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alienation comes to an end. (2) Where the right, title and interest of a judgment-debtor are set up for sale as to what passes to the auction-purchaser is a question of fact in each case dependent upon what was the estate put up for sale, what the Court intended to sell and what the purchaser intended to buy and did buy and what he paid for. (3) The words "right, title and interest" occurring in s. 155 of the Bombay Land Revenue Code have the same connotation as they had in the corresponding words used in the Code of Civil Procedure existing at the time the Bombay Land Revenue Code was enacted. (4) In execution proceedings it is not necessary to implead the sons or to bring another suit if severance of status takes place pending the execution proceedings because the pious duty of the sons continues and consequently there is merely a difference in the mode of enjoyment of the property. (5) The liability of a father, who is a managing director and who draws a salary or a remuneration, incurred as a result of negligence in the discharge of his duties is not an *avyavaharika* debt as it cannot be termed as "repugnant to good morals".

In the result the appeal fails and is dismissed with costs.

Sinha J.

SINHA J.—I agree to the order proposed.

Appeal dismissed.

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SRI BARU RAM

v.

SHRIMATI PRASANNI & OTHERS

(VENKATARAMA AIYAR, GAJENDRAGADKAR and A. K. SARKAR JJ.).

Election Petition—Corrupt practice—Procuring assistance of Government servant by appointing as polling agent—Proof—Nomination paper, rejection of—Failure to produce copy of electoral roll—If rejection improper—Representation of the People Act, 1951 (43 of 1951), ss. 2(c), 33, 36, 46 and 123(7).

The first respondent filed an election petition against the

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appellant on the grounds: (i) that he committed the corrupt practice specified in s. 123(7) of the Representation of the People Act, 1951 inasmuch as he had obtained the assistance of one P, a member of the armed forces, who had acted as his polling agent, and (ii) that the nomination of one J had been improperly rejected by returning officer. The election tribunal held that the corrupt practice was not proved but that the nomination of J had been improperly rejected and consequently it declared the election of the appellant to be void. On appeal the High Court held that the nomination of J was not improperly rejected but that the corrupt practice alleged was established and dismissed the appeal. The High Court found that P had signed the form appointing him as the appellant's polling agent and had presented it before the presiding officer, that P was seen at the polling booth and that the scribe who wrote this form had also written the form by which the appellant had appointed another polling agent. From these circumstances the High Court drew the inference that the appellant had appointed P as his polling agent and had in fact signed the form in token of such appointment. With respect to the rejection of the nomination of J the High Court held that J was a voter in a different constituency and that he had failed to produce a copy of the electoral roll when he presented the nomination paper, nor was it produced at the time of the scrutiny or within the time given by the returning officer and that consequently the nomination was properly rejected.

Held, that to establish that the appellant was guilty of the corrupt practice charged it was not sufficient to show that P had acted as his polling agent but it must also be proved that the appellant had appointed P as his polling agent. This fact the first respondent had failed to prove by any legal evidence. The facts and circumstances found by the High Court did not inevitably lead to the conclusion that the appellant had signed the form and hence such an inference could not be drawn.

Held, further, that the nomination of J was not improperly rejected. Where a candidate is an elector of a different constituency he has to prove that fact in the manner prescribed by s. 33(5) by the production of a copy of the electoral roll of that constituency or of the relevant part thereof or of a certified copy of the relevant entries thereof. In the present case there was failure on the part of J to comply with s. 33(5) and his nomination was properly rejected under s. 36(2)(b). The failure to comply with s. 33(5) is not a defect of an unsubstantial character so as to attract the application of s. 36(4). When the statute requires specific facts to be proved in a specific way and it also provides for the consequences of non-compliance with the said requirement the application of the penalty clause cannot be resisted on the ground that such application is based on a technical approach.

Jagan Nath v. *Jaswant Singh*, [1954] S.C.R. 892; *Kattan*

Anmol Singh v. *Atma Ram*, [1955] S.C.R. 481 and *Pratap Singh* v. *Shri Krishna Gupta*, A.I.R. 1956 S.C. 140, referred to.

Mohan Reddy v. *Neelagiri Muralidhar Rao*, A.I.R. 1958 A.P. 485, not approved.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 409 of 1958.

Appeal by special leave from the judgment and order dated May 13, 1958, of the Punjab High Court at Chandigarh in First Appeal from Order No. 24 of 1958.

C. B. Aggarwala and *Naunit Lal*, for the appellant.

H. S. Doabia, K. R. Chaudhury and *M. K. Ramamurty*, for the respondent No. 1.

1958. September 30. The Judgment of the Court was delivered by

GAJENDRAGADKAR J.—This appeal by special leave has been filed against the decision of the Punjab High Court confirming the order passed by the Election Tribunal by which the appellant's election has been declared to be void. The appellant Shri Baru Ram was elected to the Punjab Legislative Assembly from the Rajaund constituency in the Karnal District. Initially seventeen candidates had filed their nomination papers in this constituency. Out of these candidates, thirteen withdrew and the nomination paper filed by Jai Bhagawan was rejected by the returning officer. That left three candidates in the field. They were the appellant Baru Ram, Mrs. Prasanni and Harkesh, respondents 1 and 2 respectively. The polling took place on March 14, 1957, and the result was declared the next day. Since the appellant had secured the largest number of votes he was declared duly elected. Soon thereafter Mrs. Prasanni, respondent 1, filed an election petition in which she alleged that the appellant had committed several corrupt practices and claimed a declaration that his election was void. The appellant denied all the allegations made by respondent 1. The election tribunal first framed six preliminary issues and after they were decided, it raised twenty-nine issues on the merits. The tribunal was not

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satisfied with the evidence adduced by respondent 1 to prove her allegations in respect of the corrupt practices committed by the appellant and so it recorded findings against respondent 1 on all the issues in regard to the said corrupt practices. Respondent 1 had also challenged the validity of the appellant's election on the ground that the returning officer had improperly rejected the nomination paper of Jai Bhagawan. This point was upheld by the election tribunal with the result that the appellant's election was declared to be void.

The appellant then preferred an appeal to the Punjab High Court. He urged before the High Court that the election tribunal was in error in coming to the conclusion that the nomination paper of Jai Bhagawan had been improperly rejected. This contention was accepted by the High Court and the finding of the tribunal on the point was reversed. Respondent 1 sought to support the order of the election tribunal on the ground that the tribunal was not justified in holding that the appellant was not guilty of a corrupt practice under s. 123(7)(c). This argument was also accepted by the High Court and it was held that the appellant was in fact guilty of the said alleged corrupt practice. In the result, though the appellant succeeded in effectively challenging the only finding recorded by the tribunal against him, his appeal was not allowed because another finding which was made by the tribunal in favour of the appellant was also reversed by the High Court. That is why the order passed by the tribunal declaring the appellant's election to be void was confirmed though on a different ground. It is this order which is challenged before us by Mr. Aggarwal on behalf of the appellant and both the points decided by the High Court are raised before us by the parties.

At the hearing of the appeal Mr. Doabia raised a preliminary objection. He contends that the present appeal has been preferred beyond time and should be rejected on that ground alone. The judgment under appeal was delivered on May 13, 1958, and the petition for leave to appeal under Art. 136 of the Constitution

has been filed in this Court on September 2, 1958. It is common ground that the appellant had applied for leave to the Punjab High Court on June 9, 1958, and his application was dismissed on August 22, 1958. If the time occupied by the appellant's application for leave is taken into account, his appeal would be in time; on the other hand, if the said period is not taken into account, his application would be beyond time. Mr. Doabia argues that the proceedings taken on an election petition are not civil proceedings and so an application for leave under Art. 133 of the Constitution was incompetent; the time taken in the disposal of the said application cannot therefore be taken into account in computing the period of limitation. On the other hand, Mr. Aggarwal urges that s. 116A (2) of the Representation of the People Act (43 of 1951) (hereinafter called the Act) specifically provides that the High Court, in hearing an appeal presented to it shall have the same powers, jurisdiction and authority and follow the same procedure with respect to the said appeal as if it were an appeal from an original decree passed by a civil court situated within the local limits of its civil appellate jurisdiction. The result of this provision is to assimilate the election proceedings coming before the High Court in appeal to civil proceedings as contemplated by Art. 133 of the Constitution and so, according to him, it was not only open to the appellant but it was obligatory on him to make an application for leave to the Punjab High Court under the said article. That is why the time occupied by the said proceedings in the Punjab High Court must be excluded in deciding the question of limitation. We do not propose to deal with the merits of these contentions. It is not seriously disputed by Mr. Doabia that parties aggrieved by orders passed by High Courts in appeals under s. 116A of the Act generally apply for leave under Art. 133 and in fact such applications are entertained and considered on the merits by them. It is true that Mr. Doabia's argument is that this practice is erroneous and that Art. 133 has no application to the appellate decision of the High Court under s. 116A

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of the Act. Assuming that Mr. Doabia is right, it is clear that the appellant has merely followed the general practice in this matter when he applied for leave to the Punjab High Court; his application was entertained, considered on the merits and rejected by the High Court. Under these circumstances we think that even if we were to hold that Art. 133 has no application, we would unhesitatingly have excused the delay made in the presentation of the appeal; and so we do not think we can throw out the appeal *in limine* on the ground of limitation. If necessary we would excuse the delay alleged to have been made in presenting this appeal.

On the merits, Mr. Aggarwal contends that the finding of the High Court that the appellant has committed a corrupt practice under s. 123(7)(c) is not supported by any evidence. Before dealing with this argument it would be relevant to consider the legal position in the matter. Corrupt practice as defined in s. 2(c) of the Act means "any of the practices specified in s. 123". Section 123(7)(c) provides inter alia that the obtaining or procuring or abetting or attempting to obtain or procure by a candidate any assistance other than giving of vote for the furtherance of the prospects of that candidate's election from any person in the service of the Government and who is a member of the armed forces of the Union, is a corrupt practice. The case against the appellant as set out by respondent 1 in her election petition on this point is that the appellant secured the assistance of Puran Singh who is a member of the armed forces of the Union. It was alleged that Puran Singh "actively canvassed for the appellant on March 11th to 13th, 1957, in his village and so much so that he subsequently served as his polling agent at polling booth No. 15 at village Kotra on March 14, 1957". Both the tribunal and the High Court are agreed in holding that it had not been proved that Puran Singh actively canvassed for the appellant on March 11th to 13th as alleged by respondent 1. They have, however, differed on the question as to whether the appellant had appointed Puran Singh as his polling agent for the

polling booth in question. It would thus be seen that the point which falls for our decision in the present appeal lies within a very narrow compass. Did the appellant secure the assistance of Puran Singh by appointing him as his polling agent? Going back to s. 123, explanation (2) to the said section provides that "for the purpose of cl. (7) a person shall be deemed to assist in the furtherance of the prospects of a candidate for election if he acts as an election agent or polling agent or a counting agent of that candidate". In other words, the effect of explanation (2) is that once it is shown that Puran Singh had acted as polling agent of the appellant, it would follow that the appellant had committed a corrupt practice under s. 123(7)(c). But it is important to bear in mind that before such a conclusion is drawn the provisions of s. 46 of the Act must be taken into account. Section 46 authorises a contesting candidate to appoint in the prescribed manner such number of agents and relief agents as may be prescribed to act as polling agents of such candidate at each polling station provided under s. 25 or at the place fixed under sub-s. (1) of s. 29 for the poll. There can be no doubt that, when explanation (2) to s. 123 refers to a person acting as a polling agent of a candidate, it contemplates the action of the polling agent who is duly appointed in that behalf by the candidate under s. 46. It is only when it is shown that a person has been appointed a polling agent by the candidate and has in consequence acted as such agent for the said candidate that explanation (2) would come into operation. If, without being appointed as a polling agent by the candidate, a person fraudulently, or without authority, manages to act as the polling agent of the said candidate, explanation (2) would not apply. That being the true legal position the short point which arises for our decision is whether the appellant had appointed Puran Singh as his polling agent and whether Puran Singh acted as such polling agent at the polling booth No. 15 at Kotra.

What then are the facts held proved by the High Court in support of its conclusion against the appellant

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under s. 123(7)(c)? The first point which impressed the High Court is in respect of the writing by which the appellant is alleged to have appointed Puran Singh as his polling agent. The printed prescribed forms were not available to the candidates and so they had to copy the prescribed form for the purpose of appointing their polling agents. This position is not disputed. The form by which Puran Singh is alleged to have been appointed the appellant's polling agent contains a glaring mistake in that while reciting that the polling agent agreed to act as such polling agent the form says "I agree to act as such *following* agent" (P. W. 48/1). The same glaring mistake is to be found in the form by which the appellant admittedly appointed Pal Chand to act as his polling agent at the same polling booth. The High Court thought that the identity of this glaring mistake in both the forms coupled with the similarity of the handwriting of the rest of the writing in them showed that the two forms must have been written by the same scribe. This is a finding of fact and it may be accepted as correct for the purpose of our decision. It would, however, be relevant to add that it is not at all clear from the record that the same scribe may not have written similar forms for other candidates as well. There is no evidence to show that the scribe who made this glaring mistake had been employed as his own scribe by the appellant.

The High Court was also disposed to take the view that Puran Singh in fact had acted as the polling agent on the day of the election at the said polling booth. Respondent 1 had examined herself in support of this plea and Banwari Lal whom she examined supported her in that behalf. The tribunal was not impressed by the evidence of these two witnesses; and it has given reasons for not accepting their evidence as true or reliable. It is unnecessary to emphasise that, in dealing with an appeal under s. 116A of the Act, High Courts should normally attach importance to the findings of fact recorded by the tribunal when the said findings rest solely on the appreciation of oral evidence. The judgment of the High Court does not show that

the High Court definitely accepted the evidence of the two witnesses as reliable; in dealing with the question the High Court has referred to this evidence without expressly stating whether the evidence was accepted or not; but it may be assumed that the High Court was disposed to accept that evidence. In this connection, we would like to add that it is difficult to understand why the High Court did not accept the criticism made by the tribunal against these two witnesses. If we consider the verifications made by respondent 1 in regard to the material allegations on this point both in her petition and in her replication, it would appear that she had made them on information received and not as a result of personal knowledge; that being so, it is not easy to accept her present claim that she saw Puran Singh working as polling agent; but apart from this consideration, the evidence of respondent 1, even if believed, does not show that Puran Singh was working as a polling agent of the appellant; and the statement of Banwari Lal that Puran Singh was working as the appellant's polling agent loses much of its force in view of his admission that he had no knowledge that Puran Singh had been appointed by the appellant as his polling agent. Even so, we may assume, though not without hesitation, that Puran Singh did act as appellant's polling agent as alleged by respondent 1.

In dealing with this question the High Court appears to have been considerably influenced by the statement made by Jangi Ram whom the appellant had examined. In his cross-examination, Jangi Ram stated that Jagtu and Pal Chand were the agents of Shri Baru Ram, but he added that Puran Singh was not at the polling booth. It may be mentioned that the appellant's case was that he had appointed only one polling agent at Kotra; and this allegation, according to the High Court, was disproved by the statement of Jangi Ram inasmuch as he referred to two polling agents working for the appellant. In considering the effect of this statement, the High Court has failed to take into account the positive statement of the witness that Puran Singh was not at the polling

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station at all. The evidence of the witness may be rejected if it appears to be unreliable; but if it is accepted, it would not be fair to accept it only in part and to hold that two polling agents had been appointed by the appellant one of whom was Puran Singh. There is another serious infirmity in the inference drawn by the High Court from the statement of Jangi Ram; that is that Jagtu to whom the witness has referred as a polling agent of the appellant appears in fact to have acted as a polling agent of Harkesh, respondent 2. Jhandu, another witness examined by the appellant has stated so on oath and his statement has not been challenged in cross-examination. Thus, reading the evidence of Jhandu and Jangi Ram, it would be clear that Jangi Ram was right when he said that Jagtu was acting as a polling agent but he was wrong when he thought that Jagtu was the polling agent of the appellant. If the attention of the High Court had been drawn to the unchallenged statement of Jhandu on this point, it would probably not have drawn the inference that Jangi Ram's evidence supports the case of respondent 1 about the appointment of Puran Singh as the appellant's polling agent.

The next circumstance on which reliance has been placed in the judgment of the High Court is that Puran Singh has signed the prescribed form appointing him as the polling agent and he must have presented it to the returning officer. The prescribed form requires that a candidate appointing his polling agent and the polling agent himself should sign the first part of the form. Then the polling agent is required to take the form to the returning officer, sign in token of his agreeing to work as a polling agent before the said officer and present it to him. The High Court has found that Puran Singh must have signed the form and presented it as required by law. Puran Singh was examined by respondent 1; but when he gave evidence, he was allowed to be treated as hostile and cross-examined by her counsel. Puran Singh denied that he had acted as the appellant's polling agent and that he had signed the form and presented it to the returning officer. It, however, appears that Chand

Jamadar to whose platoon Puran Singh is attached gave evidence that the signature of Puran Singh on the form in question (P.W. 48/1) appeared to be like the signatures on acquittance rolls which had been admittedly made by him. On the same question hand-writing experts were examined by both the parties. Mr. Om Parkas was examined by respondent 1 and he stated that he had compared the admitted signatures of Puran Singh with the disputed signature and had come to the conclusion that Puran Singh must have made the disputed signature. On the other hand, Mr. Kapur whom the appellant examined gave a contrary opinion. The tribunal thought that in view of this conflicting evidence it would not be justified in finding that Puran Singh had signed the form. The High Court has taken a contrary view. Mr. Aggarwal for the appellant contends that the High Court was in error in reversing the finding of the tribunal on this point. There may be some force in this contention; but we propose to deal with this appeal on the basis that the finding of the High Court on this question is right. The position thus is that, according to the High Court, Puran Singh signed the form appointing him as the appellant's agent and presented it before the officer. Puran Singh was seen at the polling booth and the scribe who wrote the form in question also wrote the form by which the appellant appointed Pal Singh as his polling agent at the same booth. The High Court thought that from these circumstances it would be legitimate to infer that the appellant had appointed Puran Singh as his polling agent and had in fact signed the form in token of the said appointment. It is the correctness of this finding which is seriously disputed by Mr. Aggarwal before us.

It is significant that from the start the parties were at issue on the question as to whether Puran Singh had been appointed by the appellant as his polling agent; and so respondent 1 must have known that she had to prove the said appointment in order to obtain a finding in her favour on issue 29 under s. 123 (7)(c) of the Act. Respondent 1 in fact led evidence to prove the signature of Puran Singh but no attempt

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was made by her to prove the signature of the appellant on the said form. The appellant had specifically denied that he had appointed Puran Singh as his polling agent and when he stepped into the witness box he stated on oath that he had not signed any form in that behalf. Under these circumstances, it was clearly necessary for respondent 1 to examine competent witnesses to prove the appellant's signature on the form. It is true that the appellant's signature on the form appears to have been over-written, but it is only the expert who could have stated whether the over-writing in question made it impossible to compare the said signature with the admitted signatures of the appellant. It appears that after the whole of the evidence was recorded, respondent woke up to this infirmity in her case and applied to the tribunal for permission to examine an expert in that behalf. This application was made on February 6, 1958; and the only explanation given for the delay in making it was that it was after the appellant denied his signature on oath that respondent 1 realized the need for examining an expert. The tribunal rejected this application and we think rightly. In its order the tribunal has pointed out that respondent 1 had been given an opportunity to examine an expert and if she wanted her expert to give evidence on the alleged signature of the appellant her counsel should have asked him relevant questions when he was in the witness box. Thus the position is that there is no evidence on the record to support the case of respondent 1 that the said alleged signature has in fact been made by the appellant. The only relevant evidence on the record is the statement of the appellant on oath that he had not signed the form in question.

Mr. Doabia fairly conceded that there was no legal evidence on this point; but his argument was that from the other findings of fact recorded by the High Court it would be legitimate to infer that the appellant had made the said signature. In our opinion this contention is wholly untenable. It must be borne in mind that the allegation against the appellant is that he has committed a corrupt practice and a finding

against him on the point would involve serious consequences. In such a case, it would be difficult to hold that merely from the findings recorded by the High Court it would be legitimate to infer that the appellant had signed the form and had in fact appointed Puran Singh as his polling agent. Mr. Doabia argues that it is not always absolutely necessary to examine an expert or to lead other evidence to prove handwriting. It would be possible and legal, he contends, to prove the handwriting of a person from circumstantial evidence. Section 67 of the Indian Evidence Act provides inter alia that if a document is alleged to be signed by any person the signature must be proved to be in his handwriting. Sections 45 and 47 of the said Act (1 of 1872), prescribe the method in which such signature can be proved. Under s. 45, the opinion of the handwriting experts is relevant while under s. 47 the opinion of any person acquainted with the handwriting of the person who is alleged to have signed the document is admissible. The explanation to the section explains when a person can be said to be acquainted with the handwriting of another person. Thus, there can be no doubt as to the manner in which the alleged signature of the appellant could and should have been proved; but even assuming that the signature of the appellant can be legally held to be proved on circumstantial evidence the principle which governs the appreciation of such circumstantial evidence in cases of this kind cannot be ignored. It is only if the court is satisfied that the circumstantial evidence irresistibly leads to the inference that the appellant must have signed the form that the court can legitimately reach such a conclusion. In our opinion, it is impossible to accede to Mr. Doabia's argument that the facts held proved in the High Court inevitably lead to its final conclusion that the appellant had in fact signed the form. It is clear that in reaching this conclusion the High Court did not properly appreciate the fact that there was no legal evidence on the point and that the other facts found by it cannot even reasonably support the

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case for respondent 1. We must accordingly reverse the finding of the High Court and hold that respondent 1 has failed to prove that the appellant had committed a corrupt practice under s. 123(7)(c) of the Act.

This finding, however, does not finally dispose of the appeal because Mr. Doabia contends that the High Court was in error in reversing the tribunal's conclusion that the nomination paper of Jai Bhagawan had been improperly rejected. Mr. Aggarwal, however, argues that it is not open to respondent 1 to challenge the correctness of the finding of the High Court on this point. In support of his objection, Mr. Aggarwal has referred us to the decision of this Court in *Vashist Narain Sharma* v. *Dev Chandra* (1). In this case, when the respondent, having failed on the finding recorded by the tribunal in his favour, attempted to argue that he could support the decision of the tribunal on other grounds which had been found against him, this Court held that he was not entitled to do so. The provision of the Code of Civil Procedure which permits the respondent to adopt such a course, it was observed, has no application to an appeal filed by special leave under Art. 136. "We have no appeal before us on behalf of the respondent", observed Ghulam Hasan J. "and we are unable to allow that question to be reagitated". Mr. Doabia challenges the correctness of these observations. He relies on s. 116A of the Act which empowers the High Court to exercise its jurisdiction, authority and power, and to follow the same procedure, as would apply to appeals preferred against original decrees passed by a civil court within the local limits of its civil appellate jurisdiction. There is no doubt that, in an ordinary civil appeal, the respondent would be entitled to support the decree under appeal on grounds other than those found by the trial court in his favour. Order 41, rule 22 of the Code of Civil Procedure, which permits the respondent to file cross-objections recognize the respondent's right to support the decree on any of the grounds decided against him by the court below. In the present case no appeal

(1) [1955] 1 S.C.R. 509.

could have been preferred by respondent 1 because she had succeeded in obtaining the declaration that the appellant's election was void and it should therefore be open to her to support the final conclusion of the High Court by contending that the other finding recorded by the High Court which would go to the root of the matter is erroneous. Prima facie there appears to be some force in this contention; but we do not think it necessary to decide this point in the present appeal. Mr. Aggarwal's objection assumes that respondent 1 should have preferred a petition for special leave to appeal against the finding of the High Court on the issue in question; if that be so, the application made by her for leave to urge additional grounds can be converted into a petition for special leave to appeal against the said finding, and the delay made in filing the same can be condoned. As in the case of the preliminary objection raised by respondent 1 against the appellant on the ground of limitation, so in the case of the objection raised by the appellant against respondent 1 in this matter, we would proceed on the basis that we have condoned the delay made by respondent 1 in preferring her petition to this Court for leave to challenge the finding of the High Court that the nomination form of Jai Bhagawan had been properly rejected. That is why we have allowed Mr. Doabia to argue this point before us. We may add that the two points of law raised by the respective objections of both the parties may have to be considered by a larger Bench on a suitable occasion.

On the merits, Mr. Doabia's case is that the returning officer was not justified in rejecting Jai Bhagawan's nomination under s. 36(2)(b) of the Act. The facts on which this contention is raised are no longer in dispute. Mr. Jai Bhagawan who presented his nomination paper to the returning officer on January 29, 1956, was admittedly not an elector in the constituency of Rajaund in the District of Karnal. It is alleged that he was a voter in another constituency. When his nomination paper was presented, he did not produce a copy of the electoral roll of the said constituency or of the relevant part thereof or a certified copy of the

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relevant entries in the said roll; nor did he produce any of these documents on the first of February which was fixed for scrutiny of the nomination papers. When the returning officer noticed that the candidate had not produced the relevant document, he gave him, at his request, two hours' time to produce it. The candidate failed to produce the document within the time allowed and thereupon the returning officer rejected his nomination paper under s. 36(2)(b) of the Act. It is true that the candidate subsequently purported to produce before the officer his affidavit that his name was entered as a voter in the list of voters (No. 1074, Constituency No. 6, Karnal Baneket No. 21, Vol. 10), but the returning officer refused to consider the said affidavit because he had already rejected his nomination paper under s. 36(2)(b). Thus the rejection of the nomination paper was the result of the candidate's failure to produce any of the prescribed documents before the returning officer. On these facts the question which arises for decision is whether the returning officer was justified in rejecting the nomination paper under s. 36(2)(b).

Section 33 of the Act deals with the presentation of nomination papers and prescribes the requirements for valid nomination. It would be relevant to refer to sub-ss. (4) and (5) of this section. Sub-section (4) provides that on the presentation of the nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral roll. The proviso to this sub-section requires the returning officer to permit clerical or technical errors to be corrected. Under this sub-section it would have been open to Jai Bhagawan while presenting his nomination paper to produce one of the prescribed documents to show his electoral roll number on the roll of his constituency. However, his failure to do so does not entail any penalty. Sub-section (5) of s. 33 deals with the stage of the scrutiny of the nomination papers and it provides that where a candidate is an elector of a different constituency, a copy of the electoral

roll of that constituency or the relevant part thereof or a certified copy of the relevant entry of such roll shall, unless it is filed along with the nomination paper, be produced before the returning officer at the time of the scrutiny. It is thus clear that when the stage of scrutiny is reached the returning officer has to be satisfied that the candidate is an elector of a different constituency and for that purpose the statute has provided the mode of proof. Section 36, sub-s. (7) lays down that the certified copies which are required to be produced under s. 33 (5) shall be conclusive evidence of the fact that the person referred to in the relevant entry is an elector of that constituency. In other words, the scheme of the Act appears to be that where a candidate is an elector of a different constituency he has to prove that fact in the manner prescribed and the production of the prescribed copy has to be taken as conclusive evidence of the said fact. This requirement had not been complied with by Jai Bhagawan and the returning officer thought that the said non-compliance with the provisions of s. 33(5) justified him in rejecting the nomination paper under s. 36(2)(b) of the Act. The question is whether this view of the returning officer is right.

Section 36 of the Act deals with the scrutiny of nominations and the object of its provisions as shown by sub-s. (8) is to prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid and to affix it to the notice board of the returning officer. Sub-section (1) of s. 36 provides that on the date fixed for the scrutiny of nominations each candidate and one other person duly authorized may attend at such time and place as the returning officer may appoint and the returning officer is required to give them all reasonable facilities for examining the nomination papers of all candidates which have been duly delivered. Sub-section (2) then deals with the scrutiny of the nomination papers and provides that the returning officer 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 enquiry, if any, as he thinks

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necessary, reject any nomination on any of the grounds mentioned in cls. (a), (b) and (c) of the said sub-section. It is obvious that this enquiry must be summary and cannot be elaborate or prolonged. In fact, sub-s. (5) directs that the returning officer shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riots, by open violence or by causes beyond his control and the proviso to this sub-section adds that in case an objection is made 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. Sub-section (2)(b) deals with cases where there has been a failure to comply with any of the provisions of s. 33 or s. 34. There is no doubt that in the present case there was failure on the part of Jai Bhagawan to comply with s. 33(5) and prima facie s. 36(2)(b) seems to justify the rejection of his nomination paper on that ground. Section 33(5) requires the candidate to supply the prescribed copy and s. 36(2)(b) provides that on his failure to comply with the said requirement his nomination paper is liable to be rejected. In other words, this is a case where the statute requires the candidate to produce the prescribed evidence and provides a penalty for his failure to do so. In such a case it is difficult to appreciate the relevance or validity of the argument that the requirement of s. 33(5) is not mandatory but is directory, because the statute itself has made it clear that the failure to comply with the said requirement leads to the rejection of the nomination paper. Whenever the statute requires a particular act to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence it would be difficult to accept the argument that the failure to comply with the said requirement should lead to any other consequence.

It is, however, urged that the statute itself makes a distinction between defects which are of a substantial character and those which are not of a substantial

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character. This argument is based upon the provisions of s. 36(4) of the Act which provides that the returning officer shall not reject any nomination paper on the ground of any defect "which is not of a substantial character". The failure to produce the requisite copy, it is urged, may amount to a defect but it is not a defect of a substantial character. We are not impressed by this argument. There is no doubt that the essential object of the scrutiny of nomination papers is that the returning officer should be satisfied that the candidate who is not an elector in the constituency in question is in fact an elector of a different constituency. The satisfaction of the returning officer is thus the matter of substance in these proceedings; and if the statute provides the mode in which the returning officer has to be satisfied by the candidate it is that mode which the candidate must adopt. In the present case Jai Bhagawan failed to produce any of the copies prescribed and the returning officer was naturally not satisfied that Jai Bhagawan was an elector of a different constituency. If that in substance was the result of Jai Bhagawan's failure to produce the relevant copy the consequence prescribed by s. 36(2)(b) must inevitably follow. It is only if the returning officer had been satisfied that Jai Bhagawan was an elector of a different constituency that his nomination papers could have been accepted as valid. It is well-settled that the statutory requirements of election law have to be strictly observed. As observed by Mahajan C. J. who delivered the judgment of this Court in *Jagan Nath* v. *Jaswant Singh* (1) ".....an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the court possesses no common law power". The learned Chief Justice has also added that ".....it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law." In this connection we may usefully refer to another decision of this Court in *Rattan Anmol*

(1) [1954] S.C.R. 892, 895, 896.

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Singh v. *Atma Ram* (1). While dealing with the question as to whether the requirements as to attestation were of a technical or of an unsubstantial character, Bose J. observed that "when the law enjoins the observance of a particular formality, it cannot be disregarded and the substance of the thing must be there". We must, therefore, hold that the High Court was right in coming to the conclusion that the nomination paper of Jai Bhagawan had been validly rejected by the returning officer.

Mr. Doabia, however, contends that the view taken by the High Court is purely technical and does not take into account the substance of the matter. This approach, it is said, is inconsistent with the decision of this Court in *Pratap Singh* v. *Shri Krishna Gupta* (2). It is true that in this case Bose J. has disapproved of the tendency of the courts towards technicalities and has observed that "it is the substance that counts and must take precedence over mere form". But in order to appreciate the scope and effect of these observations, it would be necessary to bear in mind the relevant facts and the nature of the point raised before the court for decision in this case. The question raised was whether the failure of the candidate to mention his occupation as required by r. 9(1)(i) rendered his nomination paper invalid and it was answered by the court in the negative. The question arose under the provisions of the C. P. and Berar Municipalities Act II of 1922. It is significant that the decision of this Court rested principally on the provisions of s. 23 of the said Act according to which "Anything done or any proceedings taken under this Act shall not be questioned on account of any..... defect or irregularity in affecting the merits of the case". It was held by this Court that reading r. 9(1)(iii)(c) which directed the supervising officer to examine nomination papers, in the light of s. 23, the court had to see whether the omission to set out a candidate's occupation can be said to affect the merits of the case and on that point there was no doubt that the said failure could not possibly affect the merits of the case. The High Court had, however, taken a

(1) [1955] 1 S.C.R. 481, 488. (2) A.I.R. 1956 S.C. 140, 141.

contrary view and it was in reversing this view that Bose J. disapproved the purely technical approach adopted by the High Court. Where, however, the statute requires specific facts to be proved in a specific way and it also provides for the consequence of non-compliance with the said requirement it would be difficult to resist the application of the penalty clause on the ground that such an application is based on a technical approach. Indeed it was precisely this approach which was adopted by this Court in the case of *Rattan Anmol Singh* v. *Atma Ram* (1).

Mr. Doabia has also relied upon a decision of the Andhra High Court in *Mohan Reddy* v. *Neelagiri Muralidhar Rao* (2) in support of his argument that the failure to produce the prescribed copy cannot justify the rejection of the nomination paper. In our opinion this decision does not assist Mr. Doabia's contention. In this case it was urged before the High Court that the document produced by the party was not a certified copy as required by s. 33 (5) of the Act. This argument was based on the assumption that the certified copy mentioned in s. 33(5) of the Act must satisfy the test prescribed by s. 76 of the Indian Evidence Act. The High Court rejected this argument for two reasons. It held that the certified copy mentioned in s. 33(5) need not necessarily satisfy the test prescribed by s. 76 of the Indian Evidence Act. Alternatively it held, on a consideration of the relevant statutory provisions, that the document in question was in fact and in law a certified copy under s. 76 of the Indian Evidence Act. These points do not arise for our decision in the present appeal. Mr. Doabia, however, relies on certain observations made in the judgment of the High Court and it may be conceded that these observations seem to suggest that according to the High Court the provisions of ss. 33(5) and 36(7) do not preclude proof by other means of the fact that the name of the candidate is on the relevant electoral roll. These observations are clearly *obiter*. Even so we

(1) [1955] 1 S.C.R. 481, 488.
(2) A.I.R. 1958 Andhra Pradesh 485.

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would like to add that they do not correctly represent the effect of the relevant provisions of the Act.

The result is the appeal is allowed, the order passed by the High Court is set aside and the election petition filed by respondent 1 is dismissed with costs throughout.

Appeal allowed.

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September 30.

GHAIO MALL & SONS

v.

THE STATE OF DELHI & OTHERS

(S. R. DAS C. J., N. H. BHAGWATI, B. P. SINHA, K. SUBBA RAO and K. N. WANCHOO JJ.)

Certiorari, Writ of—Rule issued on application—Duty of inferior Courts and Tribunals—If must produce entire records.

The appellant firm, an unsuccessful applicant for a license for vending foreign liquor in New Delhi for the year 1954-1955, moved the High Court under art. 226 of the Constitution for a writ of certiorari quashing the order granting the license to a rival applicant and impleaded the Chief Minister, the Excise Commissioner, the Secretary and the Under Secretary, Finance, of the State of Delhi, as it then was, as parties to the application. Its case in substance was that the applications made for the grant of the licence were never placed before the Chief Commissioner who alone was the competent authority to grant it under Ch. 5, r. 1 of the Delhi Liquor License Rules, 1935, framed under s. 59 of the Punjab Excise Act (Punj. 1 of 1914), as extended to Delhi, and no order granting the license was ever made by him. The said opposite parties respondents, although repeatedly called upon by the High Court to do so, did not produce the entire records and filed evasive affidavits and eventually produced a letter written by the Under Secretary, Finance, to the Excise Commissioner intimating that the Chief Commissioner had made the order for granting the license to the rival applicant and maintained that the order had in fact been made by the Chief Commissioner. The High Court, under a misapprehension of fact and of the true nature and effect of that letter written by the Under Secretary, Finance, to the Excise Commissioner, held that the order had in fact been passed by the Chief Commissioner. The production of the entire records in the