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substantive right and an enactment which does so is not retrospective unless it says so expressly or by necessary intendment.

We are, therefore, of the view that the High Court was right in the view it took, and the orders of refund of excess court fees which it passed were correct in law.

Accordingly, the appeals fail and are dismissed with costs. There will be one set of costs, as the appeals have been consolidated and heard together.

Appeals dismissed.

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BRIJENDRALAL GUPTA AND ANOTHER

v.

JWALAPRASAD AND OTHERS.

(P. B. GAJENDRAGADKAR, K. N. WANCHOO and K. C. DAS GUPTA, JJ.)

Election—Nomination, rejection of—Non-mention of age in nomination paper—If defect of substantial nature—Omission, if amounts to defect—Scrutiny—When enquiry necessary—Electoral Roll—Entry regarding age—How far conclusive—Representation of the People Act, 1951 (43 *of* 1951), *ss.* 33 *and* 36—*Representation of the People Act,* 1950 (43 *of* 1950), *ss.* 16 *and* 19.

Thirteen candicates filed their nomination papers for election to the Legislative Assembly of Madhya Pradesh. The nomination of U was rejected on the ground that he failed to give a declaration as to his age as required in the nomination paper. After the poll the appellants were declared duly elected. Thereupon one of the unsuccessful candidates J filed an elecion petition challenging the election of the appellants, inter alia, on the ground that the nomination of U had been improperly rejected. The Election Tribunal dismissed the petition holding that U made no attempt before the returning officer to remedy the defect in the nomination paper, that the defect could not in law have been remedied at the stage of the scrutiny, that the defect was of a substantial character and that the rejection of the nomination was proper. On appeal the High Court held that at the time of the scrutiny U had offered to supply the omission but the returning officer had refused to allow him to do so, that the returning officer was bound to make a summary enquiry before rejection the nomination, that the non-mention of age in the nomination paper was not a defect of a substantial character and that the rejection of the nomination was improper and consequently allowed the appeal and set aside the election of the appellants:

Held, that the omission to give the declaration as to age in the nomination paper was a defect of substantial character within the meaning of s. 36(4), Representation of the People Act, 1951, and the rejection of the nomination for such an omission was proper.

Rattan Anmol Singh v. *Atma Ram,* [1955] 1 S.C.R. 481, *Pranlal Thakorlal Munshi* v. *Indubhai Bhailabhai Amin,* (1952) 1 E.L.R. 182, *Rup Lal* v. *Jugaraj Singh,* (1958) 15 E.L.R. 484, *Brij Sunder Sharma* v. *Election Tribunal, Jaipur,* (1956) 12 E.L.R. 216, *Balasubrahmanyan* v. *Election Tribunal, Vellore,* (1953) 7 E.L.R. 496 and *Ramayan Shukla* v. *Rajendra Prasad Singh* (1958) 16 E.L.R. 491, referred to.

Durga Shankar Mehta v. *Thakur Raghuraj Singh,* [1955] 1 S.C.R. 267, *Pratap Singh* v. *Sri Krishna Gupta,* A.I.R. 1956 S.C. 140 and *Karnail Singh* v. *Election Tribunal Hissar,* [1954] 10 E.L.R. 189, distinguished.

Pt. Charanjit Lal Ram Sarup v. *Lohri Singh Ram Narain,* A.I.R. 1958 Punj. 433, disapproved.

The word "defect" in s. 36(4) included an omission to specify the details prescribed in the nomination. The distinction drawn in English cases between an "omission" and "inaccurate description" depended upon the specific provisions of the English statutes and did not obtain under the Indian Law.

The Queen v. *Tugwell,* (1868) 3 Q.B. 704 and *Baldwin* v. *Ellis,* (1929) 1 K.B. 273, distinguished.

Cases falling under s. 36(2)(b) must be distinguished from those falling under s. 36(2)(a). Where the nomination paper did not comply with the provisions of s. 33 of the Act the case fell under s. 36(2)(b) and the defective nomination had to be accepted or rejected according as the defect was of an unsubstantial or of a substantial character. In such a case it was not necessary for the returning officer to hold any enquiry.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 151 of 1960.

Appeal by special leave from the judgment and order dated November 23, 1959, of the Madhya Pradesh High Court, Jabalpur, in First Appeal No. 78 of 1959, arising out of the judgment and order dated May 12, 1959, of the Election Tribunal, Raigarh, in Election Petition No. 76/1957.

G. S. Pathak and *G. C. Mathur,* for the appellants.

N. C. Chatterjee, S. K. Kapur, Y. S. Dharamathikaree and *A. G. Ratnaparkhi,* for respondent No. 1.

1960. April 22. The Judgment of the Court was delivered by

GAJENDRAGADKAR, J.—Does the failure of a candidate to specify his age as required by the prescribed form of the nomination paper amount to a defect of a

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substantial character under s. 36(4) of the Representation of the People Act, 43 of 1951 (hereinafter called the Act) ? That is the point of law which arises for our decision in the present appeal. The said point arises in this way. On February 25, 1957, polling took place at the General Election to the Madhya Pradesh Legislative Assembly from the Mamendragarh Double Member Constituency. Thirteen candicates had offered themselves for election either for the general or the reserved seat at the said election. Mr. Brijendralal Gupta, appellant 1 and Thakur Raghubir Singh, appellant 2, were the Congress candidates while respondents 1 and 7 had been adopted by the Praja Socialist Party, respondent 4 and one Sadhuram by the Jan Sangh and the remaining candidates had filed their nominations as independent candidates. Udebhan Tiwari, respondent 5, had omitted to make the declaration regarding his age in his nomination paper. This defect was discovered at the time of the scrutiny of the nomination papers on February 1, 1957, and as a result his nomination paper was rejected by the returning officer. Subsequently respondent 6 withdrew his candidature with the result that eleven candidates took part in the contest. After the polling took place and the votes secured by the contesting candidates were counted appellants 1 and 2 were declared duly elected to the General and the Reserved seat respectively. Thereupon Jwalaprasad, respondent 1, filed an election petition under s. 81 of the Act challenging the election of the appellants on several grounds, one of which was that the nomination of respondent 5 had been improperly rejected. He, therefore, prayed that the election of the appellants should be declared void and he himself should be declared as having been duly elected. This election petition was made over for trial to the Election Tribunal, Raigarh.

On the contentions raised by the parties before it the Election Tribunal framed as many as 49 issues; but in the present appeal we are concerned with only three of them which related to the rejection of the nomination of respondent 5. These three issues were (1) whether the nomination paper of respondent 5 was improperly rejected because of the omission to

fill in the age in the prescribed column, (2) whether at the time of the scrutiny respondent 5 was personally present and brought to the notice of the returning officer that his age was above 25 and the omission is simply accidental, and (3) if so, whether the rejection of the said nomination paper has rendered the whole election void *ab initio* under s. 100(1)(c) of the Act. The Tribunal held that respondent 5 did not make any attempt to rectify the defect in the nomination paper, that the returning officer could not in law have allowed respondent 5 to remedy the said defect at the stage of the scrutiny of the nomination, and that the error in the nomination was a defect of a substantial character with the result that the rejection of the nomination paper was according to the Tribunal proper. In accordance with these findings the Tribunal dismissed the election petition.

Respondent 1 then preferred an appeal against the decision of the Tribunal before the High Court of Madhya Pradesh at Jabalpur under s. 116A of the Act. The High Court has allowed the appeal; it has held that respondent 5 had at the time of the scrutiny offered to supply the omission but the returning officer refused to allow him to do so, that the returning officer was bound to make a summary enquiry before rejecting respondent 5's nomination paper, and that the non-mention of the age in the nomination paper was not a defect of a substantial character. In consequence, according to the High Court, the rejection of respondent 5's nomination paper was improper: that is why the High Court set aside the election of the appellants under s. 100(1)(c) of the Act. It is against this decision of the High Court that the appellants have come to this Court by special leave.

The learned counsel for the appellants wanted to challenge the correctness of the finding recorded by the High Court that respondent 5 offered to correct the defect in his nomination paper by supplying evidence about his age and that the returning officer had refused to give him an opportunity to do so. It is true that on this question the Tribunal had found in favour of the appellants; but, in our opinion, it was open to the High Court to consider the correctness or the

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propriety of the said finding because the jurisdiction of the High Court under s. 116A of the Act is wide enough and is not confined to questions of law. It has been urged before us that the decision on this narrow question of fact depends upon the appreciation of oral evidence led by the parties, and it was suggested that the High Court was not justified in interfering with the conclusion of the Tribunal on that point. We are not impressed by this argument. We would, therefore, deal with the present appeal on the basis that respondent 5 attempted to rectify the omission but was not allowed to do so by the returning officer. Therefore, if the defect in the nomination paper of respondent 5 was not of a substantial character the High Court's decision would be right; on the other hand, if the said defect is of a substantial character then the rejection of respondent 5's nomination paper would be proper and the fact that respondent 5 was not allowed an opportunity to rectify the said omission would make no difference in law. That is how the only point which calls for our decision is whether the omission in question is a substantial defect under s. 36(4) of the Act.

Before dealing with this question it is relevant to refer to ss. 33, 34 and read s. 36. Section 33 provides for the presentation of the nomination paper and prescribes the requirements for a valid nomination. Section 33(1) is important for our purpose. It provides that on or before the date appointed under cl. (a) of s. 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 s. 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer. Section 33(2) lays down that a candidate shall not be deemed to be qualified to be chosen to fill a reserved seat unless his nomination paper contains a declaration prescribed by it. Sub-section (3) deals with the case of a candidate who, having held any office referred to in cl. (f) of s. 7, has been dismissed and a period of five years has not elapsed since the

dismissal, and lays down that the nomination paper of such a person shall be accompanied by a certificate as specified. Sub-section (4) requires that on the presentation of a 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 rolls. The proviso to this sub-section requires the returning officer to permit any clerical or technical error in the nomination paper in regard to the said names or numbers to be corrected, and where necessary, it authorises him to direct that any clerical or printing error in the said entry shall be overlooked. We are not concerned with the remaining two sub-sections of s. 33. Section 34 deals with deposits and provides that a candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits or causes to be deposited the amounts as prescribed in cls. (a), (b) and (c). Section 36 deals with the scrutiny of nominations, authorises the returning officer to hold an enquiry, prescribes the procedure to be followed by him in holding such an enquiry, requires him to endorse his decisions on the points raised in the scrutiny, and to prepare a list of validly nominated candidates, that is to say, whose nominations have been found valid, and to affix it to his notice board. Section 36(1) provides that on the date fixed for the scrutiny of nominations under s. 30, the candidates and the other persons specified in it 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 s. 33. Sub-section (2) deals with the examination of nomination papers by the returning officer, and it provides that the said 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 necessary reject any nomination on any of the following grounds,—(a) that the candidate either is not qualified or is disqualified for being chosen to fill

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the seat under any of the following provisions that may be applicable, viz., Arts. 84, 102, 173 and 191, and Part II of this Act, (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. Sub-section (4) lays down that the returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. Sub-section (5) prescribes the procedure for the scrutiny, and sub-s. (6) requires that the returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and in case of rejection he shall record in writing a brief statement of his reasons for such rejection. Sub-section (7) provides that for the purpose 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 s. 16 of the Representation of the People Act, 1950 (43 of 1950). Sub-section (8) requires the returning officer to prepare a list of validly nominated candidates and affix it to his notice board.

It is clear that s. 33 requires that a nomination paper must be completed in the prescribed form and signed by the candidate and by the elector of the constituency as proposer. The form prescribed in that behalf is Form No. 2B. The relevant portion of the prescribed form reads thus:—

Form 2B.
Nomination Paper
(See rule 4)

Election to the Legislative Assembly of.....(State)

(To be filled in by the proposer)

I hereby nominate.....as a candidate for election from the.....Assembly Constituency.

1. Full name of proposer.....
2. Electoral roll number of proposer.....
3. Name of candidate's ††father/husband.....
4. Full postal address of candidate.....
5. Electoral roll number of candidate.....

Date..... *Signature of proposer.*

(To be filled by the candidate)

I, the above-mentioned candidate, assent to this nomination and hereby declare—

(a) that I have completed..... years of age;

(b) that the symbols I have chosen are in order of preference

(i) .....

(ii) ..... and

(iii) .....

Date..... *Signature of candidate.*

††Strike out one of the alternatives as necessary.

It is common ground that the first part of the nomination paper which has to be filled in by the proposer was in order and the second part was duly signed by the candidate but failed to declare his age as prescribed by (a) above. When the returning officer noticed this omission he made an order rejecting respondent 5's nomination. The brief statement of reasons which the returning officer has recorded shows that he held that the failure of respondent 5 to declare his age cannot be treated as clerical or technical error but is of a substantial nature since declaration as to age was necessary in order to entitle a candidate to be qualified under Art. 173 of the Constitution. The returning officer has also noted that he took the objection *suo moto* and rejected the nomination paper of respondent 5. Thus there is no doubt that respondent 5 omitted to specify his age before he signed his nomination paper and in that sense his nomination paper has not been completed in the prescribed form. The question which arises for our decision is whether respondent 5's omission to specify his age in his nomination paper amounts to a defect, and if yes, whether it is a defect of a substantial character under s. 36(4) of the Act.

On behalf of the appellants it has been conceded before us that the omission in question undoubtedly constitutes failure to comply with the provisions of s. 33, and so it attracts the provisions of s. 36(2)(b) of the Act, but it is urged that the said omission does not amount to a defect under s. 36(4) much less a defect which is of a substantial character. The argument is

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that s. 36(4) can apply only to such cases of non-compliance with s. 33 which can be said to amount to defects and not others, and since the omission in question is not a defect there is no scope for invoking the provisions of that sub-section. In support of this argument reliance has been placed on two English decisions. In *The Queen* v. *Tugwell* (1) Cockburn, C. J., held that the 9 votes whose validity was impeached had to be struck off because they had not complied with s. 32 of the Municipal Corporation Act (5 & 6 Wm. 4, c. 76) and so s. 142 could not cure their defect. The voting papers in question contained the Christian name and the surname of the candidate and his place of abode and nothing more, whereas s. 32 required that they should also contain the description of the candidate. In other words, there was a total omission to supply the description required by s. 32. It was, however, urged that the said omission should be treated as inaccurate description, and so the validity of the impugned votes should be sustained under s. 142 which provides, inter alia, that no inaccurate description of any person shall hinder the full operation of the Act in respect of such person provided that the description of such person is such as to be commonly understood. Cockburn, C.J., held that in the cases of the 9 votes in question they were not dealing with the inaccurate description but a total omission of description which is one of the things required by s. 32, and so s. 142 was inapplicable. It appears that Lush, J., and Hannen, J., agreed with the conclusion of the Chief Justice with some hesitation. To the same effect is the decision in *Baldwin* v. *Ellis* (2). In that case the omission to state in the nomination paper the name of the parish for which the person nominated was qualified as a local government elector was held to be non-compliance with the requirements of rule 4 of the Rural District Councillors Election Order, 1898, and that the said omission could not be cured by s. 13 of the Ballot Act of 1872 since that section applied only to cases where there had been a wrongful admission of a nomination paper and not to those where a nomination paper had been rejected. It was also

(1) (1868) 3 Q.B. 704. (2) (1929)1 K.B. 273.

held that the omission in question cannot be treated as inaccurate description of the person nominated within rule 13 of the Order of 1898 but was a clear non-compliance with the requirements of rule 4 of that Order and as such it was not cured by rule 33. It would thus be seen that in both the decisions the question as to whether the particular omission amounted to an inaccurate description was decided in the light of the specific provision of the statute, and so they cannot sustain the broad argument that in no case can omission be treated as a defect. We may also incidentally point out that Halsbury has read these decisions in the same way (3).

On the other hand the dictionary meaning of the word "defect" is "lack or absence of something essential to completeness", and in that sense omission to specify the age can and would be treated as a defect under s. 36(4). Defect also means "a flaw or a fault or an imperfection"; but whether or not it includes an omission must necessarily depend upon the context in which the word is used. In our opinion, having regard to the context it would be unreasonable to hold that the word "defect" under s. 36(4) excludes all cases of omission to specify the details prescribed by the statute in the nomination paper. We must accordingly reject the appellants' argument that the omission in question is not a defect under s. 36(4).

The next question which we must consider is whether in the case of such an omission it was obligatory on the returning officer to hold an enquiry under s. 36(2) of the Act. The High Court has held that the returning officer ought to have held an enquiry under s. 36(2)(a) and satisfied himself whether or not respondent 5 was eligible to stand for the election. In our opinion the High Court was in error in coming to this conclusion. If the nomination paper of respondent 5 did not comply with the provisions of s. 33 the case fell squarely under s. 36(2)(b) and the only question which can arise in such a case is whether or not the defect arising from the failure to comply with the provisions of s. 33 is of a substantial character or not. If the defect is not of a substantial

(3) Halsbury's "Laws of England", Vol. 14, 3rd Ed., paragraph 172, foot-note (a) on p. 95.

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character the returning officer shall not reject the nomination paper on the ground of the said defect; if, on the other hand, the defect is of a substantial character the returning officer has to reject the nomination paper on the ground of the said defect. That is the effect of the provisions of s. 36(2)(b) and (4) read together. An enquiry which is necessary under s. 36(2)(a) may and can be held for instance in cases where the nomination paper shows the age of the candidate as above 25, but an objection has been raised that in fact he is below 25 and as such incompetent to stand for election under Art. 173 of the Constitution; in other words, the impugned nomination has complied with the provisions of s. 33 and as such does not fall under s. 36(2)(b) at all, nevertheless the validity of the nomination can be challenged on the ground that in fact Art. 173 is not complied with. Cases falling under this class must be distinguished from cases falling under s. 36(2)(b). In the latter class of cases the failure to comply with the provisions of s. 33 being established there is no scope for any enquiry under s. 36(2)(a). Once the alleged non-compliance is proved, the defective nomination falls to be accepted or rejected according as the defect is of an unsubstantial or of a substantial character. Therefore, it is not right to hold that even after the returning officer was satisfied that the omission to specify his age showed that the nomination paper of respondent 5 had not complied with the provisions of s. 33, he should still have held an enquiry under s. 36(2)(a). Non-compliance with the provisions of s. 33 itself would justify the rejection of the nomination paper provided of course that the defect arising from the non-compliance in question is of a substantial character.

That takes us to the question as to whether the failure to specify the age in the nomination paper amounts to a defect of a substantial character under s. 36(4) or not. There is little doubt that the age of the candidate is as important as his identity, and in requiring the candidate to specify his age the prescribed form has given a place of importance to the declaration about the candidate's age. Just as the

nomination paper must show the full name of the candidate and his electoral roll number, and just as the nomination paper must be duly signed by the candidate, so must it contain the declaration by the candidate about his age. It is significant that the statement about the age of the candidate is required to be made by the candidate above his signature and is substantially treated as his declaration in that behalf. That being the requirement of the prescribed nomination form it is difficult to hold that the failure to specify the age does not amount to a defect of a substantial character. The prima facie eligibility of the person to stand as a candidate which depends under Art. 173 of the Constitution, inter alia, on his having completed the age of 25 years is an important matter, and it is in respect of such an important matter that the prescribed form requires the candidate to make the declaration. It would, we think, be unreasonable to hold that the failure to make a declaration on such an important matter is a defect of an unsubstantial character. In this connection, it is relevant to refer to the fact that the declaration as to the symbols which the prescribed form of the nomination paper requires the candidate to make is by the proviso to rule 5 given a subsidiary place. The proviso to rule 5 shows that any non-compliance with the provisions of sub-rule (2) of rule 5 shall not be deemed to be a defect of a substantial character within the meaning of s. 36, sub-s. (4). In other words, this proviso seems to suggest that, according to the rule-making authority, failure to comply with the requirements as to the declaration of symbols as specified in rule 5, sub-rule (2), would have been treated as a defect of a substantial character; that is why the proviso expressly provides to the contrary. This would incidentally show that the failure to specify the age cannot be treated as a defect of an unsubstantial character.

On behalf of the respondents it has, however, been urged before us that the returning officer should not be astute to reject the nomination papers on technical grounds, and that in the present case the returning officer should have looked at the electoral roll and satisfied himself that respondent 5 was duly qualified

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to stand for the election. His age is 48 and it was shown in the electoral roll against his name. It was thus a simple matter of looking at the electoral roll to be satisfied that the omission to specify the age in the nomination form was no more than a technical breach of the requirements of s. 33. We are not impressed by this argument. As we have already observed, in cases of non-compliance with s. 33 which attract the provisions of s. 36(2)(b), there would be no occasion to hold an enquiry under s. 36(2)(a). The only point to consider in such cases would be whether the defects in question are substantial or not; and so the argument that the returning officer could have easily verified the age of respondent 5 is not really material in construing s. 36(4).

In this connection it is relevant to consider the effect of the presumption which is raised under s. 36(7) of the Act and its effect. As we have already noticed, under s. 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 s. 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 apparantly 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 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 s. 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 s. 36(7) merely refers to the status of the person concerned as an elector. Let us consider what this presumption means. An elector under s. 2, sub-s. 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 s. 16 of the Act of 1950".

That takes us to the conditions prescribed by s. 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 resident in a constituency, shall be entitled to be registered in the electoral roll for that constituency. Thus when a presumption is raised under s. 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. Art. 173 of the Constitution which prescribes the qualification for membership of State Legislature provides

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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 s. 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 to 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 Art. 173 of the Constitution; in other words, the requirement about the completion of 25 years of age is outside the presumption under s. 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.

It now remains to consider some of the decisions which were cited before us by the learned counsel for both the parties. In *Rattan Anmol Singh* v. *Atma Ram*(1) this Court has held that the attestation required in the case of proposers and seconders who are not able to write their names is not a technical or unsubstantial matter, and so the failure to comply with the said requirement would amount to a defect of a substantial character. The appellants contend, and with some force, that this decision supports their case that like the attestation required in the case of an illiterate proposer or seconder the declaration as to the

(1) [1955] 1 S.C.R. 481.

age of the candidate is a matter of substantial importance, and failure to comply with the requirement of the prescribed form in that behalf cannot be treated as a defect which is not of a substantial character. In *Pranlal Thakorlal Munshi* v. *Indubhai Bhailabhai Amin* (1), the Election Tribunal, Baroda, has held that the omission by the candidate to mention his age in the nomination paper is a defect of a substantial character and that his nomination paper had been properly rejected on that account. The appellants have naturally relied on this decision in support of their case. The appellants have then referred us to certain decisions where the effect of the failure to specify the electoral roll number or other particulars has been considered, and it has been held that the failure in question amounts to a substantial defect under s. 36(4) of the Act. (Vide: *Rup Lal* v. *Jugraj Singh* (2); *Brij Sundar Sharma* v. *Election Tribunal, Jaipur* (3); *Balasubrahmanyan* v. *Election Tribunal, Vellore* (4); and *Ramayan Shukla* v. *Rajendra Prasad Singh* (5). By parity of reasoning the appellants contend that the failure to mention the age is undoubtedly a substantial defect. It is unnecessary for us to consider the merits of these decisions.

On the other hand the respondents have relied on the decision of this Court in the case of *Durga Shankar Mehta* v. *Thakur Raghuraj Singh* (6). Indeed it appears from the judgment of the High Court under appeal that in coming to its decision the High Court was influenced by certain observations made by Mukherjea, J., as he then was, in dealing with the case of *Durga Shankar* (6). In that case the validity of the election of Vasant Rao, respondent 2, was challenged before the Election Tribunal on the ground that he was not eligible to stand for election since at all material times he was under 25 years of age. It was, however, clear that no objection was taken before the returning officer in respect of the nomination paper of respondent 2, and the said nomination paper had been accepted by the returning officer. The question

(1) (1952) 1 E.L.R. 182.
(2) (1958) 15 E.L.R. 484.
(3) (1956) 12 E.L.R. 216.
(4) (1953) 7 E.L.R. 496.
(5) (1958) 16 E.L.R. 491.
(6) (1955) 1 S.C.R. 267.

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which was raised before this Court was whether the acceptance of respondent 2's nomination paper could be said to be imporper, and this Court held that the acceptance would have been improper 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 the wrong conclusion on the materials placed before him. Since neither of these things had happened in that case, the Court held that the acceptance must be deemed to be a proper acceptance. Even so it was observed that the validity of respondent 2's election could be challenged under s. 100(2)(c) of the Act. With that aspect of the matter we are, however, not concerned in the present appeal. It would thus be clear that in the case of *Durga Shankar* (1) this Court had no occasion to consider the scope and effect of s. 36(2)(b) and (4) of the Act at all, and so the observations made in the judgment on which reliance had been placed by the respondents in support of their plea that an enquiry should have been held in the present case do not really help us. The said observations must, with respect, be read in the context of the dispute which was raised before this Court in that case. The respondents have also relied upon the decision of this Court in *Pratap Singh* v. *Shri Krishna Gupta* (2). In that case this Court has no doubt observed that courts should not adopt a technical attitude in dealing with election matters and that "it is the substance that must count and it must take precedence over mere form"; but in appreciating the effect of these observations it is necessary to bear in mind the points which arose for decision in that case. It was the failure of the candidate to mention his occupation as required by rule 9(1)(i) on which the validity of his nomination was impeached, and in dealing with that point this Court had to consider the effect of s. 23 of the C. P. and Berar Municipalities Act, 2 of 1922, which provided that anything done or any proceeding taken under the said Act shall not be questioned on account

(1) [1955] 1 S.C.R. 267. (2) A.I.R. 1956 S.C. 140,141.

of any defect or irregularity not affecting the merits of the case. So the short point which the Court had to decide was whether the defect in the nomination form affected the merits of the case, and it held that there was no doubt that the said failure could not possibly affect the merits of the case. It was in the context of this legal position that the Court disapproved of the technical attitude adopted by the High Court in dealing with the question of the validity of the impugned nomination. It is significant, however, that even in that case the Court has referred with approval to its earlier decision in the case of *Rattan Ammol Singh* (1). There is another decision of this Court on which the respondents have relied. That is the case of *Karnail Singh* v. *Election Tribunal, Hissar* (2). It appears that in that case the nomination paper of Sher Singh had been rejected on the ground that column 8 in the nomination form was not duly filled up. The defect to which objection was taken was that the name of the sub-division had not been stated under the relevant columns, though on evidence it was quite clear that there was no defect in identifying the candidate and that the candidate himself pointed out to the returning officer the entry of his name in the electoral roll, and this Court held that the defect in question was purely technical and that the Tribunal was perfectly right in holding that the nomination paper had been improperly rejected. It is difficult to see how this decision can assist the respondents at all. As we have already pointed out the omission to make a declaration about the age is, in our opinion, an omission to comply with the substantial requirement prescribed by the form and it cannot be compared with the omission with which this Court was concerned in the case of *Karnail Singh* (2).

There is one more decision on which the respondents have relied. In *Pt. Charanjit Lal Ram Sarup* v. *Lahri Singh Ram Narain* (3) the Punjab High Court was dealing with a case where the nomination paper of a candidate had been rejected not only on account of the omission to state the age in the nomination paper but also for the reason that no evidence was led by the

(1) [1955] 1 S.C.R. 481. (2) (1954) 10 E.L.R. 189.
(3) A.I.R. 1958 Punj. 433.

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candidate concerned or by his representatives or agents to show that the candidate had completed his 25 years though the returning officer had directed that such evidence should be led. It appears that the Election Tribunal also found that on the evidence adduced before it, it could not be determined with any amount of certainty as to whether at the time of filing the nomination paper Mr. Pirthi, the candidate in question, was above or below 25 years of age. That is why it was held that the rejection of the nomination paper could not be said to be improper. One of the points urged before the Punjab High Court was that the omission to state the age was not a defect of a substantial character but the High Court did not feel called upon to give a firm finding on this point, because in the case before it there was not only the impugned omission but there was also no material before the returning officer whereby that omission could be made good. We ought, however, to add that though on the facts proved in that case the election petition should have been dealt with under s. 36(2)(b) and (4) it was apparently considered as falling under s. 36(2)(a) and that, as we have already pointed out, is not the true legal position. Besides there are certain general observations made in the judgment which would indicate that the High Court was inclined to hold that the defect arising from the failure to declare the age in the nomination form was not of a substantial character. It is unnecessary to add that these observations do not correctly represent the effect of s. 36(2)(b) and s. 36(4) of the Act.

In the result the appeal is allowed, the decision of the High Court is set aside and that of the Tribunal restored with costs throughout.

Appeal allowed.