these two provisions so far as the use of coal tar dyes is concerned. As already indicated, the only difference is in the quantum of the coal tar dye and not its use.

(11) For the reason recorded above, the petition is allowed and the charge against the petitioner under section 16(1)(a)(i) of the Prevention of Food Adulteration Act is quashed.

HARBANS SINGH, C.J.—I agree.
P. C. JAIN, J.—I agree.

K.S.K.

10 ILR —Govt. Press, Chd.

ELECTION PETITION

Before D. K. Mahajan, J.

BHAGWAN DASS SINGLA,—*Petitioner.*

Versus

HARCHAND SINGH AND ANOTHER,—*Respondents.*

Election Petition No. 1 of 1969

September 8, 1969.

Representation of People Act (XLIII of 1951)—Section 36—Constitution of India (1950)—Article 173—Name of a person appearing in an electoral roll—Conclusive presumption that he is 21 years old—Whether arises—Such presumption—Whether decisively proves the qualification of age under Article 178—Inquiry by Returning Officer on the date of scruting of nomination paper—Scope of—Order of the Returning Officer accepting nomination paper—Whether final.

Held, that moment the name of a person appears in an electoral roll, a conclusive presumption arises under section 36(7) of the Representation of the People Act, 1951, that he is an elector and necessarily above the age of twenty-one years. This presumption only tends to show that the person concerned has completed twenty-one years of age but it would not in every case decisively show that the age of the candidate satisfies the tests prescribed by Article 173 of the Constitution. In other words the completion of 25 years of age is outside the presumption under section 36(7). In order that the nomination paper of such a candidate is rejected for want of constitutional qualification, there must be *prima facie* evidence that he does not possess the qualification as to age. (Paras 11 and 12)

Held, that the scope of the inquiry to be held by the Returning Officer at the date of the scrutiny is that he has to accept the nomination paper of a candidate unless the want of qualification is apparent on the electoral roll itself or on the face of the nomination paper. If this defect for want of qualification is overlooked by him or an objection is raised and in an enquiry made on that objection, the Returning Officer comes to a wrong conclusion on the materials placed before him, the acceptance of the nomination paper would not be deemed to be a proper acceptance. Such an acceptance, however, is not final and is open to examination by the Election Tribunal, when election petition is filed. The Tribunal can come to a finding that the candidate is not qualified at all and the acceptance of his nomination paper by the Returning Officer was not proper. Similarly in the case of improper rejection of nomination papers, the Tribunal can come to its independent finding. (Para 13)

Petition under Sections 80 and 81 of the Representation of the People Act, 1951 praying that the Election of Shri Harchand Singh—respondent as

the returned candidate in the election from the Lehra Gaga Assembly Constituency be quashed and the election be declared void and the same be set aside.

AJIT SINGH BAINS, ADVOCATE, for the Petitioner.

JOGINDER SINGH REKHI, ADVOCATE, for Respondent No. 1.

J. N. KAUSHAL, SENIOR ADVOCATE WITH C. L. LAKHANPAL AND I. S. VIMAL, ADVOCATES, for Respondent No. 2.

JUDGMENT

MAHAJAN, J.—The only ground, on which the election of the returned candidate is sought to be declared void, is—that the petitioner's nomination paper was improperly rejected.

(2) The petitioner is an Advocate. The State of Punjab was under the President's rule, when a Mid Term Poll was ordered. In this petition, the dispute relates to Lehragaga Constituency. This Constituency was called to elect its representative to the Vidhan Sabha on the 1st of January, 1969. The nomination papers were to be filed with effect from the 4th of January, 1969, to the 8th of January, 1969. On the 7th of January, 1969, the petitioner personally filed his nomination paper and he was told that the nomination papers would be scrutinised on the 9th of January, 1969, the date fixed for that purpose. At the time, when the nomination papers were scrutinized, the petitioner did not appear. No objection was taken to his nomination paper by any other candidate. The Returning Officer, *suo motu*, rejected his nomination paper and recorded his decision thus—

"PRESENT:—None.

Rejected, as the age qualification is not clearly fulfilled.

(Sd.) . . .

9-1-69

11.30 a.m.

Returning Officer."

Thereafter, the polling took place on the 9th of February, 1969. The ballots were counted on the 11th of February, 1969, and on that

Act); and the Representation of the People Act, 1951 (Act No. 43 of 1951) (hereinafter called the 1951 Act). Section 14 of the 1950 Act defines the 'qualifying date' in relation to the preparation or revision of every electoral roll as the 1st day of January, in which it is so prepared or revised. Section 16 enumerates the disqualifications for registration in an electoral roll. It is common case that the petitioner suffered from no disqualification under this section. Section 19 provides the conditions of registration and is in these terms:—

"19. CONDITIONS OF REGISTRATION:—Subject to the foregoing provisions of this Part, every person who—

(a) is not less than twenty-one years of age on the qualifying date; and

(b) is ordinarily resident in a constituency,
shall be entitled to be registered in the electoral roll for that constituency."

Therefore, a person, who is below twenty-one years of age cannot be registered as an elector. Sections 21 and 22 provide for the preparation and revision of the electoral rolls and the correction of entries in the electoral roll.

(10) So far as the 1951 Act is concerned, the relevant provisions that need be noticed for the purposes of this petition, are sections 2(e) and 36. Section 2(e) defines an 'elector' and is in the following terms:—

"2. INTERPRETATION:—(1) In this Act, unless the context otherwise requires,—

(a) * * * *
(b) * * * *
(c) * * * *
(d) * * * *

(e) 'elector', in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in

Section 16 of the Representation of the People Act, 1950 (43 of 1950).

(f) * * * *
(g) * * * *
(h) * * * *
(i) * * * *
(2) * * * *
(3) * * * *
(4) * * * *
(5) * * * *

Section 36 is in the following terms:—

"36. SCRUTINY OF NOMINATIONS.—(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 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),

(b) that there has been a failure to comply with any of the provisions of Section 33 or Section 34; or

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

(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) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in Section 16 of the Representation of the People Act, 1950 (43 of 1950).

(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."

The only other provision, to which a reference necessarily has to be made, is Article 173 of the Constitution of India; and the same is reproduced below:—

"173. A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he—

(a) is a citizen of India, and makes and subscribes before some person authorised 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 Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty 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) It is clear from the combined reading of these provisions that once a person's name is entered in the electoral roll, there is a conclusive presumption that he is an elector unless it is proved that he is subject to a disqualification mentioned in Section 16 of the 1950 Act. There is no disqualification as to age in Section 16 of the Act. Age is merely a matter of qualification for being entered as an elector. It may from this be spelt out that in a way, it is a disqualification to be below twenty-one years, if one is to be entered as an elector in the electoral roll. But under section 16 of the 1950 Act, this is not one of the disqualifications mentioned therein. An elector means a person whose name has been entered in the electoral roll and the name of only that person can be entered in the electoral roll who is twenty-one years of age and, in any case, there is a clear presumption that the person, whose name is entered in the electoral roll, is twenty-one years of age. It has come in the evidence of PW-1, Kuldip Singh, the Returning Officer, that:—

"* * The electoral roll, Exhibit PW-1/2 was prepared for the year 1965. I had the copy of the amended electoral roll.

The electoral roll is amended every year. The electoral roll, Exhibit PW-1/2, was finally published on the 24th December, 1968. The electoral roll no doubt was printed in 1965 but it was authenticated on the 24th December, 1968, and any changes that occurred up to the date of authentication are shown in red ink in the electoral roll. There are additional names in the electoral roll after objections had been filed and determined. The entire electoral roll is not printed. At the mid-term poll, the electoral roll is not reprinted; it is only amended. The original part 15 of the electoral roll, Exhibit PW-1/2, was printed in 1965 but the amended part was printed sometime in 1968. The name of the petitioner is in the original part of the electoral roll. The electoral roll printed in 1965 will show the state of affairs as existing on 1st January, 1965."

It is clear from his testimony that the name of the petitioner existed on the electoral roll prepared in the year 1965 which electoral roll is effective from the 1st of January, 1965. Therefore, a clear conclusive presumption arose that on the 1st of January, 1965, the petitioner was not less than twenty-one years of age. The Returning Officer, while rejecting the nomination paper of the petitioner, ignored the provisions of Section 36(7) of the 1951 Act and thus the rejection of the nomination paper was improper. The view, I have taken of the matter, finds further support from the various pronouncements of their Lordships of the Supreme Court. In *Brijendralal Gupta and another* v. *Jwalaprasad and others* (1), while considering the provisions of Section 36(7), their Lordships of the Supreme Court observed that:—

> "* * Thus when a presumption is raised under section 36(7) it may mean *prima facie* that the person concerned is not less than 21 years of age. * * * * *
> It is obvious that the presumption raised under Section 36(7) would not be enough to justify the plea about the validity of the nomination paper because the said presumption only tends to show that the person concerned has completed 21 years of age. * * * * "

(1) A.I.R. 1960 S.C. 1049=22 E.L.R. 366

In *Durga Shankar Mehta* v. *Thakur Raghuraj Singh and others* (2), Mukherjea, J., (as he then was), after noticing the provisions of section 36(7), observed:—

> "* * In other words, the electoral roll is conclusive as to the qualification of the elector except where a disqualification is expressly alleged or proved. * *"

For the purposes of disqualification, one has to refer to section 16 of the 1950 Act. As already stated, the want of qualification under Article 173 is not a disqualification under section 16 of the 1950 Act. In *Brijendralal Gupta and another* v. *Jwalaprasad and others* (1), Gajendragadkar, J. (as he then was), while dealing with section 36(7) of the 1951 Act, at page 378 of the Report, observed as follows:—

> "* * In this connection, it is relevant to consider the effect of the presumption which is raised under section 36(7) of the Act and its effect. As we have already noticed, under section 36(7) a certified copy of the entry in the electoral roll shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency; but it must be remembered that this presumption is raised for the purposes of this section and it is made expressly subject to the last clause of this sub-section, that is to say, the presumption can arise unless it is proved that the person in question is subject to any of the disqualifications mentioned in section 16 of the Act of 1950. The use of the adjective 'conclusive' which qualifies 'evidence' is technically inappropriate because the presumption arising from the production of the certified copy is by no means conclusive.
>
> It is also significant that in regard to the conclusive character of the relevant evidence the material provision as it stood originally has been subsequently amended by Act 27 of 1956. Originally, the provision was that the relevant entry shall be conclusive evidence of the right of any elector named in that entry to stand for election, or to subscribe the nomination paper as the case may be. The Legislature apparently thought that the presumption authorised by these words was unduly wide, and so, by the amendment, the *prima facie* and rebuttable presumption is now limited to the capacity of the person

(2) 9 E.L.R. 494

concerned to be treated as an elector and nothing more, and that too unless it is proved that he suffers from any disqualification mentioned in section 16. Section 16 to which reference has thus been made prescribes disqualifications for registration in an electoral roll under three heads,—(a) that the person is not a citizen of India, (b) that he is of unsound mind and stands so declared by a competent court, or (c) is for the time being disqualified from voting under the provisions of any law relating to corrupt and illegal practices and other offences in connection with elections. Thus, the position is that the certified copy of the relevant entry would *prima facie* show that the person concerned is not subject to any of the said disqualifications, but this *prima facie* presumption can be rebutted by evidence to the contrary.

There is yet another aspect of this matter to which reference may be made. The rebuttable presumption which arises under section 36(7) merely refers to the status of the person concerned as an elector. Let us consider what this presumption means. An elector, under section 2, sub-section 1(e) of the Act, in relation to a constituency, means 'a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in section 16 of the Act of 1950.'

That takes us to the conditions prescribed by section 19 of the Act of 1950 for registration in the electoral roll. Section 19 provides that subject to the foregoing provisions of Part III of the said Act every person who, on the qualifying date (a) is not less than 21 years of age, and (b) is ordinarily residest in a constituency, shall be entitled to be registered in the electoral roll for that constituency. Thus when a presumption is raised under section 36(7) it may mean *prima facie* that the person concerned is not less than 21 years of age and is ordinarily resident in that constituency; but for the validity of the nomination paper it has to be proved that the candidate has completed 25 years of age. Article 173 of the Constitution which prescribes the qualification for membership of State Legislature provides that a person shall not be qualified in that behalf unless he (a) is a citizen of India, (b) is, in the case of a

seat in the Legislative Assembly, not less than 25 years of age, and (c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament. Confining ourselves to the requirement about age, it is obvious that the presumption raised under section 36(7) would not be enough to justify the plea about the validity of the nomination paper, *because the said presumption only tends to show that the person concerned has completed* 21 *years of age.* It is clear that in regard to persons between 21 or 25 years of age, their names would be registered in the electoral roll and so they would be electors if otherwise qualified and yet they would not be entitled to stand for election to the State Legislature. Thus, it would not be correct to assume that a reference to the certified copy of the electoral roll would in every case decisively show that the age of the candidate satisfied the test prescribed by Article 173 of the Constitution; in other words, the requirement about the completion of 25 years of age is outside the presumption under section 36(7), and that must be the reason why the prescribed nomination form requires that the candidate in signing the said form must make a declaration about his age. This consideration supports our conclusion that the declaration about the age is a matter of importance and failure to comply with the said requirement cannot be treated as a defect of an unsubstantial character.* * *"

(12) Thus it would appear from the above authorities that moment the name of a person appears in an electoral roll, a conclusive presumption arises that he is an elector and is necessarily above the age of twenty-one years. Therefore, the entry in the electoral roll, that the age of the elector is twenty years, is really pointless. In fact, no value can be attached to such an entry. See in this connection the Full Bench decision of this Court in *Roop Lal Mehta* v. *Dhan Singh and others* (3), wherein it was held as follows: —

"* * After the electoral rolls have been finalised the vote of a person, whose name is on the electoral roll, cannot be challenged as being void on the ground that he was under 21 years of age on the qualifying date."

(3) I.L.R. (1968)1 Punjab and Haryana 651 (F.B.)=1967 P.L.R. 618

In *Brijendralal Gupta's case* (1), though the age of the elector was mentioned as 48 years, that entry was not taken to be conclusive as to his age and the omission to declare the age in the nomination paper was held to be fatal. In view of the conclusive nature of the presumption under section 36(7), a person has to be presumed to be of 21 years of age on the day on which his name finds mention in the electoral roll, that is on the day, he is deemed to be an elector or is enrolled an elector. In the instant case, that date is 1st of January, 1965; and on this, there is no dispute. Therefore, on the day, when the nomination paper was filed, by pure arithmetical calculation, the petitioner was more than 25 years of age and, therefore, his nomination paper could not be rejected.

(13) Before proceeding to show that on the present record it has been proved beyond any shadow of doubt that, in fact, the age of the petitioner at the relevant time was above 25 years, it will be proper to dispose of the contention of the learned counsel for respondent No. 1, namely, that the order of the Returning Officer rejecting the nomination paper is conclusive and a Tribunal, in an election petition, cannot go behind that order. In other words, no evidence can be led to prove that the age of the petitioner was above 25 years at the relevant time. As already indicated, the nomination paper, on the face of it, was perfectly in order. The declaration as to age showed that the petitioner was above 25 years of age. The nomination paper was complete and in accordance with law in all other respects. It was rejected merely on a reference to the electoral roll. In the electoral roll, the age of the petitioner was entered as 20 years. It is also significant that no objection was taken by any one to the nomination paper of the petitioner. On the other hand, respondent No. 1, Shri Harchand Singh, has clearly stated, that:—

> "* * I said that his papers should not be rejected and he should be permitted to contest the election. * * *".

The question then arises, what is the scope of the enquiry that has to be held by the Returning Officer at the date of the scrutiny. This matter is not *res integra*. In *Durga Shankar Mehta's* case (2), Mukherjea, J. (as he then was), observed:—

> "* * * * It would have been an improper acceptance, if the want of qualification was apparent on the electoral

roll itself or on the face of the nomination paper and the Returning Officer overlooked that defect or if any objection was raised and enquiry made as to the absence of qualification in the candidate and the Returning Officer came to a wrong conclusion on the materials placed before him. When neither of these things happened, the acceptance of the nomination by the Returning Officer must be deemed to be a proper acceptance. It is certainly not final and the Election Tribunal may, on evidence placed before it, come to a finding that the candidate was not qualified at all. But the election should be held to be void on the ground of the constitutional disqualification of the candidate and not on the ground that his nomination was improperly accepted by the Returning Officer. * * *"

These observations clearly show that the Returning Officer had to accept the nomination paper unless the want of qualifiaction was apparent on the electoral roll itself or on the face of the nomination paper and that defect was overlooked by him or an objection was raised and in an enquiry made on that objection, the Returning Officer had come to a wrong conclusion on the materials placed before him. But if none of these things happen, the acceptance would be deemed to be a proper acceptance. The learned Judge made it clear that even such an acceptance would not be final and the Tribunal could come to a finding that the candidate was not qualified at all. But the election of the candidate would be void on the ground of a constitutional disqualification and not on ground of improper acceptance of the nomination paper. These observations, in my opinion, would equally apply to the case of an improper rejection. In the present case, the rejection was on the basis of lack of constitutional qualification and in order to hold, that there was such a lack of qualification, the Returning Officer had *suo motu* made recourse to the electoral roll. But he completely gave a go-by to the provisions of section 36(7). Irrespective of the entry in the electoral roll, that the age of the petitioner was 20 years, the Returning Officer had to proceed on the basis that on the 1st of January, 1965, the age of the petitioner was not less than 21 years. If this position of the law had been kept in view, the Returning Officer would not have committed the error in which he fell. While dealing with *Durga Shankar Mehta's case*

(2), in *S. M. Banerji* v. *Sri Krishna Agarwal* (4), Subba Rao, J., observed as follows:—

> "* * This judgment, therefore, is a clear authority for the proposition that if the want of qualification does not appear on the face of the nomination paper and if no objection is raised on that ground before the returning officer, the acceptance of the nomination must be deemed to be a proper acceptance. * * *"

However, in view of the clear pronouncement of Venkatarama Aiyer, J., in *N. T. Veluswami Thevar* v. *G. Raja Nainar and others* (5), the contention of the learned counsel for respondent No. 1, that the order of rejection of the nomination paper passed by the Returning Officer is final, cannot be accepted. These observations are as follows:—

> "* * It was contended for the respondent that the proceedings before the Tribunal are really by way of appeal against the decision of the returning officer, and that, therefore, the scope of the enquiry in the election petition must be co-extensive with that before the returning officer, and must be limited to the ground taken before him. It was argued that a decision could be said to be improper only with reference to a ground which was put forward and decided in a particular manner by the returning officer, and that, therefore, the expression 'improperly rejected' would, in its true connotation, restrict the scope of the enquiry before the Tribunal to the ground taken before the returning officer. We are unable to agree with this contention. The jurisdiction which a Tribunal exercises in hearing an election petition even when it raises a question under S. 100(1)(c) is not in the nature of an appeal against the decision of the returning officer. An election petition is an original proceeding instituted by the presentation of a petition under S. 81 of the Act. The respondents have a right to file written statements by way of reply to it; issues have to be framed, and subject to the provisions of the Act, the provisions of the Civil Procedure Code regulate the trial of the petition. All the parties have right to adduce evidence, and that is of the

(4) 22 E.L.R. 64

(5) A.I.R. 1959 S.C. 422.

essence of an original proceeding as contrasted with a proceeding by way of appeal. That being the character of the proceedings, the rule applicable is that which governs the trial of all original proceedings; that is, it is open to a party to put forward all grounds in support of or negation of the claim, subject only to such limitations as may be found in the Act. * * * * ".

(14) In *S. M. Banerji's case* (4), a controversy was raised that there was a conflict between the decisions in *Durga Shankar Mehta's case* (2), and *Veluswami Theyar's* (5) case; and Subba Rao, J. (as he then was), in *S. M. Banerji's case* (4), drew the pointed attention to the observations of Venkatarama, J., in *Veluswami Theyar's case* (5), namely, that:—

"This is not a direct pronouncement on the point now in controversy and that is conceded."

The learned Judge then proceeded to make the following observations:—

"* * The two decisions can stand together and they deal with two different situations: in the former, no objection was raised at all to the nomination, while in the latter, an objection was raised on the ground of disqualification; but in the election petition, additional grounds of disqualification were alleged and sought to be proved: one is concerned with a case of improper acceptance and the other with a case of improper rejection. Though some of the observations in the later decision may well have been advanced to come to a contrary conclusion in the earlier decision, Venkatarama Ayyar, J., who was party to both the decisions, distinguished the earlier one on the ground that it was not a direct pronouncement on the question raised in the later. The earlier decision is that of five Judges but the later is of three Judges. The learned Judges, who decided the later case, did not see any conflict between their decision and that of the earlier one. Though there is some force in the argument advanced by Mr. A. V. Viswanatha Sastri, and, if it were *res integra*, some of us might be inclined

not to agree with the reasoning and the conclusion of the earlier judgment, this court is bound by its earlier decision and we do not see any justification to refer the question to a larger Bench, particularly as we have come to the conclusion that the High Court was not justified in interfering with the order passed by the Tribunal in its discretion disallowing the material amendment. * *".

(15) It would thus appear that the true legal position is that the entry of a person in the electoral roll on the qualifying date is a conclusive proof of the fact that he is more than 21 years of age. But a candidate has to possess the constitutional qualification that he is 25 years of age. In order that the nomination paper of such a candidate is rejected for want of the constitutional qualification, there must be *prima facie* evidence that he does not possess the qualification as to age; and even if a decision is rendered on this matter by the Returning Officer, that decision is not final and it is open to examination by the Election Tribunal when an election petition is filed.

(16) In the present case, there was no material before the Returning Officer on the basis of which he could hold that the age of the petitioner was below 25. No objection was taken to the declared age of the petitioner by any one. It was only on the basis of the erroneous entry in the electoral roll that the nomination paper was rejected. I say 'erroneous' because the evidence led in the case proves it to be so. In any case, the Returning Officer had to proceed on the basis of the presumption under section 36(7) that on the qualifying date the candidate was above 21 years of age. Therefore, it must be held that the rejection of the nomination paper of the petitioner was improper and on that ground, the election of the returned candidate has to be declared void.

(17) The only other question, that remains to be examined, is, whether the petitioner has been able to prove that he was, in fact, 25 years of age on the date when he filed his nomination paper. The petitioner has led evidence in this behalf; and I will now refer to it. Exhibit PW-2/2 is the entry from the Admission and Withdrawal Register of Government Higher Secondary School, Lehragaga. In this entry, the date of birth of the petitioner is entered as 5-3-1999 Bk. The corresponding date, according to the Gregorian calender comes to 17th of June, 1942, Exhibit PW-4/1

is the copy of the Matriculation Certificate and therein, the age of the petitioner is recorded as 17th of June, 1942. In the Extract of the Result Gazette, Exhibit R2W-1/2, the date of birth of the petitioner is the same. Exhibit PW-4/2 is an application made to the Public Service Commission by the petitioner for the post of Prosecuting Sub-Inspector of Police; and therein also, his date of birth is recorded as 17th of June, 1942. PW-3, Piarey Lal, Executive Officer, Municipal Committee, Lehragaga, was examined as a witness. He was asked to produce the Birth Registers and he stated that the Birth Registers with the Municipal Committee started from *Sambat* 2001. Therefore, the Birth Registers for the year 1999 Bk. are not available. The petitioner is an Advocate and he passed the LL.B. examination in 1965. He did his Matric in 1959. He failed in the 9th Class. On this state of the evidence, one can legitimately conclude that the petitioner's date of birth is 17th of June, 1942.

(18) Lot of argument was addressed as to the evidentiary value of the entry of age of a person in the School Register. But the learned counsel for both the parties were agreed that these entries are relevant pieces of evidence and slight evidence to the contrary may displace them. In the present case, there is not an iota of evidence which would cast doubt on the entries in the School Register as well as on the Matriculation Certificate. As a matter of fact, the date of birth of the petitioner even finds mention in Exhibit R2 W-1/2. In this state of the record, it would not be unreasonable to hold that the petitioner was born on the 17th of June, 1942. These entries existed long before the present controversy had arisen. Much was sought to be made out by the learned counsel for the respondent, Shri Harchand Singh, that the father and mother of the petitioner have not appeared in the witness-box. In my opinion, their non-production does not materially effect the case. All that they could have said was that the petitioner was born on such and such a date and nothing more. Theirs would be merely an oral testimony. And, in any case, the only source, from which the date mentioned in the documents could have been obtained, would be the parents. Their non-production might have been serious if even slight evidence had been led by the respondent to the contrary. In this situation, a finding must be returned that the petitioner was more than 25 years of age at the date when he filed his nomination paper.

(19) It is, therefore, clear that the rejection of the petitioner's nomination paper on the basis that he was below the qualifying

age was improper. I accordingly find the only Issue for the petitioner.

(20) The result, therefore, is that this petition is allowed and the election of the returned candidate is declared void. There will be no order as to costs.

R.N.M.

APPELLATE CIVIL

Before H. R. Sodhi, J.

TIPPER CHAND,—*Appellant.*

Versus

MATU RAM AND ANOTHER,—*Respondents.*

Regular Second Appeal No. 541 of 1959

September 10, 1969.

Civil Procedure Code (V of 1908)—Sections 107, 149 and Order 7, rule 11—Provisions of Order 7, rule 11—Whether apply to appeals—Appeal not properly valued for court-fee—Appellate Court—Whether bound to afford opportunity to appellant to correct it.

Held, that provisions of Order 7, rule 11 of the Code of Civil Procedure do not in terms apply to appeals and the appellate Court is not bound to afford an opportunity to the appellant to correct the valuation of the appeal for the purpose of a court-fee within a time to be fixed by the Court before the appeal can be dismissed. No doubt by virtue of section 107 of the Code, an appellate Court has the same powers as an original Court in respect of plaints but that does not imply that Order 7 rule 11 becomes applicable in terms to appeals. The only provision of law under which an appellate Court can extend time for the purpose of making up the deficit court-fee is section 149 of the Code which vests a discretion in the Court in this regard. The discretion has to be judicial and not arbitrary. Where a Court is satisfied that the mistake in not paying a proper court-fee is a *bona fide* one, it is only then that it is bound to allow the deficiency to be made good within a time prescribed by it. (Paras 5 and 6)