, the election petition has been filed. It is submitted that the petitioner, of his own, has decided the issue that the nominations were improperly accepted, therefore, the election is void, which cannot be accepted. Referring to **AIR 1969 SC 1034**, it is stated that in an election, the nomination has to be first made, thereafter the oath is administered. Referring to Format, the counsel would submit that the format which has been accepted would show that initially the nomination was made and subsequent to it the oath was administered. The counsel referred to the statement of D.W.1 and stated that the time of filing of nomination was upto 3 p.m., and when the

nomination was made, the oath could have been administered till the mid night as per the direction of the Election Commission as the nominations could not have been refused.

6. It is further submitted that the Election Commission has the power to give direction as has been held in **AIR 2014 SC 3102**. Therefore, the direction has been given that when the candidate files the nomination then till mid night of that date oath could have been administered. It is stated that in such situation, the time of administration of oath has to be interpreted that the oath is administered on the same date before the scrutiny of nomination papers. It is further submitted at the behest of the petitioner that similarly named persons Chandulal Sahu or Chanduram Sahu were collected from different places, their accounts were opened at serial numberwise in the bank and in a preplanned manner their nomination papers were submitted at 3 p.m., and subsequently they were administered oath. It is further contended that the entire effort was made by the petitioner as the voters who voted for similarly named contesting candidates i.e., Chandulal Sahu or Chanduram Sahu would have naturally damaged the vote bank of respondent No.1 Chandulal Sahu and not that of election petitioner Ajit Pramod Kumar Jogi. He, therefore, submits that the petition is completely frivolous as the petitioner when failed to be elected by democratic process despite all his effort now challenge is made in the election petition on frivolous grounds, therefore, the petition be dismissed with exemplary costs.

7. On the basis of pleadings, by order dated 14.07.2015 the Court had framed two issues as under:

Sr.No.	Issue	Finding
(i)	“Whether the result of the election so far as it relates to the returned candidate/Respondent No.1 Chandulal Sahu has been materially affected by non-compliance of the provisions of the Constitution of India and the Representation of the People Act, 1951 or any Rules framed thereunder ?	Not proved
(ii)	Any other relief which this Court deems fit shall also be considered at the time of final hearing.	“Not entitled to any relief”

8. The petitioner on his behalf had examined K.K. Behar, Deputy Election Officer as P.W.1 and the petitioner himself P.W.2. The respondents on their behalf had examined R. Sangeeta as D.W.1, the returning officer and Chandulal Sahu, D.W.2.
9. From the pleadings made, evidence adduced and the submissions made, the entire challenge as projected is primarily on the ground that six candidates were not administered oath, thereby improper acceptance of nomination was made by the returning officer in violation of article 84 of the Constitution of India. The contention of the petitioner is that since the oath was not administered and was impossible at the same time of 3 p.m., therefore, the administration of oath is *per-se* illegal. Since the entire thrust is about administration of correctness of oath and reference is made to Article 84 of the Constitution of India, the said article which would be relevant for the purpose is reproduced hereunder.
10. Article 84 speaks about qualification for membership of

parliament which reads as under :

“84. Qualification for membership of Parliament.—A person shall not be qualified to be chosen to fill a seat in Parliament unless he –

(a) is a citizen of India, and makes and scribes before some person authorized in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty five years of age; and

(c) Possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament”.

11. Likewise the relevant Section 100(1)(d)(i) of Representation of People Act, 1951 which would govern the present *lis* which reads as under:

100. Grounds for declaring election to be void.- (1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

(a) xxx

(b) xxx

(c) xxx

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

(i) by improper acceptance of any nomination, or

(ii) xxx

(iii) xxx

(iv) xxx

the High Court shall declare the election of the returned candidate to be void.

12. The entire question which falls for consideration in this case is as to whether the improper acceptance of nomination forms or non-administration of oath of six candidates as alleged by the petitioner is proved beyond all reasonable doubt ?
13. (i) In order to find out the answer when survey is made of the evidence, it would show that the nomination form of Chandulal Sahu, son of Pilau Ram Sahu, son of village Tundra arrayed as respondent No.11 is marked as Ex.P-7. The signatures in this document are not in dispute. It records that on 26.3.2014 at 3 p.m., the form was submitted and thereafter the time of oath was shown as 3 p.m., before the Returning Officer. This respondent had contested as an independent candidate.

(ii) Likewise Ex.P-8 is the form submitted by Chandu Ram Sahu, son of Nakul Sahu of village Ghonch, who is arrayed as Respondent No.9. It also records that the submission of nomination form was made on 26.3.2014 and the oath was administered on the same date, which shows the timing at 3 p.m. Ex.P-9 & P-10 have been marked twice as they are the second and third sets of nomination forms deposited by the candidate, which appears to be the similar form of Chandu Ram Sahu, son of Nakul Ram Sahu of village Ghonh. The forms were deposited in three sets. The document except Ex.P-8 the certificate of oath is not attached with Ex.P-9 & Ex.P-10.

(iii) The document Ex.P.11 is nomination form of Chandu Ram Sahu, son of Ram Bharosa Sahu of village Durgpali who is arrayed as Respondent No.10. It also shows that

submission of nomination form was made on 26.3.2014 and the oath was administered on the same day at about 3 p.m. Two sets of nomination paper of Chanduram Sahu are again marked as Ex.P-12 & Ex.P-13, however, no declaration of oath is attached to these two documents.

(iv) Ex.P-14 is the document of nomination form of Chandulal Sahu, son of Awadh Ram Sahu of village Gadseoni who is arrayed as Respondent No.12. It also records the filing of nomination on 26.03.2014 and oath was shown to be administered on 26th March 2014 at about 3 p.m.

(v) Ex.P.15 pertains to nomination form of Chandulal Sahu, son of Tijoram Sahu of village Bhatigarh who is arrayed as Respondent No.13 which also records that the submission of nomination form was made on 26.03.2015 and the oath was shown to be administered at 3 p.m., on the same day.

(vi) Ex.P-16 is the nomination form of Champalal Patel which shows that it was filed at 2.35 p.m., on 20.03.2014. Champalal Patel is arrayed as Respondent No.17 in the petition. The nomination form of Champalal Patel is further marked as Ex.P-17 which does not contain any affirmation of oath. Another set of nomination form of Champalal Patel is marked as Ex.P-18. The form Ex.P-17 is shown to be submitted on 20.03.2014 and Ex.P-18 is shown to be submitted on 25.03.2014 by Champalal Patel at 3 p.m. One more set of nomination form by Champalal Patel is marked as Ex.P.19 which appears to be of 25.03.2014 wherein time of deposit of nomination form is shown as 3.00 p.m. Likewise Ex.P-20 is also of Champalal Patel which shows that the nomination form was deposited at 3 p.m.

14. In all the aforesaid nomination papers the signatures of D.W.1 R. Sangeeta, the Returning Officer, have been admitted. The contention of the petitioner is that the nominations were submitted on 25.3.2014 at 3 p.m., and the oath of all six candidates were administered at the same time at 3 p.m., is not feasible and possible. Necessarily the issue raises a question of facts and a probabilities.
15. The returning officer R. Sangeeta is examined on behalf of the respondent. She being the primary evidence, the entire statement is evaluated. In her deposition it is stated that the date of filing of nomination was from the date of notification from 19.03.2014 to 26.03.2014. At para 4 of her statement it is stated that during elections, the nomination forms are accepted from 11 a.m., to 3 p.m. and according to the direction of the Election Commission, if any candidate files nomination papers uptill 3 'o clock, it cannot be refused. It is further stated that the acceptance of nomination paper was upto 3 o' clock, therefore, as per direction of election commission, the oath could have been given upto 12.00 hours in the midnight of the preceding day. The Returning Officer has further deposed that normally when the nominations are filed, at that time the oath is administered and in absence thereof, technically till 12 o' clock in the night of the same, day, the oath could have been administered.
16. The witness has further explained that on 19th, 20th & 21st of March 2014 (3 days) only one nomination was filed whereas on 24.3.2014, four nomination papers were received and on 25.03.2014, 3 nominations papers were received and on the

last date of nomination i.e., 26.3.2014, as many as 28 nominations were filed. Explaining further fact, it is stated that on the basis of sale of nomination forms normally it is evaluated that how many nominations would come in the next coming days, therefore, all the preparations were already made. Explaining the procedure, the returning officer has further stated that as per the direction of the Election Commission if the candidates are present in the office premises for filing nominations before 3 p.m., then the candidates are issued tokens one by one and even after 3 p.m., according to token system, the nominations are accepted one by one since the candidates had tendered the nomination forms before the prescribed time of 3 p.m. It is specifically stated that an election officer cannot refuse any nomination. The returning officer has accepted the documents Ex.P.7, P-8, P-9, P-10, P-11, P-12, P-13, P-14, P-15, P-16 & P-17 which bear her signatures and also endorsed the fact that the signatures were made by the respective candidates before her. It is further contended that the petitioner has not objected at the time of filing of nomination anything in writing.

17. During the course of evidence on a direction given by the Court, the witness submitted that everything was recorded in the CD. Therefore, the witness was directed to verify the same and make submission after the CD is viewed by the witness. Pursuant thereto the witness was directed to specify at what time the oath was administered. Subsequently on 12.2.2016 the witness after verification of the CD asserted before the Court that she had administered the oath to

candidates Chanduram Sahu, son of Nakul Sahu; Chandu Ram Sahu, son of Ram Bharosa Sahu; Chandu Ram Sahu, son of Pilau Ram Sahu; Chanduram Sahu, son of Awadh Ram Sahu; Chandulal Sahu, son of Tijoram Sahu i.e., 5 persons at 3 o' clock after their nominations were received.

18. So far as it relates to candidate Champalal, the documents show that his first nomination was received on 20.03.2014 at 2.35 p.m., and the oath was administered on 20.03.2014 at 2.35 p.m., itself. The said evidence remains un rebutted. No further challenge is made by the petitioner. The petitioner in his statement has deposed that it was impossible to receive, to check and then administer the oath at the same time in respect of the similarly named Candidates i.e., Chandulal Sahu or Chanduram Sahu at 3 p.m. In this context, if the entire evidence of the returning officer is surveyed it has been stated that if the candidates were physically present with their nomination forms before 3.00 p.m., then according to the token system their nominations are stated to be accepted at 3.00 p.m. Normally the time is shown as 3 p.m., for presentation and in lieu thereof some tokens were provided to the candidates. Further according to the token system the oath is administered either at the same time or subsequently till 12.00 hours in the midnight on the same date before the scrutiny. The said explanation cannot be shelved on the presumption and perceived opinion of the petitioner that when the time of nomination was given at 3 p.m., and the oath is shown to be administered at 3 p.m., the same cannot be done at the same time as an impossible task.

19. The explanation of the returning officer goes to show and will have a positive interpretation that if some candidates deposits their nomination forms at the last moment i.e., at 3 p.m., as was done in the instant case, then in such case when the candidates are physically present then the nominations are not refused till the time prescribed. It is a natural consequence or more democratic procedure if the person who deposits the nomination form to contest an election, would not be refused instead the oath can be administered uptill 12 o' clock in the night preceding to the date of Scrutiny. The returning officer in clarification after verification of the CD of persons has named the same persons i.e., Chandulal Sahu or Chanduram Sahu who were 5 in number and has reiterated the fact that the oath was administered at the same time i.e., at 3 p.m. It would be too technical to interpret that the deposit of nominations was made at 3 p.m., and the oath could not be administered at the same time at 3 p.m., to 5 persons of having similar names i.e., Chandulal Sahu/Chanduram Sahu.
20. Part-V of the Representation of the People Act, 1951 deals with conduct of elections wherein Chapter-I deals with nomination of candidates. Section 30, 33 and 36 deal with appointment of dates for nominations, etc., presentation of nomination paper and requirements for a valid nomination and scrutiny of nominations. So far as it relates to the present case, relevant portions of Sections 30, 33 & 36 are reproduced herein below.

“30. Appointment of dates for nominations, etc.—As soon as the notification calling upon a constituency to elect a member or

members is issued, the election commission shall, by notification in the Official Gazette, appoint—

- (a) the last date for making nominations, which shall be the [seventh day] after the date of publication of the first mentioned notification or if that day is a public holiday, the next succeeding day which is not a public holiday;
- (b) xx xx xx
- (c) xx xx xx
- (d) xx xx xx

Likewise, section 33(1) reads as under

“33. Presentation of nomination paper and requirements for a valid nomination ,--(1) On or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by his proposer, between the hours of eleven o’clock in the forenoon and three o’ clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer:

Provided that xxx xxx xxx
 Provided that xxx xxx xxx
 Provided that xxx xxx xxx

Likewise relevant portion of section 36 reads as under:

“36. Scrutiny of nomination. (1) On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer of each candidate, and one other person duly authorized in writing by each candidate but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have

been delivered within the time and in the manner laid down in section 33.

(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, [reject] any nomination on any of the following grounds:-

(a) that on the date fixed for the scrutiny of nominations the candidate either is not a qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely :-

Articles 84, 102, 173 and 191

[Part II of this Act, and sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963)

(b) xxx xxx xxx

(c) xxx xxx xxx

(3) Nothing contained in clause [(b) or clause (c)] of sub-section (2) shall be deemed to authorize the [rejection] of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(5) The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:

Provided that in case [an objection is

raised by the returning officer or is made by any other person] the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.

(6) The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

(7) xxx xxx xxx

(8) Immediately after all the nomination papers have been scrutinized and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board.”

21. A conjoint Reading of sections 30, 33 and 36 together would show that the presentation of nominations can be made between 11 a.m. and 3 p.m., in the after noon to the returning officer. The evidence as available in this case would indicate that it is not disputed that the nomination papers were deposited on 26.03.2014. Under Section 36(2) of the Act of 1951 one of the grounds on which the nomination can be rejected is that on the date fixed for the scrutiny of nomination, the candidate is not qualified for being chosen to fill the seat under Article 84 of the Constitution for membership of Parliament. The expression “on the date fixed for scrutiny” u/s 36(2)(a) means on the whole of the day on which the scrutiny of nomination has to

take place. In other words, the qualification must exist from the earliest moment of the day of the scrutiny. In the instant case, according to the statement of the returning officer, the oath was administered on 26.03.2014 itself. It is categorically stated that as per the direction issued by the Election Commission if the candidate presents his nomination, then in such a case, it cannot be refused and the oath can be administered till 12 O' clock in the midnight preceding the day. If the facts are looked into in a technical stand point, the Returning Officer has stated that she has received the nomination papers of Chanduram Sahu, son of Nakul Sahu; Chandu Ram Sahu, son of Ram Bharosa Sahu; Chandu Ram Sahu, son of Pilau Ram Sahu; Chanduram Sahu, son of Awadh Ram Sahu and Chandulal Sahu, son of Tijoram Sahu at 3 o' clock and they were administered oath at 3 o' clock. The Act does not prohibit to file the nomination uptill 3 o' clock. So if more than one candidate filed nomination papers before or at 3 p.m., of the last day of filing nominations, then the Returning Officer was bound to accept it. The Act do not contemplate any time to administer oath. It only envisages that before the scrutiny, the candidate must have taken oath. The aforesaid named candidates of Chanduram Sahu or Chandulal Sahu who were 5 in number have not come forward before the Court to rebut the evidence of the Returning Officer. The Act also do not put a rider that each candidate has to be administered oath individually. Therefore, natural inference can be drawn that the oath could have been administered in a group.

22. It is settled preposition that unless the election petitioner

discharges its burden it cannot be assumed on the opinion of the candidate that the oath was not administered. Undoubtedly no objection was raised at the time of scrutiny. The candidates who were administered oath though were parties before this Court have not come up to say that they were not administered oath. It is only the petitioner who lost the election has raised such ground. This aspect is writ large that the returned candidate/respondent No.1 Chandulal Sahu had sustained more damage as similarly named people had contested the election inasmuch as like named people would have shared his vote bank only. Therefore, when the candidates who were administered oath do not come up before the Court, it would be too technical to hold that such candidates were not administered oath.

23. A reference may usefully be made to the maximum "*Falsa demonstratio non nocet cum de corrore constat*" which means mere false description does not vitiate, if there be sufficient certainty as to the object. '*Falsa demonstratio*' means an erroneous description of a person or a thing in a written instrument; and the above rules respecting it signifies that where the description is made up of more than one part, and one part is true, but the other false, there, if the part which is true describes the subject with sufficient legal certainty, the untrue part will be rejected and will not vitiate the devise; the characteristic of cases within the rule being that the description, so far as it is false, applies to no subject at all, and, so far as it is true, applies to one only. (See Broom's Legal Maxims, 10th Edition, pp.426-427). Broom quotes (at Pag 438) an example that an error in the

proper name or in the surname of the legatee should not make the legacy void, provided it could be understood from the will what person was intended to be benefited thereby.

24. Applying the aforesaid principle to the present case, in sum and substance it can be inferred that even if the time of 3 o'clock is written by the Returning Officer with respect to the time of administration of oath, evaluating the same in the light of the evidence which is on record, the same cannot be said to be wrong on the face of it.
25. In case of *Durga Shankar Mehta v. Raghurai Singh and others*, AIR 1954 SC 250 the Supreme Court held that if the want of qualification does not appear on the face of the nomination paper or of the electoral roll but is a matter which could be established only by evidence, an enquiry at the stage of the scrutiny of the nomination papers is required under the Act only if there is any objection to the nomination. The Returning Officer is then bound to make such enquiry as he thinks proper on the result of which he can either accept or reject the nomination. But when the candidate appears to be properly qualified on the face of the electoral roll and the nomination paper and no objection is raised to the nomination, the Returning Officer has no other alternative but to accept the nomination.
26. It is true that mere failure of the appellant in raising objection to the validity of the nomination paper filed by the respondent before the returning officer does not stop or exclude the election petitioner from raising a plea before the High Court that some of the respondents were not administered oath. In this case, the same issue having raised

and examined in the light of evidence, it goes to point out that the election petitioner has failed to substantiate the issue raised by adducing necessary evidence.

27. The Supreme Court further in case of **Ram Phal Kundu Vs. Kamal Sharma 2004 AIR SCW 1043** reiterated the principle laid down in **Jeet Mohinder Singh V. Harminder Singh Jassi, 1999(9) SCC** which reads as under:

“The success of a candidate who has won an election should not be lightly interfered with. Any petition seeking such interference must strictly conform to the requirements of the law. Though the purity of the election process has to be safeguarded and the Court shall be vigilant to see that the people do not get elected by flagrant breaches of law or by committing corrupt practices, the setting aside of an election involves serious consequences not only for the returned candidate and the constituency, but also for the public at large inasmuch as re-election involves an enormous load on the public funds and administration.”

28. The law applicable in this case do not mandate that the oath has to be administered on a certain point of time. The only bar is that before the scrutiny is held, the candidate should have taken oath. Nothing is on record to rebut such fact that before the scrutiny was made, no oath was administered. Therefore, when the allegations are put to issue, it should have been proved by clear, cogent and credible evidence and it has to be proved to the hilt as the standard of proof being the same as that in a criminal trial.
29. In the facts and circumstances of the present case, after survey of the entire evidence, this Court is of the opinion that the election petitioner has failed to prove his case

beyond reasonable doubt. The pleading and evidence of the petitioner are too vague and are only premised over self opinion or are based on surmises and conjectures.

30. In the result, it is held that the petitioner has failed in making out a case for setting aside the election of respondent.
31. As an upshot of the above discussion, the petition is devoid of any force and is liable to be dismissed. In the facts and circumstances of the case, the parties shall bear their own costs.

**Sd/-
GOUTAM BHADURI
JUDGE**