

Shiv Ram Vs. Shiv Charan Singh

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Court : Rajasthan

Decided On : Sep-23-1963

Reported in : AIR1964Raj126

Judge : I.N. Modi and; P.N. Shinghal, JJ.

Acts : [Representation of the People Act, 1951](#) - Sections 36(2), 36(7), 81(1), 100(1), 116A and 123; [Constitution of India](#) - Articles 173, 324 and 326; [Representation of the People Act, 1950](#) - Sections 30; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 107; [Evidence Act, 1872](#) - Sections 18, 32(5), 35 and 145

Appeal No. : Misc. Appeal (Election) No. 48 of 1963

Appellant : Shiv Ram

Respondent : Shiv Charan Singh

Advocate for Def. : M.B.L. Bhargava and; B.S. Sharma, Advs.

Advocate for Pet/Ap. : R.K. Rastogi and; G.M. Lodha, Advs.

Disposition : Appeal dismissed

Judgement :

Modi, J.

1. This appeal is directed against the judgment and order of the Election Tribunal, Jaipur City, dated the 4th April, 1963, by which the election of the appellant, Shri Shiv Ram, to the Legislative Assembly of this State, at the last General Election was declared to be void. Both the appellant and the respondent, along with certain other persons with whom we are not concerned in this appeal, stood as candidates for election to the Rajasthan Legislative Assembly from the Mahuwa Constituency. The appellant was declared successful on the 26th February, 1962, and the respondent was defeated.

Thereupon, the latter filed the election petition out of which this appeal arises on the 11th April, 1962. The sole ground on which this petition was filed was that on the date of the election, the appellant was not qualified to stand for the same as he was of less than the minimum age of 25 years prescribed for this purpose by Article 13 of the Constitution. According to the respondent, the appellant's date of birth was the 10th January, 1941, and consequently it was contended that he had not completed (sic) of 25 years on the date of the election. This petition was opposed by the appellant.

The stand taken by the appellant was and is that his correct date of birth was the 4th August, 1935, and not the 10th January, 1941, and, therefore, he was more than twenty-five years of age at the relevant time. In support of this submission, the appellant further contended that he had been functioning as a coupled member of the Panchayat Samiti Toda Bhim for the last one and a half year, the minimum age prescribed for such membership being twenty-five years according to the Rajasthan Panchayat Samitis and Zila Parishads Act, 1959, and that no body had objected to his election as such co-opted member.

Furthermore, the appellant pleaded that neither the respondent nor any other candidate had raised any objection as respects his age at the time of the scrutiny of the nomination papers, for all these persons knew, that the appellant was more than twenty-five years of age at the material time.

Lastly, the appellant contended that as his age was mentioned as twenty-five years in the Electoral Roll of 1959 and no objection had ever been filed by any one against that entry, it became final under the Registration of Electoral Rules,

1960, and, therefore, the election petition deserved to be dismissed with special costs to the appellant.

As a result of the enquiry which was held by the Election Tribunal, it has been held that the appellant was proved to have been born on the 10th January, 1941, and not on the 4th August, 1935, and, consequently, he had not attained the age of twenty-five years at the date of his election; and that being so, he was not qualified to be chosen to fill a seat in the Legislative Assembly of the State. In this view of the matter, his election was declared to be void. It is this order which is sought to be challenged by the present appeal.

(2) Before we proceed to dispose of the appeal on the merits, we may clear up a small point as to the material point of time at which a candidate for election must have completed the minimum prescribed age of twenty-five years. It seems to have been supposed by everyone before the Election Tribunal that this material point of time was the date of election. This does not appear to us to be correct in view of Clause (a) of Sub-section (2) of Section 36 of the [Representation of the People Act, 1951](#) (Act No. XLIII of 1951, hereinafter referred to as the Act of 1951) which, inter alia provides that a nomination paper may be rejected on the ground that, on the date fixed for the scrutiny of nominations, the candidate does not fulfil the required qualifications including that of age. That being so, the correct point of time with reference to which the eligibility of a candidate to stand for election has to be tested is the possession or otherwise of a qualification or a disqualification with reference to the date fixed for the scrutiny of the nominations.

Having regard to this requirement of law, the correct issue that arises for determination in a case like this was and would be whether the appellant had completed the age of 25 years on the date fixed for the scrutiny of nomination papers and not any other date. But this is really immaterial so far as the present case is concerned because the Tribunal has found that the appellant had not completed the prescribed age of twenty-five years even on the date of the election which fell after the date fixed for the scrutiny of the nomination papers.

3. Be that as it may, the Election Tribunal in coming to the conclusion that the appellant failed to fulfil the minimum qualification as to age seems to have relied

on the following evidence:

(1) Ex. P-7. This is an entry at No. 396 in the Admission Register of what was the Toda Bhim Middle School in 1950, and it is stated therein that the appellant was admitted to the second class on the 5th January, 1950, and his date of birth is mentioned as the 10th January, 1941, and his age at the time of admission as nine years only.

(2) Ex. P-8. This is an entry at No. 685 in connection with the re-admission of the appellant to the same school on the 25th January, 1952. It may be explained that it appears from the entry mentioned in the foregoing paragraph that the appellapt had left this school on the 29th September, 1951. In this, entry also, the date of birth of the appellant has been mentioned as the 10th January, 1941, and his age at the time of re-admission as eleven years.

(3) Ex. P-1. This is a further entry relating to the appellant in the scholars' register of what had then become the Government High School, Toda Bhim, the former middle school having been so upgraded, and the appellant has been referred to as scholar No. 92. In this Entry, as it originally stood, the appellant's date of birth is also mentioned as the 10th January, 1941, and his age at the time of the last admission to this institution was entered as eleven years. This entry, however, came to be corrected by the Headmaster Bhagwat Prasad P. W. 2 in December, 1960 and it bears an endorsement in red ink that the date of his birth was changed to the 4th August, 1935. and his age at the time of admission to 16 years as per orders of the Inspector of Schools, Kar-auli dated 3-12-60 (attached herewith). This endorsement is dated the 8th December, 1960.

(4) Ex. P-6. This is a declaration to the school authorities which is alleged to have been written in the handwriting of the appellant and purports to have been signed by his father Bhonri-lal, and was obviously made in November, 1958, as a step for the appellant being able to sit at his Matriculation Examination in March or April, 1959. The date of birth of the appellant is mentioned in this document as the 10th January, 1941, in English, and there is evidence on the record to show that this was written by some assistant teacher of the school. There is, however, a clear wording in this declaration to indicate that the date of birth of Shivram as

mentioned in the school records was correct.

(5) Ext. P-9. This is an application of the appellant to the Board of Secondary Education, Rajas-than, for permission to appear at the ensuing High School Examination. Below the application which is signed in full by Shivram, there is the certificate of the Headmaster, Government High School, Toda Bhim, Bhagwat Prasad (P. W. 2) that the date of birth of Shiv Ram according to the register of the institution was the 10th January, 1941.

(6) In addition to this, the Tribunal relied on the evidence of Bhagwat Prasad P. W. 2 who worked as Headmaster of the Toda Bhim High School from 1954 to the middle of 1962 and Giriraj Prasad (P. W. 7) who worked as Headmaster of the Toda Bhim Middle School (as it then was) from July, 1949 to October, 1951, and the Inspector of Schools Shri Anant Shanker Mabuwa (P. W. 8). The first two witnesses gave evidence with respect to the date of birth of the appellant that was mentioned in the school records and the Headmaster Bhagwat Prasad also deposed to the correction that had been made by him in accordance with the order of the Inspector of Schools, and the Inspector Anant Shanker was examined as regards the powers of the holder of that office to change or correct the date of birth of a boy who had already taken a High School Examination. According to this witness, the Inspector had no authority to order any correction in such a case.

4. As against this evidence, the appellant placed his reliance on certain oral evidence as to the date of his birth and on the Electoral Rolls of 1957 and 1959 and also his horoscope. The oral evidence has not been believed by the Tribunal and this was not pressed before us. The evidence furnished by the horoscope was also not pressed before us. As regards the Electoral Rolls, the one relating to the year 1957 mentions his age as twenty-one years and the roll of 1959 as twenty-three. But this was corrected as twenty-five years obviously as the appellant wanted to stand as a co-opted member of the Panchayat Samiti, Toda Bhim, and the minimum age qualification required for such candidature was 25 years. The appellant has himself admitted that he was co-opted as a member of the said Panchayat Samiti some time in 1960.

5. This is the broad outline of the whole case as it has been unfolded before us.

6. The main points raised by learned counsel for the appellant are two in number :

(1) The entries in the Electoral rolls of 1957 and 1959 are conclusive to establish that the appellant was at least of 21 years of age on the qualifying date for the electoral roll of 1957 which was said to be the 1st March, 1957, when his name was first put on the Electoral Rolls and admit of no further questioning at any election dispute before a Tribunal or before this Court, and, therefore, the Tribunal fell into a grave error of law in disregarding this position.

(2) Even if this position is not accepted as conclusive, the entries as to age in the Electoral Rolls should be held to be far more reliable than the like entries made in the school registers. In this connection it was also urged before us that the basic entry in the school registers was the entry Ex. P-7 which was made on the 5th January, 1950, and that the other entries were more or less derivative from this earlier entry and were of no independent worth, and the entry Ex. P-7 was not admissible in evidence under Section 35 of the Evidence Act because it was not proved that the Toda Bhim Middle School was a Government school at the relevant time, and that it was in the course of the discharge of his ordinary official duties that the Headmaster had noted down the date of birth in the school register.

7. We propose to deal with the first question first, because if the entries in the Electoral Rolls are conclusive as urged by learned counsel, then no further question can possibly arise, and the age as recorded therein will have to be taken as conclusive as to the dispute placed before us.

8. In support of his submission, learned counsel placed strong reliance on Section 36(7) of the Act of 1951 read with Sections 14 to 30 of the [Representation of the People Act, 1950](#) (Act No. XLIII of 1950, hereinafter referred to as the Act of 1950) as also Articles 324 and 306 of the Constitution.

9. Now, Article 324, broadly speaking provides that the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State shall be vested in an Election Commission. Article 325 then provides that there shall be one general electoral roll for every territorial constituency and no person shall be ineligible for

inclusion in any such roll or claim to be included therein on grounds of religion, race, caste, sex or any of them.

Article 326 then lays down that the election to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage, which in other words means that every person who is a citizen of India and who is not less than twenty-one years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under the Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such, election.

10. Section 15 of the Act of 1950 provides that for every constituency, there shall be an electoral roll which shall be prepared in accordance with the provisions of this Act under the superintendence, direction and control of the Election Commission. Section 16 then lays down the disqualifications for registration in an electoral roll. Section 19 provides that every person who is not less than 21 years of age on the qualifying date and is ordinarily resident in a constituency shall be entitled to be registered in the electoral roll of that constituency. Section 14, earlier defines the phrase 'qualifying date' and Section 20 defines the expression 'ordinarily resident.'

Section 21 then provides that the electoral roll for each constituency shall be prepared in the-prescribed manner by reference to the qualifying date and shall come into force immediately upon its final publication in accordance with the rules made under this Act. This section further provides for the annual revision of the rolls and also for a special revision if that becomes necessary in the opinion of the Election Commission. Section 22 makes a provision for correction of entries-in the electoral rolls.

Section 23 then lays down that any person-whose name is not included in the electoral roll of a constituency may apply for such inclusion in the prescribed manner to the Chief Electoral Officer or the electoral registration officer as the case may be. Section 24 then provides for appeals against such orders. Section 28 gives the Government power to make rules, after consulting the Election

Commission by notification in the official Gazette, inter alia, for the particulars to be entered in the electoral rolls, for the preliminary publication of electoral rolls, for raising claims and objections to the entries made therein, for appointment of authorities to dispose of such claims and objections, for the publication of claims or objections and the manner of hearing them, and the final publication of the electoral rolls and the periodical revision of such rolls.

Section 30 then provides that no Civil Court shall have jurisdiction to entertain or adjudicate upon any question whether any person is or is not entitled to be registered in an electoral roll for a constituency or to question the legality of any action taken by or under the authority of an electoral registration officer, or of any decision given by any authority appointed under this Act. for the revision of any such roll.

Section 31 then provides that if any person gives a false statement or declaration in writing which he either knows or believes to be false or does not believe to be true in connection with the preparation, revision or correction of an electoral roll or the inclusion or exclusion of any entry in or from it, he shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

11. Then we come to Section 36(7) of the Act of 1951, which reads as follows :

'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](#).' Now, before we deal with this section, it is necessary to read Section 32 of this very Act, which is as follows : 'Any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat under the provisions of the Constitution and this Act.' By Section 36(2) it is provided that on the date fixed for the scrutiny of nomination papers, it will be the duty of the Returning Officer to examine the same and he shall decide all objections which may be made thereto on any objection or suo motu after such summary inquiry which he thinks necessary and he may reject any

nomination paper if the candidate (i) is not qualified or (2) is disqualified for being chosen to fill the seat under any of the provisions mentioned therein, and these provisions include Article 173 with which we are concerned.

12. It is in this setting that the question arises whether an objection to the effect that the successful candidate did not possess the requisite age qualification at the date of the nomination can be raised at an election dispute, and further, whether if such an objection is raised, the age entry in the final electoral roll should be accepted to be conclusive and beyond challenge at any such dispute in the sense that he was at least 21 years of age on the qualifying date with reference to which the electoral roll was framed.

13. On giving our most careful and anxious consideration to the whole matter, our answer to the first part of the question posed above is that such an objection could be raised even before the Returning Officer; for Section 36(2) speaks with no uncertain voice on that point when it clearly says that it will be the duty of the Returning Officer on the date fixed for the scrutiny of the nomination papers to decide (where an objection to that effect is raised before him or even otherwise) whether a candidate is not qualified to fill the seat on account of anything contained in Article 173 of the Constitution which inter alia lays down the necessary qualifications for membership as being (i) a citizen of India and (2) as being 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. Now, if such an objection could be raised before the Returning Officer, it can a fortiori be raised before an Election Tribunal. So far we do not see room for any serious controversy.

14. The question, however, is as to the value of the entry in the electoral roll in the matter of age (a) before the Returning Officer and (b) before the Election Tribunal.

15. Now, as we carefully look at the language of Section 36(7), what it lays down is that a certified copy of an entry in an electoral roll of a constituency which is in force at the time of a particular election shall be conclusive evidence of the fact that the individual referred to in that entry is registered as 'an elector' for the constituency. This, in other words means at the highest that his status as an

ejector for that constituency cannot be challenged before the Returning Officer. It is important to note, however, that even this has been made subject to two conditions which are enacted by the section itself. The first is that this presumption will not avail if the candidate is subject to any disqualifications mentioned in Section 16 of the Act of 1950; and the second is that the presumption of conclusiveness, such as it is, will be available only for the purposes of this section, that is, for the purpose of scrutiny of nomination papers with which the Returning Officer is concerned. This, to our mind, leaves the larger question of his eligibility to stand as a candidate more or less untouched. It seems to us, therefore, that the collusiveness of the presumption created by Sub-section (7) of Section 36 of the Act of 1951 does not and cannot extend any farther so as to bar an inquiry, for example, whether a person is a citizen of India or not or whether he has been declared a lunatic by any competent court or he stands disqualified to vote being adjudged guilty of having committed a corrupt practice or any other offence in connection with elections (See Section 16 of the Act of 1950), or whether he has completed 25 years of age on the date of the scrutiny of nomination papers; and objections of this nature can be raised even before the Returning Officer.

It may be of interest to mention here that as Section 36(7) stood before it was amended in 1956, the production of any certified copy of an entry made in an electoral roll of any constituency was to be treated as conclusive evidence of the right of any elector named in that entry to stand for election or to subscribe a nomination paper unless of course it was proved that the candidate was disqualified under the Constitution or the Act, or the proposer or the seconder were similarly disqualified.

The law has since been changed obviously because the Legislature thought that the presumption to be raised under Section 36(7), as it originally stood, was much too wide with the result that the presumption has now been limited to this extent only that a person whose name appears in the electoral rolls of a constituency which is in force at the time of the election is an 'elector' for that constituency and does not extend any farther. Section 32 of the Act of 1951 imposes a duty on the Returning Officer to see that the individual who has offered himself as a candidate for the election is 'qualified' to be chosen to fill the seat,

under the provisions of the Constitution and the Act itself. Reference may as well be made in this connection, apart from Article 173 of the Constitution, to Chapter II of Part II of the Act of 1951 which also lays down certain qualifications of membership to a State Legislature.

16. We should also like to invite attention in this connection to Section 100(1)(a) of the Act of 1951 which omitting its irrelevant part reads as follows :

'.....if the Tribunal is of opinion. --(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under, the Constitution or this Act.the Tribunal shall declare the election of the returned candidate to be void.'

Now, we have already pointed out above that one of the essential qualifications for membership of a legislative assembly which a candidate must fulfil is as respects his age being 25 years at the material time and this is provided under Article 173 of the Constitution.

17. Reading all these provisions together, we are categorically of the view that when the election of a successful candidate is sought to be challenged on the ground of want of qualifying age at the material date as in the present case, Section 36(7) cannot possibly be used for the purpose of barring such an inquiry. Any other view, in our opinion, would render Section 100(1)(a) of the Act of 1951, nay, Article 173 of the Constitution (which prescribes the qualification of age as an essential qualification of a candidate seeking to stand for a. membership of the Legislature of a State) as entirely nugatory, and we are quite clear that we would not be justified in putting such an interpretation on Section 36(7) of the Act of 1951.

18. As for the submission that in any determination of such a question the age of the candidate mentioned in the electoral roll in force must be accepted as conclusive proof of the age mentioned therein or as conclusive proof of the fact that the candidate was at least 21 years of age at the time of his enrolment or rather on the qualifying date, we consider it enough to point out that no such conclusive presumption can arise on the language of Section 36(7) of the Act of 1951. As

we have analysed the section above, that presumption is a limited one and in any case it does not seem to us to relate to proceedings before the Election Tribunal at all.

We should further like to add that if the intention of the Legislature was contrary to what we think it is, there was nothing to prevent it from giving effect to it in an appropriate manner. Thus, for example the provision contained in Section 36(7) could have been cast in a wider mould than is to be found in that section as it exists. That the Legislature has clearly not done. Our conclusion, therefore, is that the question of the qualifying age of a candidate whenever it is sought to be raised before an Election Tribunal would properly fall to be decided on all the materials which may be before it and the entry as to his age in the electoral rolls in force will be just one piece of evidence admissible under Section 35 of the Evidence Act, but according to us, no presumption that it must be accepted as conclusive proof of the age entered therein or that the candidate was at least 21 years of age at the date of his enrolment or on the qualifying date vis-a-vis the electoral roll in force can legitimately attach to it.

19. We may at this stage refer to the decision of their Lordships of the Supreme Court in *Brijendralal v. Jwalaprasad*, AIR 1960 SC 1949 on which learned counsel for the appellant appeared to place great reliance in support of his submission which we have discussed above. That was a case in which a candidate had omitted to specify his age in his nomination paper and the Returning Officer rejected it under Section 36(2)(b) of the Act of 1951. Section 36(2)(b) lays down that a Returning Officer may reject any nomination paper where there has been a failure to comply with any of the provisions contained in Sections 33 and 34 of the said Act and it was found that there was such a breach in this case as the nomination paper altogether failed to specify the candidate's age therein. The question, therefore, arose whether such omission amounted to a defect and if so whether the defect was of a substantial character under Section 36(4) of the Act. Their Lordships held that that was so. '

The next question was whether in the case of such an omission it was obligatory on the Returning Officer to hold an inquiry under Section 36(2) of the Act. The

High Court held that the Returning Officer ought to have held an inquiry under Section 36(2)(a) and satisfied himself whether or not the candidate was eligible to stand for the election. Their Lordships held that the Returning Officer was not required as a matter of law to make an inquiry in the class of case before them where the objection fell squarely within the ambit of Section 36(2)(b) and the only question in such a case that properly arose was whether or not the defect was of a substantial character under Section 36(4).

It was in this context that Section 36(7) of the Act of 1951 came up for consideration before the Supreme Court. The argument relative to this provision was that a certified copy of an entry in the electoral roll must be held to be conclusive evidence of the fact that the person referred to in the entry was an elector for that constituency and therefore all that the Returning Officer need have done was to look at the entry in the electoral roll concerned, and if he had done so, he would have been satisfied that the candidate was more than 25 years of age as the age shown against his name therein was 48 years. Their Lordships in repelling this argument observed thus:

'.....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.' Their Lordships then proceeded to point out that the correct position was 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.' Their Lordships then referred to another aspect of the case and pointed out that the rebuttable presumption which arises under Section 36(7) merely refers to the status of the

person concerned as an elector and that this presumption 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 must be proved that the candidate has completed 25 years of age, at the relevant time, as required by Article 173 of the Constitution.

The conclusion to which their Lordships came on this other aspect of the case was 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, and that there would be persons between 21 and 25 years of age whose names would be registered in the electoral roll and yet they would not be entitled to stand for election to the State Legislature, and, therefore, the requirement about the completion of 25 years of age was outside the presumption of Section 36(7).

20. Learned counsel for the appellant seeks to found an argument on this part of the judgment of their Lordships for his submission that the entry in the electoral roll of 1957 as to the age of the appellant should be held to be conclusive proof to this extent at least that the appellant was 21 years of age in 1957 and therefore he could not have been less than 25 years old at the material time in 1962.

21. We regret that we find ourselves altogether unable to accept this submission as sound. In the first place, the discussion as to the value of the presumption available under Section 36(7) in the latter part of their Lordships' judgment was intended to bring out the fallacy underlying the submission made before them that there was a conclusive presumption as to qualifying age of the respondent based on his entry in the electoral roll because there would always be people between the ages of 21 and 25 who would have a right to be put on the electoral roll but who would merely on that account not be entitled to stand for election to a State Legislature as they may not be of the qualifying age of 25 years at the material time.

In the second place this part of the judgment of their Lordships cannot, if we may say so with respect be read divorced from what they had observed earlier wherein it was clearly held that (1) the presumption under Section 36(7) is capable of being

raised for the purposes of Section 36 only and (2) that '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 (3) that even so it could not arise where it is proved that the candidate suffers from any disqualification. Therefore, reading the judgment of their Lordships as a whole, we have no hesitation in saying that it in no way adversely affects the conclusion at which we have come above, and if we may say so with respect, we have on the other hand felt all the more strengthened in our view by the observations which have fallen from their Lordships as regards the true scope and content of Section 36(7).

22. Our attention was next invited 'To the provisions of Section 30 of the Act of 1950, and it was urged that by virtue of the bar contained in that section, neither the Election Tribunal nor we have any jurisdiction to decide any question as to the age of the appellant. We have given this objection our careful consideration and have come to the conclusion that it has no substance. In the first place, neither the Election Tribunal trying an election dispute as a tribunal of original jurisdiction nor this Court while hearing an appeal from its decision, can be said to be a Civil Court as such. In the second place, the question before us taken in its essence is not whether any person was or was not entitled to be registered in any electoral roll for a constituency or as to the legality of any action taken by or under the authority of an election registration officer or of any decision given by any authority appointed under this Act for the revision of any such roll within the meaning of Section 30. But the question is whether the appellant was qualified to stand for the election, inasmuch as it is alleged that he lacked the minimum qualifying age of 25 years for such a purpose as required by Article 173 of the Constitution. We have no hesitation in saying that Section 30 of the Act of 1950 has no relevance in a matter of this kind, and, therefore, we overrule this objection also.

23. The next case on which learned counsel relied was *B.M. Ramaswamy v. B. M. Krishnamurthy*, reported at page 511 of the *Doabia's Election Cases*, 1962. This was a case under the *Mysore Village Panchayats and Local Boards Act, 1959* (Mysore Act No. 10 of 1959). The contest in this case was that the inclusion of the name of the successful candidate in the electoral roll of the Mysore Legislative Assembly which was deemed to be the list of voters for the Panchayat

constituency was illegal as the procedure laid down in the rules for such inclusion had not been followed at all. It was held that the inclusion of the name of the candidate was illegal but under Section 30 of the [Representation of the People Act, 1950](#), no civil Court had jurisdiction to question the legality of any action taken by or under the authority of the electoral registration officer and consequently the question could not be agitated before the Munsiff in whose Court the election petition had been filed or before the High Court in ' appeal. This case is entirely distinguishable from the case before us.

As it appears from the judgment of their Lordships of the Supreme Court, the Mysore Act proceeded on the basis that the voters' list was final for the purpose of an election, as Section 10 of the Act laid down that every person whose name is in the list of voters of any Panchayat constituency shall, unless disqualified under this Act or under any other relevant law for the time being in force, be qualified to be elected as a member of the Panchayat. The disqualifications were laid down in Section 11 of the Act, and it was no one's case that the candidate suffered from any of these disqualifications. Apart from that, it was found that there was no provision in the Act which could enable the Munsiff or the High Court to set aside the election on the ground that though the name of the candidate was in the list, it had been included therein illegally. So far as the present case is concerned, the contest is on an entirely different and indeed a fundamental plane and that is that the successful candidate here lacked one of the basic qualifications laid down in the Constitution vide Article 173 and a matter like this could even be raised before the Returning Officer under Section 36(2)(a), and further it has been made a definite ground for the avoidance of the election under Section 100(1)(a) of the Act of 1951. We are, therefore, definitely of the opinion that this case can furnish no help whatsoever to the appellant.

24. The conclusion, therefore, to which we come is that there is nothing in Section 36(7) of the Act of 1951 or Section 30 of the Act of 1950 or in any other provisions of the said Acts which compels us to hold that the age of the appellant as mentioned in the electoral roll of 1957 or of 1959 should be accepted to be conclusive at an election dispute where it is challenged that the said candidate was not qualified to stand at the election because he lacked one of the essential

conditions provided under Article 173 of the Constitution, or, in other words, that he was less than 25 years of age at the material time. This objection, therefore, fails and is hereby rejected.

25. It is next submitted that even if we come to the conclusion to which we have, an entry in an electoral roll as to age should be accepted as far more reliable as a piece of evidence bearing on the question of age and should be preferred to the entry contained in the school registers. It was further argued in that connection that the primary entry in this behalf was the entry of 1950 Ex. P-7 and the other entries were only derived therefrom, and, therefore, they were of no independent worth and so far as the first entry is concerned, it is inadmissible in evidence under Section 35 of the Evidence Act inasmuch as there is nothing to show that the Toda Bhim School was a Government school or that there were any rules or regulations under which the Headmaster was required to record the ages of the students who came to seek admission in the school at the time of their admission.

26. We may state at the very outset that it is not disputed before us that, at the time this dispute arose, this school was a Government school. It is also conceded that it was a Government school when it was raised to the status of a High School in 1954. But what is contended is that from that it is not possible to conclude that it was a Government school in 1950 when the appellant was admitted therein.

We are not impressed by this argument. If it was the case of the appellant that this was not a Government school (as it later undoubtedly was) at the time the appellant sought admission therein in January, 1950, it was for him to have raised a controversy on this point in an appropriate manner at the proper stage, for this was a question of pure fact. Not having been so raised, we are not prepared to allow him to take advantage of a contention like this at this stage. We, therefore, accept that this was a Government school.

Even so, it has to be conceded that it has not been shown to us that there were any statutory rules in force according to which the headmasters of such schools were required in the discharge of their official duty to record the ages of the students who sought admission therein. But in our opinion, this argument, taken at its highest, only comes to this that such entries would not by themselves become

admissible under Section 35 of the Evidence Act, but no more. Learned counsel seems to forget that where Section 35 properly comes into play, an entry made by a public servant in any public or official book in the discharge of his official duty becomes relevant by itself, and no other proof of such entry is required as a matter of law by our Evidence Act, but this, does not exclude the possibility that such an entry may become admissible otherwise if it is properly proved to have been made by a person ordinarily competent to make it. The entry Ex. 7 does not stand by itself. It has been proved by the person who made it, that is, Headmaster Giriraj Prasad P. W. 7. He was the headmaster of the Toda Bhim Middle School as it then was from 4th July, 1949, to the 14th October, 1951. The further evidence of this witness is that when a boy was admitted in his school, an admission form was given to him which was required to be filled in by his father or guardian and that entries in the admission register were made from that admission form wherein the father or guardian was also required to give the age and date of birth of the boy sought to be admitted.

This witness has further clearly stated that the entry Ex. P-7 in the register Ex. P-10 was in his handwriting and that he had made it on the 5th January, 1950, when the appellant was admitted in his school and that the particulars of the entry were taken from the admission form which had been filled in by the father of the appellant. Unfortunately the admission form has not been produced in this case because it is said that it had been eaten away by white ants. Now this explanation may be true. But even if it is not and the admission form is not available at this date, we see no cogent reason why we should disbelieve the testimony of this witness in so far as what he has stated above. Nothing has been brought out in the cross-examination of this witness to show that he had any animus against the appellant. Nor are we able to conceive of any such possibility. A strong attack was made on the evidence of this witness because in his cross-examination he stated that the admission form contained the signatures of the appellant's father with which he was acquainted. But it further transpired that he had no opportunity of seeing the signatures of the appellant's father either before or after this admission form was handed over to the witness.

27. Now, it seems to us that this witness had foolishly indulged in exaggeration when he said that he was acquainted with the signatures of the appellant's father. But that apart, we see no good reason why we should hold the evidence of this witness with reference to the record prepared by him, namely, Ex. P-7 inadmissible in evidence and further hold it to be unworthy of belief.

28. The witness has further stated in his examination-in-chief that he had checked the date of birth of the appellant as entered in the admission form with his physical appearance and that might well have been so because in the admission register not only his date of birth is given but it is further mentioned that the boy was nine years of age at the time. Let it be also noted that the appellant was seeking admission to the second class in the school. Now if the appellant was born in 1935 as he says, he would certainly have been about 15 years of age at that time and the difference between the two ages would be so great and indeed so remarkable at the particular stage that we have no doubt that if the appellant was anywhere near the age of 14 or 15, the headmaster might very well have subjected him or his guardian to further questioning in this regard. But as that did not require to be done, we feel persuaded to accept that the age tallied with his physical appearance, and if that was so, he could not have been 15 years of age at that time.

29. It may be also pointed out at this place that it is admitted that the appellant's father was not alive when this dispute arose having died some time in 1959, and that being so, we are of opinion that any statement made by him to the school authorities as to the date of birth of the appellant or as to his age would be relevant under Sub-section (5) of Section 32 of the Evidence Act. There is abundant authority for the proposition that the statement of a deceased competent person is admissible to prove a person's date of birth with whom the deceased may be connected by a special tie of relationship by blood, marriage or adoption, since a question as to the existence of such relationship also includes the question as to the commencement of that relationship, and, therefore, such statements as to age, minority or majority or the order in which the members of the family were born have been held to be admissible under Sub-section (5) or Sub-section (6) of Section 32 of the Evidence Act as the case may be. See *Mt. Naima Khatun v.*

Basant Singh, AIR 1934 All 406 and Abdus Subhan v. Nusrat Ali, AIR 1937 Oudh 170. In this view of the law, we have no hesitation in holding that the statement contained in the admission register of the school as to the appellant's age based as it must have been on information supplied to the school authorities by the father of the appellant who is dead is clearly admissible in evidence under Section 32(5) of the Evidence Act, and there is no substance in the contention of learned counsel for the appellant that the entry Ex. 7 must be rejected as inadmissible.

30. The only other question is about the weight that we should attach to such an entry and as to that matter we are also inclined to think that the entry is of considerable value as it was based on information supplied by the father of the appellant and there can be no two opinions that he was the best person to know what the date of birth of the appellant was. We have stated above that we are disposed to believe that the date of birth contained in Ex. P-7 was based on information which must have been supplied in the normal course of things by the father of the appellant to the school authorities. That this was so clearly appears from the affidavit Ex. P-4 which was admittedly filed by the appellant when he wanted his age to be corrected in the school records in 1960. The relevant paragraph is No. 2 and reads as follows :-

^eSa 'kiFkiwoZd c;ku djrk gwa fdesjs firkth us vui<+ gksus ds dkj.k esjh vk;q Ldwy esa xyr ntZ dj k nh gS A**

Rendered in English, the paragraph would read as follows : -

'I state on oath that my father by reason of his illiteracy had got my age wrongly recorded in the school.'

In the next paragraph of this affidavit, the appellant stated that his correct date of birth was Sawan Sudi 5 Smt. 1992 corresponding to the 4th August, 1935, and that he had a horoscope which corroborated this, A strenuous argument was raised before us that this admission of the appellant that his age had been recorded by his father in the school records by reason of his illiteracy should be taken as a whole or not at all. In support of this proposition, we were referred to a number of decisions among which the following may be mentioned : Jwala Das v.

Pir Sant Das, AIR 1930 PC 245, Hanumant v. State of Madhya Pradesh, AIR 1952 SC 343, R. E. Attaullah v. Mrs. J. Attaullah, AIR 1953 Cal 530 and Ishar Singh v. Gajadhar Prosad, AIR 1957 Pat 174.

32. Now if we may say so, with all respect, we should like to point out that all that these cases rightly understood lay down is that an admission must be taken into consideration as a whole and not piecemeal. For, there is high authority for holding that where an admission consists of distinct and separate matters, there is no reason why an admission relating to one matter should not be relied on without reference to the admission relating to other matters. See the decision of the Supreme Court in Karnail Singh v. State of Punjab, AIR 1954 SC 204. There is also ample authority for the view that though the entire statement containing the admission must be put in and considered, the Court is not bound to believe or disbelieve the statement as a whole, and, where there is other evidence in the case, it may in the light of that evidence believe one part of the statement and disbelieve the other, though it must be added that where there is no other evidence in the case, or the other evidence is untrustworthy, and the only material for decision is the admission, then such admission must be accepted or rejected as a whole. See Rajah Nilmoney Singh Deo v. Ramanoograh, 7 Suth WR 29, Mg. Shee Myin v. Ma Naing, AIR 1923 Rang 24 and Balmakund v. Emperor, AIR 1931 All I.

33. Accepting this as the correct and comprehensive exposition of the law on the subject, we are definitely of the opinion that it can certainly be predicated of this case that there is other evidence on the record to show that the age and the date of birth which are to be found in Ex. P-7 were recorded in accordance with the information supplied to the school authorities by the father of the appellant. We have already discussed the evidence of Giriraj Prasad P. W. 7 in this connection who was the headmaster of the school at the relevant time. This is, therefore, not a case where there is no other evidence than that furnished by the admission contained in the affidavit Ex. P-4. That being so, it is open to us to accept if we feel so reasonably persuaded to do, that the admission contained in paragraph two of the affidavit which is to the effect that the information as to age had been supplied by the appellant's father to the headmaster of the school, deserves to be believed

and on a consideration of the entire evidence which has been produced on the point, we do so believe it.

34. The next question to consider in this connection is whether the appellant's father was an illiterate person, as he claims he was in this affidavit. This version is falsified by a witness of the appellant himself R. W. 3 Moolchand who, on his own showing, is a very close relation of his. This witness has stated that Bhonrilal was quite literate, that he knew Bhonrilal's handwriting and that he used to receive letters from him. This is more than enough to show that the appellant's version that his father was illiterate, and, that was why he gave an incorrect date of the appellant's birth to the school authorities is a sheer falsehood and that collapses to the ground completely.

On the other hand, it stands proved out of the mouth of this witness that the appellant's father was a fairly literate person. Interestingly enough, when the appellant examined himself at the trial, he had the audacity to say in his cross-examination that he had come to know of his date of birth being the 4th August, 1935, from his father. This clearly belies the statement made by the appellant in his affidavit that his father had got a wrong date of birth recorded in the school registers when he was admitted into the Toda Bhim Middle School in 1950. One might have thought that the appellant had perhaps derived his knowledge about his true date of birth from his horoscope Ex. D-1 in which the date of birth has been recorded as the 10th January, 1941. This was also a piece of evidence which was relied on by the appellant in his affidavit when he applied for the correction of his date of birth in the school records. It was conceded before us, however, that this horoscope was prepared some three or four years prior to the present dispute. No value, therefore, can possibly be attached to it.

35. It may be conceded that once the age and date of birth had come to be recorded in Ex. P-7 in January, 1950, when the appellant was admitted to the Toda Bhim Middle School, the subsequent entry Ex. P-8 which was made on the 25th January, 1952, when he was readmitted to the school and the uncorrected entry Ex. 1 which was made in the scholar's register in 1954 when the school was raised to the status of a High School was more or less derived from this and there

need not have arisen any specific occasion for this entry to be re-checked.

We are unable to think, however, that the same thing could be said about Ex. P-6 and Ex. P-9 which came into existence when the appellant was preparing to appear at his High School Examination. It is admitted that it was necessary for a declaration to be filed on behalf of the guardian of the appellant as to his correct date of birth before he could be allowed to appear at the said examination. This declaration was filed in November, 1958, and the appellant actually sat at the High School Examination in 1959, at which unfortunately he failed. But be that as it may the declaration Ex. P-6 filed on behalf of the appellant as well as the certificate of the headmaster which have been duly proved by the headmaster Bhagwat Prasad P. W. 2, consistently with Ex. P-7, mention the appellant's date of birth as the 10th January, 1941. The appellant has not denied that this declaration was put in by him, though there is some conflicting evidence whether it was signed by his father Bhonrilal or not. That, in our opinion, does not matter. For the important point to note is that the appellant himself, if what he now wants us to accept was his correct date of birth, must have then been between 23 and 24 years of age, fully grown up and able to see that a wholly wrong date of birth had been given in his case. No objection whatsoever was raised by him even at that stage and that part of the endorsement which says that his date of birth as recorded in the High School was correct is proved to have been filed in the school in his own handwriting. See the evidence of Bhagwat Prasad P. W. 2 in this connection. It is thus not a case of a solitary entry in a school register but there are a number of entries which are consistent between themselves and about the source of which also there can be no doubt, as on the appellant's own admission, these entries happened to be made on the information supplied by his father. He undoubtedly says that his father was illiterate but this defence seems to be a pure myth as we have discussed above.

36. At this stage, we may as well dispose of one other objection which was strenuously pressed before us on behalf of the appellant, and that objection is that the Tribunal should not have made-use of, much less placed reliance on, Exs. 4, 6, 7 and 8 as these documents had not been put to the appellant in his cross-examination by the respondent, and that for the same reason we should ignore

these documents altogether. Support for this submission was sought on certain observations of the Privy Council in *Bal Gangadhar Tilak v. Shrinivas Pandit*, AIR 1915 PC 7 which appear at page 11 of the report, and are to the following effect :-

'But they must also record their dissent from. the view that the use made of these documents in this case was justified by law. On general principles it would appear to be sound that if a witness is under cross-examination on oath he should be given the opportunity, if documents are to be used against him, to tender his explanation and to clear up the particular point of ambiguity or dispute. This is a general, salutary, and intelligible rule, and where a witness's reputation and character are at stake the duty of enforcing this rule would appear to be singularly clear.

Fortunately the law of India pronounces no uncertain sound upon the same matter. By Section 145 of the Indian [Evidence Act, 1872](#), it is provided that 'A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must be called to those parts of it which are to be used for the purpose of contradicting him.'

37. Now, these observations were made by their Lordships in a case where statements of witnesses recorded in a criminal case were imported in bulk, and were used, in a civil suit (in which the appeal was carried to the Privy Council) for the purpose of contradicting or discounting the evidence of the witnesses given in the civil suit. Their Lordships were of the view that the witnesses, if their testimony in Court was sought to be contradicted with what they had stated earlier in the criminal action, must have been given the opportunity of tendering their explanation and clearing up the points of ambiguity or dispute.

The question is whether the principle laid down by their Lordships which, if we may say so with utmost deference, is perfectly sound, is attracted in the present case. Our answer is that it is not. We say so because the documents on which the respondent relies, namely, Exs. 4, 6, 7 and 8 are all admitted documents. In fact it was and is the appellant's case at the trial that these entries had been made in

the school records at the instance of his father but that they were made incorrectly because, as he seeks to make out, his father was illiterate. It should be obvious, therefore, that subject to the explanation which the appellant gave, he himself admitted these entries to have been made at the instance of his father and no question arose of contradicting him so far as the factum or the origin of the entries made in the school records was concerned. It would have indeed been another matter if the appellant's case was that these entries had not been made at the instance of his father but were entirely unauthorised or made at the instance of some one else in which case it might have well become necessary to confront him with them. Besides, the particular allegation in the affidavit E.x. P-4 to the effect that his father was illiterate and had therefore committed the mistake that he did was also his case at the trial. In these circumstances, we are clearly of the view that there was no occasion in this case of contradicting the appellant with his previous statements which, as we have analysed, were in line with what his case at the trial was. The position, therefore, is that Section 145 of the Evidence Act was not attracted into application in this case at all. We may as well point out that the appellant himself had referred to some of these documents in his examination-in-chief and it could not possibly be said that his attention was not drawn to them.

38. We should also like to add with reference to the appellant's affidavit Ex. P-4 that it contains an admission by him on his own showing that his age in the school records had been got entered by his father (though his further case is that he fell into a mistake in doing so because of his illiteracy) and that being so the rule as to confrontation does not and should not in our judgment apply to admissions in so far as they are relevant facts in themselves. As admissions, they carry an inherent evidentiary value of their own, and it is indeed well settled law that if a party is proved or admits to have made an admission, it is his duty to explain it and not for the other party to call him to explain the same and the doctrine of confrontation in such a case would be obviously conflicting with the rule aforementioned. See *Lal Singh v. Guru Granth Sahib*, AIR 1951 Pepsu 101, *Ram Kishun v. Kausal Kishore*, AIR 1958 Pat 294 and *Narayan v. Gopal*, AIR 1960 SC 100. In these circumstances, we see no force in the plea that these documents cannot be made use of because of any breach of the provisions of Section 145 of the Evidence Act,

and, in any case, we are altogether unable to hold that any prejudice could have been possibly caused to the appellant by his attention not having been called to the statements contained therein. We, therefore, overrule this objection.

39. A word about the correction in the school entry Ex. P-1 may not be out of place here. We have it from headmaster Bhagwat Prasad that he had made the correction in the columns therein for date of birth and age at the date of first admission to the school, from the 10th January, 1941, and 11 years respectively to 4th August, 1935, and 16 years in accordance with the orders of the Inspector of Schools dated the 3rd December, 1960. Exs. P-2, P-3, P-4 and P-5 are the relevant documents in that connection. Ex. P-2 is the certified copy of the application made by the appellant to the Inspector of Schools, Karaulil.

In this application, the appellant stated that he had received his education in the High School at Toda Bhim whereat his date of birth had been wrongly recorded by his father, as he was illiterate, and that he was born in Section 1992 according to which his age at the time of the application was 25 years and two months. He also stated that he had obtained a certificate from the Munsiff-Magistrate and from the Gram Panchayat about his date of birth, and, therefore, he prayed that the necessary correction be made in the school record.

It is interesting to note that in this application the appellant did not mention his exact date of birth though he did mention his age as 25 years and two months nor did he mention that he had sat at the High School Examination in 1959. The next document is Ex. P-3. This is a certificate from the Munsiff-Magistrate, Hindaun, who certified that on the basis of a medical certificate obtained from the civil hospital at Hindaun on the 31st October, 1960, but which has not been brought on this record, the appellant's age was 25 years. We do not understand what business the Munsiff-Magistrate had to give this certificate. Ex. P-4 is the affidavit which we have already discussed above.

The last document is Ex. P-5. This is a certificate dated the 30th October, 1960, from the Sar Panch, Gram Panchayat Board, Khedi (Toda Bhim) that he had seen the horoscope of the appellant and his date of birth as recorded therein was Sawan Vadi 5 Smt. 1992 and therefore his age was 25 years and three months.

Below this certificate is an application of the appellant filed before the Sar Panch that his age had been wrongly recorded in the school and that he wanted to have it corrected, and, therefore, he was desirous of his true date of birth being testified to.

It may be pointed out that the horoscope which was presented by the appellant before the Gram Panchayat Khedi is the very horoscope which was produced before the Tribunal, and we have had occasion in the foregoing part of this judgment to point out that his learned counsel candidly conceded, and, in our opinion, rightly that he could not press his case on anything contained therein as it was a document which was prepared some three or four years before the present litigation began. It was on this material that the Inspector ordered the correction of the entries in the scholar's register of the Toda Bhim High School and which correction was actually made on the 3rd December, 1960 by Headmaster Bhagwat Pra-sad P. W. 2.

It has not been shown to us how the Inspector was competent to order the correction, leave alone the question whether there was any solid material for ordering the same. The Inspector Anant Shankar has come into the witness-box as P. W. 8 and he has unequivocally stated that the date of birth of a boy who had appeared at the High School Examination could be changed by the Board only after the recommendation of the Director of Education, and that the Inspector of School had no power to order any correction in such a case. And it clearly seems to us that such a correction would not have been ordered if the fact of his having appeared at the High School examination had not been suppressed by the appellant in his application to the Inspector for correction of the entries in question in the school records. Under the circumstances, we have no manner of hesitation in saying that this correction was entirely unauthorised and no value can be attached to it.

40. As against all this evidence, which we have fully analysed above, we are asked to hold on behalf of the appellant that we should give preference to the entry of age as disclosed in the rolls of 1957 and 1959 which, it is claimed were made according to the provisions contained in the Act of 1950 to which we have

made detailed reference above. As we have already stated, the appellant's age has been mentioned in the electoral roll of 1957 as 21 years, and in the electoral roll of 1959 as 23 years which latter entry was corrected as 25 years in 1960 for the purposes of the election to the Panchayat Samiti Toda Bhim. We have already rejected the appellant's contention that these entries must be accepted as conclusive on the question of the appellant's age at an election dispute.

41. The further question that remains to consider is what value we should attach to these rolls. It may be mentioned at this place that the respondent made an endeavour to summon both the birth and death registers of village I5opalpura (Tehsil Toda Bhim), where the appellant admit tedly resided, for the years 1931 to 1942. It was disclosed, however, by P. W. 1 Bhorl Lal Patri that these registers had been destroyed and that after the establishment of Panchayats, even the maintenance of such registers has been discontinued. Speaking as a general rule, we should like to point out that an entry in a birth and/or death register as to age would be excellent evidence in that connection, and may have to be preferred to entries in the records of educational institutions. This evidence is therefore denied to us.

42. Learned counsel, however, contends that in the absence of such evidence we should discard the statements of age in the school registers because it has been held in a number of cases in our country that it is a common practice to make out a person entering a school to be younger in age than he is, in order not to be too old for Government employment when his education is completed and for other reasons. Our attention has been invited in support of this view to *Mohammad Hassan v. Sabdar Mirza*, AIR 1933 Lab.601, *Janaki Nath Roy v. Jyotish Chandra*, AIR 1941 Cal 41 and *Sri Sita Ram v. D. M. Pilibhit*, 1957, All LJ 383 and *Abdul Majeed v. Bhargavan*, AIR 1963 Kerala 18, and doubtless there may be some other cases to the same effect.

43. Now, what we should like to say in connection with this matter is that, in some of these cases, the entries in the school registers have not been believed because they stood opposed to the entries in the birth registers. But as we have already pointed out above, the birth registers are certainly to be preferred, as a rule, in

such cases where they are available. The same rule cannot apply where the evidence furnished by the birth registers is not available at all. In some other cases it has been held that the statements in the school register are not of much evidentiary value in the absence of the evidence to show the source from which such entries are derived. There is something to be said for this view also but the entries with which we are concerned here are definitely proved to have been made on the basis of the information supplied by the appellant's own father to the school authorities, as we have the appellant's clear admission on that point which there is no reason to doubt. Apart from that, we wish to point out, with all respect, that no such rule of thumb can be laid down that entries of age in school registers have little or no evidentiary value. Each case must depend upon its own facts and circumstances and must be decided on the net balance of the various counts of proof offered therein.

44. The question, therefore, boils down to this as to whether on the facts and circumstances of the present case, the entries in the electoral rolls of 1957 and 1959 deserve greater weight than the entries in the registers of the Government School in Toda Bhim to which we have made a detailed reference above.

So far as the entry of age in the electoral roll of 1959 is concerned, it originally showed the appellant's age to be 23 years and that was got corrected by him as 25 years. This, in our opinion, was clearly a preparatory step to enable the appellant to stand for the membership of the Panchayat Samiti of Toda Bhim for which the minimum qualification as to age was 25 years. The entry betrays a motive behind it, and does not inspire confidence, in the same manner as the correction which had been successfully manipulated; by the appellant as to his age and date of birth in his school register of the Toda Bhim High School in 1960.

Similarly, the entry of age in the electoral roll of 1957 also does not inspire any confidence in our minds. The year 1957 was the year of the second General Election. We also have it that the father of the appellant Bhonrilal was a member of the Legislative Assembly of this State before his death in 1959. These facts furnish obvious reasons why the appellant might have managed to get his name recorded in the electoral roll of 1957 representing himself to be 21 years of age.

As we have already pointed out above, no finality can attach to these entries as regards the qualifying age of a candidate at an election and they are at best a piece of prima facie evidence which are liable to be rebutted. Having regard to the evidence led on the opposite side, we are definitely in agreement with the Election Tribunal that these entries have been successfully rebutted in the present case.

45. We cannot help stating here further that entries in electoral rolls as to age cannot be accepted as possessing a larger and an inflated evidentiary value before the Election Tribunal or before this Court than should rightly attach to them. The preparation of (sic) electoral rules 1956 under which the entry of 1957 should have been made (or for that matter the relevant Rules of 1960) contain no provisions as to how these should be checked up. These entries, it is common knowledge, are made, as a rule, mostly on the statements of persons concerned without their being asked to produce any particular proof of them. It may be even said that in many a case they are in the nature of admissions in a man's own favour. Again, sometimes they may come to be made even at the instance of a relative of the family. And it may be permissible to point out that as it has some times been said about entries as to age in school records that they not infrequently betray a tendency on the part of those responsible for them to understate them for reasons of early eligibility for Government service or the like, we are disposed to think that entries in electoral rolls may equally frequently, if not more, be motivated by a desire to overstate them for reasons not far to seek for example to support the candidature of a friend or relation or to serve as a foundation for one's own candidature. Such a tendency may not unreasonably be more marked in marginal cases, that is, of electors who may be below 21 years of age. It is true that a right of appeal is provided under the rules for correction in such cases at the instance of an aggrieved party but the entries are legion and at the stage at which they are made, it is too much to expect that any objection is likely to be raised about them save perhaps in, a rare case.

46. Then as to the stage of nomination an objection can certainly be raised that the candidate concerned is less than 25 years of age in the case of a person offering himself as a candidate for Parliament or for a Legislative Assembly. But the Returning Officer is expected at best to make a summary enquiry into such a

matter and no elaborate investigation is permitted or feasible and for a very good reason because if full-fledged enquiries are permitted in a matter of this kind at that stage, the election may have to be interminably protracted in a country with a vast population like ours. And that perhaps explains the principle behind the presumption enshrined in Section 36(7) of the Act of 1951. But that apart, such a presumption is a limited one and enures only for that stage, and is rightly rebuttable at an election dispute which may be raised after the election is held. Entirely different considerations would arise at the post-election stage, the more so, as under our system, an election can be challenged on the ground of want of qualifying age at the time of election or more precisely at the time of scrutiny of nominations for such elections. Then the matter is bound to come up for a full-fledged inquiry and we are categorically of the view that at such an inquiry either the presumption raised under Section 36(7) has no place or at the best has a prima facie value and no more, and it would depend entirely on the kind of the totality of evidence offered at the enquiry by the rival parties as to what value can be properly attached to the entries made as to age in the electoral rolls as compared with the other proofs offered at the trial, and no hard and fast rule can be laid down as to whether the one kind of evidence should prevail or the other. That must depend on the facts and circumstances of each case, and speaking for ourselves, we are entirely unable to subscribe to the view, with all respect, that the entries regarding age in electoral rolls should always be assigned a greater value than like entries in educational records any more than the latter should prevail over the former.

47. Before we conclude, we might briefly dispose of the contention raised on behalf of the appellant that the burden of proving the allegation that the appellant was not qualified to be chosen as a member of the State Assembly for want of qualifying age lay upon the election petitioner, that is the respondent here and that that was a heavy burden for him to discharge and that such burden had not been successfully discharged in the present case. To agree that the initial burden of proving the ground or grounds upon which the election is sought to be set aside even in a case like the present would rest upon the election-petitioner. But it must further be remembered that his burden is not as heavy as in the case of an election petition in which the election of a candidate is sought to be set aside on

the ground of a corrupt practice as defined in Section 123 of the Act of 1951, as a charge like that is in the nature of the imputation of a criminal offence. The present class of case is bound to rest on a slightly different footing inasmuch as the matter of a candidate's age is within his special knowledge, and, therefore, after good prima facie evidence has been led by the election-petitioner as regards the former's age, the burden is bound to shift on to the shoulders of the candidate himself which he must meet and he cannot merely sit on the fence and do nothing. We should, however, further like to point out that where both parties have had a fair and full opportunity of leading evidence and have availed themselves of the same, the question of burden of proof is merely of an academic nature and cannot possibly enter into the final verdict where it is possible to arrive at a definite conclusion one way or the other on the totality of the evidence led by both the parties. We are clearly of opinion that the present is a case of this last-mentioned description, and nothing, therefore, turns upon whom the burden of proof lies in this case. As we have pointed out above, the appellant is definitely proved to have been born on the 10th January, 1941, his case that he was born on the 4th August, 1935, having not been substantiated at all and therefore there is no escape from the conclusion that he had not attained the age of 25 years at the material time and consequently was not qualified to stand within the meaning of Section 100(1)(a) of the Act of 1951 read with Article 173 of the Constitution.

48. We may also add before concluding our judgment that we are clearly of the opinion that the failure to raise such an objection either at the stage of the making of the entry as to age in the relevant electoral roll or at the time of the scrutiny of the nomination papers on the part of the respondent cannot in any manner adversely affect the conclusion at which we have arrived above for the simple reason that there can be no estoppel against the statute and therefore even if such an objection may not have been raised earlier, it can legitimately be raised before the Election Tribunal under the scheme of the election law with which we are concerned.

49. For the reasons mentioned above, we agree with the Election Tribunal that the appellant's election must be declared to be void, and we uphold his order.

50. This appeal, therefore, fails and is hereby dismissed with costs. We assess the respondent's counsel's fee at Rs. 350/-. Let the substance of this decision be intimated to the Election Commission and the Speaker of the Legislative Assembly of this State forthwith, and as soon as possible thereafter, an authenticated copy of this judgment be forwarded to the Election Commission.

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