

(1982) 01 OHC CK 0007

In the Orissa High Court

Case No : Election Petition No. 2 of 1980

Mayadhar Nayak

APPELLANT

Vs

Sub-Divisional Officer, Jajpur and Others

RESPONDENT

Date of Decision : 13-01-1982

Acts Referred:

Constitution of India, 1950 — Article 173

Evidence Act, 1872 — Section 101 , 102, 103, 104

Representation of the People Act, 1951 — Section 100, 32, 36, 36(2)

Citation : AIR 1982 Ori 221 : (1982) 54 CLT 265

Hon'ble Judges : J.K. Mohanty, J

Bench : Single Bench

Advocate : S.C. Dash, S.K. Achary and B.K. Patnaik, for the Appellant; I. Ray, Standing Counsel, B. Misra, R. Mohanty, K. Patnaik and Bidyadhar Mishra, for the Respondent

Final Decision : Dismissed

Judgement

J.K. Mohanty, J.—This petition has been filed by Shri Mayadhar Nayak. the unsuccessful candidate who contested the election to the Orissa Legislative Assembly from 23-Sukinda Assembly constituency in Cuttack District. The election was held on 31-5-1980. The petitioner stood as a candidate of S. U. C. I. party and secured 15,718 votes while the third respondent Sarat Rout, who stood on Congress (1) ticket, was declared elected securing 22,640 votes. The other candidates, namely, Prafulla Chandra Ghare (respondent No. 2), Sarat Chandra Patra (respondent No. 4), Sarangdhar Muduli (respondent No. 5). Haladhar Dhir (respondent No. 6) and Hrushikesh Rout (respondent No. 7) secured 8385, 3603, 630, 434 and 1957 votes respectively. The total number of valid votes polled was 53,367.

2. According to the petitioner, the nominations to fill up the seat from 23-Sukinda Assembly constituency were invited by the Returning Officer, Jajpur, on the basis of notification (Ext. 4) issued by the Government of Orissa calling upon the

electors to elect a member. The nomination papers were to be filed between 25-4-1980 and 2-5-1980 and the date for scrutiny by the Returning Officer was on 3-5-1980. The last date for withdrawal of nomination papers was 5-5-1980. Eight candidates i.e., the petitioner and respondents Nos. 2 to 8, filed nomination papers. On the date of scrutiny, i.e., 3-5-1980, respondent No. 8 Sanatan Deo (who died during the pendency of this election petition) filed objection before the Returning Officer against the candidature of Sarat Rout (respondent No. 3) on the ground that he did not satisfy the constitutional requirements of Article 173(b) of the Constitution as he was less than twenty-five years of age and the Returning Officer was under obligation u/s 36(2) of the Representation of the People Act, 1951 (hereinafter referred to as the "Act") to reject his nomination. This was because, as is evident from the particulars of Matriculates provided by the Board of Secondary Education, Orissa, Sarat Kumar Rout son of Purna Chandra Rout was born on 25-4-1957 and on the date of scrutiny he was less than twenty-five years of age. Sarat Kumar Rout passed the Annual H. S. C. Examination in 1971 and he had filled up the form for appearing in the said examination in his own hand. He had the H. S. C. Examination certificate in his possession and with the full knowledge of his date of birth, misled the Returning Officer by offering his candidature and giving a false information. He has also appeared at Intermediate and Degree Examinations of Utkal University as a student of Angul College and must have filled up his date of birth in those forms. He has even got a wrong age recorded in the electoral roll. According to the petitioner, Sanatan Deo was called upon by the Returning Officer by his letter No. 457 dated 3-5-1980 to adduce evidence on 5-5-1980 at 11.00 a. m. in support of his contention that Sarat Kumar Rout was below twenty-five years of age. He did not call upon respondent No. 3 to adduce evidence in his support. Sri Deo's contention was, however, rejected by the Returning Officer and the nomination of Sarat Rout, whose name as per documents is Sarat Kumar Rout, was accepted as valid. Sanatan Deo withdrew his nomination on 5-5-1980 and did not contest the election. According to the petitioner Sarat Rout was not a valid candidate in the eyes of law and the Constitution and the votes polled in his favour should be presumed to be those cast in favour of a nonexistent candidate. Hence those votes should be treated as not polled at all. The petitioner received the highest number of votes from among the valid candidates; but for the votes obtained by the returned candidate by corrupt practices by way of misrepresentation of his age in the nomination, he would have been declared elected to represent the constituency. The election has been materially affected by the candidature of Sarat Rout (respondent No. 3), who in the eyes of law and the Constitution is not a candidate. With these averments it has been prayed that the candidature and subsequent election of Sarat Rout as M. L. A. from 23-Sukinda Assembly constituency be set aside and the petitioner be declared as the validly elected candidate from the said constituency.

3. In this case only Sarat Rout (respondent No. 3) filed written statement. The Returning Officer (respondent No. 1), though did not file any written statement,

appeared through his lawyer, The other respondents, namely, respondents Nos. 2, 4, 5, 6 and 7 were set ex parte. Sanatan Deo (respondent No. 8) died during the pendency of this Election Petition and his name has been deleted.

In his written statement respondent No. 3 has stated that the election petition is not maintainable due to non-compliance of Sections 81, 82 and 117 of the Act and is also liable to be dismissed u/s 86(1) of the Act. Also Rule 4 (iii) of the Rules framed by this Court under the Act has not been complied with and as such the petition is not maintainable. The election petition has not been properly presented and the cost has not been deposited in accordance with the rules of this Court According to respondent No. 3 it is not true to say that he did not satisfy the constitutional requirement of Article 173(b) and it is false to say that he was less than twenty-five years of age on the date of filing the nomination papers. It is equally false to say that on the date of scrutiny he was in possession of the H. S. C. Examination certificate and with the full knowledge of his date of birth, misled the Returning Officer by offering his candidature. It is nothing but white lie to say that he has got a wrong age recorded in the electoral roll. On the date of scrutiny, i.e., 3-5-1980, late Sana-tan Deo filed an application before the Returning Officer alleging inter alia that he was the only official party nominee of the Congress (I) party and as this respondent was under age, his official symbol had to be as-signed to him (Sanatan Deo). Mr. Deo was called upon to substantiate his claim on 5-5-1980. It is stated that conceding for the sake of argument and admitting that in the H. S. C. Examination certificate of respondent No. 3 and in some other documents his date of birth has been recorded as 25-4-1957, the same is wholly erroneous and incorrect as the correct date of birth of this respondent is 30-1-1951. (It may be mentioned here that this sentence was added by way of amendment which was allowed by Order No. 35 dated 2-11-1981). This respondent filed his reply challenging the petition of Sanatan Deo and successfully established his case that he was above twenty-five years of age on the date of filing his nomination and as such the requirement of Article 173(b) of the Constitution was fulfilled. According to this respondent his candidature was valid and was in no way hit by any provisions of law and he having been successfully won the election is the genuine candidate to represent and has been rightly declared to be elected as a valid candidate securing the largest number of valid votes. He submitted that the election petition is devoid of any merit and as such is liable to be dismissed with costs.

4. On the pleadings of the parties the following issues were framed. ISSUES.

1. Is the petition maintainable as laid ?
2. Is the petition barred by limitation?
3. Does the application comply with the provisions of Sections 81, 82, 100 and 117 of the Act and Rule 4 (iii) of Chapter VIII of the Rules framed by the Hon"ble High Court ?
4. Did respondent No. 3 satisfy the requirements as laid down under Article

173(b) of the Constitution at the time of filing nomination to contest from 23-Sukinda Assembly Constituency ?

5. Did respondent No. 3 complete twenty-five years of age at the time of filing nomination as required under the Act and Rules ?

6. To what relief, if any, the petitioner is entitled ?

Issue Nos. 1, 2 and 3 (regarding the maintainability of the election petition) were taken up first and were heard on 31-3-1981. Orders were delivered on 17-4-1981. The issues were answered against respondent No. 3 and the election petition was held to be maintainable. The other issues are to be decided in this judgment.

5. Issues Nos. 4 and 5 :-- The question that arises for consideration is whether respondent No. 3 had completed twenty-five years of age on the relevant date, i. e., on the date of filing the nomination papers. Article 173 of the Constitution provides that a person shall not be qualified to be chosen to fill the seat in the Legislature of a State unless he is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age. Section 32 of the Representation of the People Act, 1951 provides that 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. Section 36(2) of the Act empowers the Returning Officer to reject any nomination on the ground that on the date fixed for the scrutiny of the nominations, the candidate is not qualified to fill the seat under Article 173 of the Constitution. So, from the provisions of Article 173 of the Constitution and Sections 32 and 36(2) of the Act, it is clear that a nomination of a candidate is liable to be rejected. If on the date of nomination he had not completed the age of twenty-five years. Section 100(1) of the Act provides that when the High Court is of the opinion 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 the Act, or when the result of the election in so far as it concerns a returned candidate has been materially affected by the improper acceptance of a nomination the Court shall declare the election of the returned candidate to be void.

6. The nomination filed by respondent No. 3 was objected to by late Sanatan Deo, but the objection was overruled and the Returning Officer held that respondent No. 3 was not below twenty-five years of age on the relevant date and accepted the nomination papers filed by respondent No. 3. This would be evident from the nomination papers (Exts. G, G/1, G/2 and G/3) and the orders passed thereon (Exts. G/4, G/5, G/6 and G/7). As has been held by the Supreme Court in the case of Brij Mohan Singh Vs. Priya Brat Narain Sinha and Others, , by the Madras High Court in the case of K. Puramalai v. (1) L. M. Alangaram (2) R. Krishnamurth 1967 ELR Mad 401 and by the Bombay High Court in the case of Krishna Rao Maharaj Patil v. Onkar Narayan Wagh 1958 ELR Bom 386 the burden of proving that the age of respondent No. 3 was below twenty-five years on the

date of filing the nomination is on the petitioner. It is only after prima facie evidence is led by the petitioner that the burden shifts on to the shoulder of respondent No. 3. It is, therefore, to be considered whether the petitioner has discharged his burden and has established that the age of respondent No. 3 was below twenty-five years on the relevant date.

7. According to the petitioner, respondent No. 3 was born on 25-4-1957. This the petitioner seeks to establish on the basis of the Tabulation Register (Ext. 8) of the H. S. C. Examination of the year 1971 and the entry (Ext. 8/1 made therein with respect to one Sarat Kumar Rout, the entry in the admission register of Revenshaw Collegiate School, the application form submitted for admission into the 2nd Year Degree Class of Angul College, the application form for appearing in the Final B. A. Examination of 1975, the entry in the admission register of 1st Year Degree Course of the year 1972-73 of Revenshaw Evening College and the extract (Ext. 2) of the general register of cases cognizable by the police wherein respondent has been shown to have been released u/s 3 of the Probation of Offenders Act. The petitioner has examined himself as P. W. 1 and has also examined seven other witnesses, who are official witnesses, in order to prove the documents produced on his behalf.

On the other hand, respondent No. 3 has asserted that he was above twenty-five years of age on the date of filing nomination, his date of birth being 30-1-1951. On the side of respondent No. 3 the documents on which reliance has been placed for proving the age are the electoral roll (Ext. A) published in 1975 and the entry (Ext. A/1) therein with respect to respondent No. 3 where his age has been mentioned as twenty-three years, the electoral roll (Ext. B) published in 1980 and the entry (Ext. B/1) therein where his age has been mentioned as twenty-eight years, the horoscope (Ext. C), copy of the birth certificate (Ext. D), prescriptions (Exts. E and E/1) dated 10-10-1965 and 15-5-1965 granted by the Doctor (R. W. 5), the affidavit (Ext. L/2) filed by his mother before the Returning Officer and his own affidavit (Ext. L) filed before the Returning Officer. Respondent No. 3 examined nine witnesses including his father (R. W. 7), maternal uncle (R. W. 6), the priest (R. W. 2) who performed his Ekosisia Puja (twenty-first day ceremony), the son of the horoscope maker (R. W. 3) and the Doctor (R. W. 5) who granted the prescriptions (Exts. E and E/1) to prove his age. He himself could not be examined as he was ill. It may be mentioned here that respondent No. 3 had filed the attested copy of birth certificate, extract of the electoral rolls of 1975 and 1980, the affidavit of his mother and his own affidavit before the Returning Officer.

8. Now from the evidence on record it is to be considered how far the petitioner has been able to prove his case. P. W. 1 is the petitioner himself. He has narrated as to how objections were raised by late Sanatan Deo regarding the age of respondent No. 3 and how ultimately the Returning Officer accepted the nomination papers of respondent No. 3 holding that he was above twenty-five years of age. He has produced a copy of the Magistrate's General Register in C.

S. No 24 dated 31-7-1973 which has been marked as Ext. 2. From this it transpires that one Sarat Ch. Rout was convicted u/s 323, I. P. C. along with one Ghanasyam Bal, Baidhar Naik and Dolagobinda Bal While Ghanasyam Bal and Baidhar Naik were sentenced to pay a fine of Rs. 50/- each; in default to undergo Section 1, for fifteen days each, Surat Ch. Rout and Dolagobinda Bal were released u/s 3 of the Probation of Offenders Act. From this the petitioner wants to make out that Sarat Ch. Rout as mentioned in Ext. 2 is none else but respondent No. 3 who has been released under S. 3 of the Probation of Offenders Act as he was below twenty-one years of age on 30-3-1978. But this submission has no force. Apart from the fact that the person released was Sarat Ch. Rout and not Sarat Rout or Sarat Kumar Rout, the provisions of the Probation of Offenders Act do not say that a person released under any provision of this Act must be below twenty-one years of age. Section 3 of the said Act says that any person will be released; he need not be a person below twenty-one years.

Dr. Dash, learned counsel appearing for the petitioner, relied on decisions reported in Ramji Missir and Another Vs. The State of Bihar, and Musakhan and Others Vs. State of Maharashtra, and argued that Probation of Offenders Act is a social legislation which is meant to reform juvenile offenders so as to prevent them from becoming hardened criminals by providing an educative and reformatory treatment to them by the Government. As respondent No. 3 was released under the provisions of this Act, he must be below twenty-one years in the year 1978. These decisions do not say that the Probation of Offenders Act only applies to persons below twenty-one years of age.

P. W. 1 has no personal knowledge about the age of respondent No. 3. In cross-examination he has stated :

"I have no personal knowledge about the date of birth of Sarat Rout (R-3)."

He has also stated that he has not raised any objection to the electoral roll published in 1975 wherein the age of respondent No. 3 has been mentioned as twenty-three years and to the electoral roll published in 1980 wherein the age has been mentioned as twenty-eight years. P. W. 2 is the Assistant Secretary of the Board of Secondary Education, Orissa. He was asked to produce the application form submitted by respondent No. 3 for appearing in the H. S. C. Examination of 1971. He has stated that the form is not available in the office as the same has been destroyed after being preserved for one year. He was unable to say whether Annexure 1 (particulars of candidate) to the Election Petition (marked X for identification) was issued from his office or not, p. W. 3 is an L. D. Assistant of Ravenshaw Collegiate School. He appeared on behalf of the Headmaster of that school who was asked to produce the application form of Sarat Rout for appearing in the H. S. C. Examination of 1971. This witness said that the application form is not available. On the other hand he produced the result sheets (marked Z/7 for identification). Objection was raised on behalf of respondent No. 3 that this document should not be allowed to be produced. However, permission was accorded to produce this document. The examination of

this witness was deferred and, he was asked to produce the admission register of the school for the year 1969-70. He produced the admission register for the year 1969-70 which was marked as Z/10 for identification. Serial No. 18 of the said register relates to one Sarat Kumar Rout whose date of birth has been mentioned as 25-4-1957 and he was admitted to Class X in the year 1969. This witness admitted in cross-examination that he joined in his post in the school in 1979. He could not say who made the entries in the register.

Dr. Dash argued that Ravenshaw Collegiate School is a Government school and the register has been maintained by Government servants in discharge of official duties in the regular course of official business. He relied on a decision reported in *Maharaja Pratap Singh Bahadur Vs. Thakur Manmohan Deo and Others*, and argued that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. He also relied on a decision reported in AIR 1971 J&K 62 (*Radha Krishan Tickoo v. Bhusan Lal Tickoo*) and submitted that an entry in any record of even a private school as to the age of any student may be admissible if the school is run under the Education Code framed by and under the authority of any Government of any State. He also relied on a decision reported in *Anant Ram Vs. The State of Punjab*, and submitted that the entries in the Government school registers are admissible in evidence.

On the other hand Mr. Mohanty, learned counsel appearing for respondent No. 3, submitted that these documents cannot be taken into consideration as it has not been proved that Sarat Kumar Rout as mentioned in the documents relates to respondent No. 3. No evidence has been led that respondent No. 3 was admitted to Ravenshaw Collegiate School in 1969.

P. W. 4 is the Principal of Angul College. He was asked to produce the application form of Sarat Rout (respondent No. 3) for admission to Pre-University Class. But he produced an application form of one Sarat Rout son of Purnachandra Rout for admission into 2nd Year B. A. Class. This document has been marked as Z/8 for identification. Production of this document was objected to on behalf the respondent No. 3 on the ground that this document was not called for and the same should not be admitted in evidence. However, the document was allowed to be produced. This witness joined in Angul College on 24-8-1981 and he has no personal knowledge about the document or its contents. He has stated that he does not know the signature of the person in the document.

Dr. Dash argued that the document marked Z/8 for identification is a statutory form and it should be looked into. But this argument cannot be accepted as the document has not been formally proved.

P. W. 5 is the District Election Officer, Cuttack. He is a formal witness and has proved the notification (Ext. 4) issued by the Governor calling upon all the Assembly constituencies in the State to elect members, the notification (Ext. 5)

issued by the Returning Officer of 23-Sukinda Assembly constituency inviting nomination and fixing the date of nomination and scrutiny, office copy of the letter (Ext. 6) of the Returning Officer addressed to the Secretary, Orissa Legislative Assembly, forwarding six acknowledgement receipts of certificate of election, attested copy of the acknowledgement receipt (Ext. 6/1) granted by Sarat Rout regarding receipt of election certificate and the return of diction (Ext. 7) showing number of valid votes and number of votes secured by different candidates. P. W. 6 is the Registrar of Utkal University. He was asked to produce the application forms of respondent No. 3 for appearing in the Pre-University Examination 1972 and First Year Degree Examination 1973. But he stated that the said forms are not available and they have been destroyed. He produced the application form of one Sarat Kumar Rout for admission into B. A. Examination of 1975 as a collegiate candidate from Angul College. He stated that one Sarat Kumar Rout has signed the form, but he does not know the handwriting of the applicant. The form is marked as Z/9 for identification. Production of the document was objected to on behalf of respondent No. 3 on the ground that this document should not be looked into as it has not been proved in accordance with law. This witness has frankly stated that he is nor acquainted with the handwriting and signature appearing in the document.

Dr. Dash argued that the document marked Z/9 for identification is a statutory form and it should be taken into consideration without being formally proved. In my view this argument is not correct and it cannot be accepted.

P. W. 7 is the Lecturer in English and also the Administrative Bursar of Ravenshaw College, Cuttack, who appeared on behalf of the Principal of the said College. This witness produced the admission register of First Year Degree Arts Class of Ravenshaw Evening College for the year 1972-73. The relevant entry was marked as Z/11 for identification,. But this document is of no use to the petitioner as there is no mention of the date of birth against the name of Sarat Kumar Rout. This witness was cross-examined by learned counsel for the petitioner, but nothing substantial has been brought out from him. P. W. 8 is the Assistant Secretary of Board of Secondary Education, Orissa. He was earlier examined as P. W. 2 and was directed to produce the Tabulation Register of H. S. C. Examination of 1971. The register has beeo marked as Ext. 8 and the entry with respect of Roil No. 13613 (Sarat Kumar Rout) has been marked as Ext. 8/1. The date of birth of Sarat Kumar Rout has been mentioned as 25-4-1957. In cross-examination P. W. 8 has stated that he has no personal knowledge about Ext. 8 and the entries made therein. He has stated that the result sheets (marked Z/7 for identification) have not been signed by anybody. He has also stated that there is no indication in Ext. 8 that the date of birth of the candidate has been extracted from his application form. On seeing the Regulations of the Board of Secondary Education, Ortssa, he did not find any provision for maintenance of registers like Ext. 8. Learned counsel for respondent No. 3 objected to the production of this document and submitted that it should not be looked into as it has not been formally proved. This argument does not hold

good. Board of Secondary Education, Orissa, is a statutory body and it conducts the H. S. C. Examinations of the students and regularly maintains the details of the candidates and marks obtained by them. It functions under the Board of Secondary Education Act and the Regulations made thereunder. So the objection on behalf of respondent No. 3 cannot be accepted.

8A. On behalf of respondent No. 3, the District Election Officer (R. W. 1) proved the electoral roll published in 1975 (Ext. A) and the entry (Ext. A/1) in serial No. 9 (Sarat Kumar Rout at page 274), and the electoral roll published in 1980 (Ext. B) and the entry (Ext. B/1) in serial No. 522 (Sarat Rout at page 124). In Ext. A/1 the age of Sarat Kumar Rout has been shown as twenty-three years and in Ext. B/1 it has been shown as twenty-eight years. R. W. 2 is the family priest of respondent No. 3. He has stated that about thirty-two years back (this witness was examined on 23-11-1981), Purnachandra Rout (father of respondent No. 3) was married. One year and three months after the marriage this witness performed the twenty-first day ceremony of Sarat Kumar Rout who is the first child of Purnachandra Rout. Nothing substantial has been brought out in cross-examination of this witness. However, Dr. Dash argued that this witness has not stated that the date of birth of respondent No. 3 is 30-1-1951. He also argued that though R. W. 2 is a priest, he could not correctly say what is Saptapadi, R. W. 3 is an astrologer. According to him his father Nidhi Naik was also an astrologer who prepared the horoscope of Sarat Rout. He proved the horoscope (Ext. C) to be in the handwriting of his father. In cross-examination nothing substantial has been brought out from this witness. A suggestion was made to this witness that Ext. C has been prepared by one Madhabananda Tripathy, but he stoutly denied the same. R. W. 4 is a Clerk in the office of the Health Officer of Vital Statistics, Cuttack Municipality. He proved the birth certificate (Ext. D) issued by the Registrar of Births and Death-cum-Health Officer, Cuttack Municipality. He has further stated that the certificate is an extract of the register of births and deaths maintained in Cuttack Municipality. In cross-examination suggestion was made to this witness that Ext. D is a false certificate and the name of Sarat Kumar Rout has not been mentioned in the register. But he denied the same. R. W. 5 is a Doctor. He was the Assistant Surgeon of Gobardhanpur Dispensary (the village of respondent No. 3) for the period from 1958 to 1966. He was the family physician of Purnachandra Rout (father of respondent No. 3). This witness has stated that he has treated Sarat Kumar Rout for his ailments several times. He has proved two prescriptions (Exts. E and E/1) -- one dated 10-10-1965 and the other dated 15-5-1965, prepared in his hand and signature for Sarat Kumar Rout. In these prescriptions the age of respondent No. 3 has been recorded as fourteen years. In cross-examination he has stated that the age of respondent No. 3 has been mentioned in Exts. E and E/1 on his mother's, statement.

Dr. Dash submitted that Exts. E and E/1, should not be accepted in evidence as they have been produced late. Besides, R. W. 5 has not produced any document or register to show that he has actually treated this patient. He relied on a

decision reported to AIR 1927 310 (Oudh) and submitted that the prescription register maintained by a Government compounder in a Government dispensary is only admissible. But this decision is of no avail to him as it has been held therein that the entries in a prescription register maintained by a Government compounder in a Government dispensary are admissible u/s 35, although the particular compounder or compounders who made these entries have not been called as witnesses to prove their handwriting. In this case the Doctor has made it clear that he treated Sarat Rout for his ailments in his private capacity and he has proved the prescriptions (Exts. E and E/1). He is a respectable witness and nothing has been brought out in his cross-examination to discredit his version.

R. W. 6 is the maternal uncle of respondent No. 3. According to him Purnachandra Rout married his sister in the year 1949 and respondent No. 3 was born in the year 1951 at Cuttack. His sister was kept in a house at Jagannathballav in Cuttack Town where she gave birth to respondent No. 3 on 30-1-1951. The birth of the child was intimated to the Municipal Office on 5-2-1951. According to him at the time of twenty-first day ceremony of the child he himself, his father and brothers, Anant Charan Hota (R. W. 2) and Nidhi Naik astrologer (the father of R. W. 3) were present. Many questions were put to this witness in cross-examination. But nothing has been brought out from him to disbelieve his statement. R. W. 7 is the father of respondent No. 3. According to him Sarat Kumar Rout is his first child who was born on 30-1-1951. He is also known as Sarat Rout. This witness corroborated R. W. 6 in material particulars and stated that he and R. W. 6 went to the Municipal Officer to report the birth of the child. He also corroborated R. W. 3 that the horoscope (Ext. C) was prepared by Nidhi Naik, the family astrologer. He was cross-examined at length. In cross-examination he has stated that he has not intimated about the date of birth of Sarat Kumar Rout at the time of his admission in schools and colleges. He has also stated that he does not remember the date of birth of Sarat Kumar Rout as per the H. S. C. Examination certificate.

Dr. Dash argued that R. Ws. 6 and 7 are interested witnesses and their evidence should not be accepted. But this argument cannot be accepted as nothing substantial has been brought out from these witnesses to discredit their testimony. They are also the most competent witnesses to depose about the date of birth of respondent No. 3.

R. W. 8 is the Office Superintendent of Cuttack Municipality. He has been serving in the Municipality since 1966. According to him the register of births and deaths was being maintained in Cuttack Municipality under the provisions of Bihar and Orissa Municipal Act, 1922 and the register has been maintained since 1922. Under the Registration of Births and Deaths Act, 1969, the Health Officer has been declared as the Registrar of Births and Deaths and he is the custodian of the register of births and deaths. The Health Officer is granting certificates regarding births and deaths since 1969. In cross-examination he has stated that u/s 344 of the Bihar and Orissa Municipal Act, 1922, the register of births and

deaths is being maintained by Cuttack Municipality. He could not say when the Cuttack Municipality by resolution decided to maintain such registers. He could not show any document that prior to 1969 the Health Officer was the Registrar of Births and Deaths, but from the practice followed he came to know that the Health Officer was acting as the Registrar of Births and Deaths. Prior to 1969 the register of births and deaths was being kept in custody of the Health Officer and after 1969 also it is being kept in his custody. He stated that he has no personal knowledge whether Ext. D is the exact copy from the register of births and deaths, but usually such certificates are granted on the basis of the entries made in the register.

Dr. Dash argued that Ext D should not be taken into consideration as the original register has not been produced. It may be mentioned here that though Ext. D was obtained on 3-5-1980 and the attested copy was produced before the Returning Officer, the petitioner did not take any steps for calling for the original register. However, an application was filed during the course of arguments that the original register should be called for as the petitioner has reasons to believe that there might be interpolations. As the petitioner was not diligent in calling for the document and only made the application at a belated stage, the prayer was rejected by order dated 14-12-1981.

So the existence of the register of births and deaths has not been disputed by the petitioner. Dr. Dash argued that nothing has been shown that the register of births and deaths has been maintained according to Municipal Act and Rules and the resolution of the Cuttack Municipality to maintain the register has not been produced and in absence of all these Ext. D should not be taken into consideration. He relied on a decision reported in Ram Prasad Sharma Vs. The State of Bihar, and argued that no proof has been led in this case as to who made the entry in the birth register and whether the entry was made in discharge of official duty. He also relied on a decision reported in Sham Lal and Another Vs. Muni Lal and Others, and submitted that the register of births and deaths must be shown to have been maintained in accordance with the Municipal Act and Rules. As already mentioned, R. W. 7 has stated that the register of births and deaths has been maintained u/s 344 of the Bihar and Orissa Municipal Act, 1922 and such register has been maintained by Cuttack Municipality since 1922.

Mr. Mohanty learned counsel appearing for respondent No. 3, submitted that as per Section 344 of the Bihar and Orissa Municipal Act, 1922, the register of births and deaths within the limits of Municipality has been maintained in accordance with the provisions of the Bengal Births and Deaths Registration Act, 1873 and after coming into force of the Registration of Births and Deaths Act, 1969, maintenance of this register by the Health Officer has been continued. This is also clear from the evidence of R. W. 7. Section 11 of the Bengal Births and Deaths Registration Act, 1873 provides that in any place to which the District Municipal Improvement Act shall have been extended, the Municipal

Commissioner may, if at a meeting specially convened for considering such questions they shall so determine, arrange for keeping a register of all births or of all deaths or of all births and deaths, occurring within the municipality, in this case R. W. 8 has stated that the register of births and deaths has been maintained u/s 344 of the Bihar and Orissa Municipal Act as required under the provisions of the Bengal Births and Deaths Registration Act, 1873, which was also applicable to Orissa. According to Mr. Mohanty, an entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact. He also contended that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public or private business, in their relation to the facts of the particular case. Under Illustration (e) of Section 114 of the Evidence Act, the Court may presume that judicial and official acts have been regularly performed. He further argued that from the evidence of R. Ws. 6 and 7 it is clear that they have reported the births of respondent No. 3 in Cuttack Municipality. Mr. Mohanty relied on a decision reported in AIR 1968 Put 481 (Biswanath Gosain v. Dulhin Lalmuni) wherein it has been held (para 11):--

"The entries in Birth and Death registers are public documents and are admissible u/s 35 of the Evidence Act and it is not necessary to prove who made the entries and what was the source of his information. The register being a public document, presumption of correctness attaches to it and heavy onus lies on the party who wants dispute the presumption."

He also relied on the decision reported in (1967) ELR (Mad) 401 wherein it has been held :

"An extract from the birth register is a public document and a certified copy of such an extract is admissible in evidence."

Mr. Mohanty also cited another decision reported in AIR 1970 Kant 305 (Smt. Vanajakshamma v. P. Gopala Krishna) wherein it has been held that the register of births is a public document and certified copy of its extract is admissible to prove the contents of such document. After hearing the argument of both sides I see no reason as to why Ext. D should not be taken into consideration.

R. W. 9 is the Returning Officer. He has proved the nomination papers of respondent No. 3 marked Exts. G, G/1, G/2 and G/3 and the orders passed thereon marked Exts. G/4, G/5, G/6 and G/7. He has stated that late Sanatan Deo filed his objection (Ext. H) before him. He issued notice to Sanatan Deo to produce evidence in support of his objection, but Sri Deo did not produce any evidence. However, respondent No. 3 produced the attested copy of the birth certificate, electoral rolls of 1975 and 1980, and the affidavit of his mother and his own affidavit stating that his date of birth is 30-1-1951. After considering all

these he came to the conclusion that respondent No. 3 was above twenty-five years of age on the date of filing nomination and so he accepted the nomination! papers of respondent No. 3. The position of law is well settled that even if a decision is rendered on this matter by the Returning Officer, that decision is not final and it is open to examination by the Election Tribunal when an Election Petition is filed. This position is not disputed.

8-B. From a consideration of the above evidence it emerges that while the petitioner in order to prove that the date of birth of respondent No. 3 is 25-4-1957 wants to place reliance on the Tabulation Register (Ext, 8) of the Board of Secondary Education, the entry in the admission register of Ravenshaw Collegiate School of the year 1969-70, the application form for admission to 2nd Year Degree Course of Angul College and the application form to appear in the Annual B. A. Examination of 1975, respondent No. 3 wants to prove his date of birth to be 30-1-1951 by relying on the electoral rolls of 1975 and 1980 (Exts. A and B) and the entries (Exts. A/1 and B/1) made therein with respect to respondent No. 3, the horoscope (Ext, C), birth certificate (Ext. D), prescriptions (Exts. E and E/1) and the affidavit of his mother, Ext. 1/2. Besides, respondent No. 3 also relies on the oral evidence of his maternal uncle (R. W. 6), father (R. W. 7) and the family priest (R. W. 2). The petitioner has not produced any oral evidence in support of his case that the date of birth of respondent No. 3 is 25-4-1957.

9. Mr. Mohanty, learned counsel appearing for respondent No. 3, relied on decisions reported in Brij Mohan Singh Vs. Priya Brat Narain Sinha and Others, and AIR 1964 P&H 231 (Bansi Ram Naru Ram v. Jit Ram Gehru Ram) and submitted that the entries in school registers should not be relied on as a conclusive proof of the age of a person. In the decision reported in Brij Mohan Singh Vs. Priya Brat Narain Sinha and Others, it has been held :

"In actual life it often happens that persons give false age of the boy at the time of his admission to a school so that later in life he would have an advantage when seeking public service for which a minimum age for eligibility is often prescribed. The Court of fact cannot ignore this fact while assessing the value of the entry and it would be improper for the Court to base any conclusion on the basis of the entry, when it is alleged that the entry was made upon false information supplied with the above motive."

In the decision reported in (1967) ELR (Mad) 401 it has been held:

"The date of birth as given in the School Certificate is not conclusive as proving the age of a person. When there is conflict between the age as given in the School registers and the birth extract, if the birth extract is proved to relate to the person concerned, it is safe to rely on the age as given in the birth extract."

In the decision reported in (1958) ELR (Bom) 386 it has been held :

"Much reliance cannot be placed on entries in school admission registers which

are not proved to have been made on the basis of statements made by a person, e. g., the father of the boy, who knew the true date of his birth."

In *Bhagwan Dass Singla Vs. Harchand Singh and Another*, it has been held that the entry in the school register is relevant piece of evidence, but slight evidence to the contrary may displace it. In the decision reported in AIR 1964 P&H 231 it has been held (at p. 235) :

"..... the evidentiary value of entries in records of educational institutions have seldom Been considered to be great, As against the evidence as to age in birth registers the entry in school records have generally been considered to be inferior quality. The entry in birth register is usually much more contemporaneous than the entry in school registers and, therefore, more reliable. The entry in a birth register would, normally speaking, inspire greater confidence than an entry in the record of educational institutions, and the former is by and large supposed to be a more reliable piece of evidence than the latter."

Mr. Mohanty submitted that the extract of the birth register is the conclusive proof of the age of respondent No. 3. To add to this, the prescriptions (Exts. E and E/1) granted by the Doctor (R. W. 5) go to show that in the year 1965 respondent No. 3 was fourteen years old. This fits in with the case of respondent No. 3 that his date of birth is 30-1-1951. R. W. 5 is a respectable witness and his evidence has not been shaken in cross-examination. Nothing has been brought forward by the petitioner that the age as mentioned in the school and college registers, Tabulation Register and the application forms was recorded on the basis of the statement made by the father of respondent No. 3. On the other hand, the father has categorically denied to have given the date of birth of respondent No. 3 as 25-4-1957 to the school and college authorities.

Mr. Mohanty then submitted that the entry in the electoral roll is the conclusive proof that the age of the person whose name is entered in it is twenty-one years at least This will be evident from Section 36(7) of the Act. In support of his contention Mr. Mohanty cited decisions reported in *Brijendralal Gupta and Another Vs. Jwalaprasad and Others*, *Durga Shankar Mehta Vs. Thakur Raghuraj Singh and Others*, and *Bhagwan Dass Singla Vs. Harchand Singh and Another*, . In decision reported in *Brijendralal Gupta and Another Vs. Jwalaprasad and Others*, it has been held (at pp. 12 and 15):

"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. Section 19 read with Section 36(7) shows that when a presumption is raised u/s 36(7) it may mean prima facie that the person concerned is not less than twenty-one years of age."

In the decision reported in *Durga Shankar Mehta Vs. Thakur Raghuraj Singh and Others*, it has been held (para 8) :

"..... the electoral roll is conclusive as to the qualification of the elector except where a disqualification is expressly alleged or proved"

In the decision reported in Bhagwan Dass Singla Vs. Harchand Singh and Another, it has been held.

"The entry in electoral roll is conclusive to prove that age of a person whose name is entered is 21 years at least and where nomination paper was rejected ignoring Section 36(7) of the Representation of the People Act, 1951, such rejection was held improper."

It has been further held (para 18 of Bhagwan Dass Singla Vs. Harchand Singh and Another, :

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

Mr. Mohanty submitted that the entry (Ext. A/1) in the electoral roll of 1975 (Exhibit A) conclusively shows that respondent No. 3 was twenty-three years of age in the year 1975. In the year 1980 he was twenty-eight years old, as would be evident from the entry (Ext. B/1) in the electoral roll of 1980 (Ext. B). The contention of Mr. Mohanty is that the age given in the electoral rolls tils in with the case of respondent No. 3 that he was born on 30-1-1951.

Mr. Mohanty further submitted that the horoscope (Ext. C), which has not been challenged, is a strong piece of evidence in favour of respondent No. 3. In support of his contention he relied on a decision reported in Kumar Ganganand Singh and Others Vs. Maharaja Sir Rameshwar Singh Bahadur and Another, wherein it has been held :

"Where the statement in the horoscope as to the date of birth is the statement of a person who is dead and who had special means of knowledge as io the date of birth, the horoscope is admissible and is valuable evidence as to the date of birth."

Prom the above discussion Mr. Mohanty submitted that there is overwhelming evidence, both oral and documentary, in support of the case of respondent No. 3 that he was born on 30-1-1951. He was not below twenty-five years of age on the date of filing nomination and was a qualified candidate and his nomination has been rightly accepted by the Returning Officer.

10. Dr. Dash, learned counsel for the petitioner, submitted that free and fair

elections are the very foundation of democratic institutions and just as it is said that justice must not only be done, must also be seen to be done similarly elections should not only be fairly and properly held but should also be seen to be so conducted as to inspire confidence in the minds of the electors that everything has been aboveboard and has been done to ensure free elections. In support of his contention he relied on a decision reported in *Rampakavi Rayappa Belagali Vs. B.D. Jatti and Others*, . He further submitted that respondent No. 3 avoided to examine himself and on a false pretext he did not come to the witness box and, therefore, adverse inference should be drawn against him. In support of his contention he placed reliance on decisions reported in AIR 1973 Gau 90 (*Mst. Jurmati Bewa v. Anwar Rasul*) and *Irudayam Ammal and Others Vs. Salayath Mary*, . According to him it would have been proper for respondent No. 3 to enter the witness box and take the Court into confidence about the true state of affairs. It is, therefore, legitimate to raise a presumption that respondent No. 3 deliberately avoided to examine himself. Dr. Dash submitted that had respondent No. 3 been examined, the application forms (marked Z/8 and Z/9 for identification) could have been confronted to him so as to elicit the true state of affairs that his date of birth is 25-4-1957 as recorded in these documents. He placed reliance on a decision reported in *Shiv Ram Vs. Shiv Charan Singh*, and submitted that this decision has full application to the facts and circumstances of the present case. In the above decision it has been held (para 43 of AIR 1964 Raj :

"..... No 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,"

It has been also held (para 24 of 1964 Raj) :

"There is nothing in Section 36(7) of the Representation of the People Act of 1951 or Section 30 of the Act of 1950 or in any other provisions of the said Acts to hold that the age of the candidate as mentioned in the previous electoral roll should be accepted to be conclusive at an election dispute where his election is challenged on the ground that the said candidate was not qualified to stand at the election of Legislative Assembly because he lacked one of the essential conditions provided under Article 173 of the Constitution viz., that he was less than 25 years of age at the material time.

xx xx xx Under Section 36(7) of the R. P. Act of 1951 a certified copy of an entry in an electoral roll 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 elector for that constituency cannot be challenged before the Returning Officer. The conclusiveness of the presumption created by Section 36(7) does not and cannot extend any farther so as to bar an inquiry.

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. It cannot be said 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.

XX XX XX The failure to raise 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 paper cannot in any manner adversely affect the conclusion, for 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."

It has been further held :

"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 (Entry as to age of student in school register of Govt. school) becomes relevant by itself, and no other proof of such entry is required as a matter of law by 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."

Regarding the burden of proof, it has been held in the same decision :

"Although the initial burden of proving the allegations that the candidate was not qualified to be chosen as a member of the State Assembly for want of qualifying age would rest upon the election petitioner, the 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.

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. 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."

11. In reply, Mr. Mohanty submitted that in the above decision the question was whether the date of birth appearing in the electoral roll would be taken as conclusive proof of the age of the elected candidate or the date of birth in the

school register which was admittedly supplied by the father would be taken as true. He submitted that in the above case the entry in the electoral roll was changed to suit the purposes of the elected candidate and the date of birth appearing in the school register was supplied by his father. He referred to the observation made by the Honourable Judges in the aforesaid case which is as follows :

"An entry in birth and/or death register as to age would be excellent evidence and may have to be preferred to entries in records of educational institutions."

Mr. Mohanty pointed out that in this case apart from the electoral roll, respondent No. 3 has produced overwhelming documentary evidence, i. e. the horoscope, entry in the birth register and prescriptions of the Doctor etc., in support of his age. Besides, there is oral evidence in support of his case which has not been shaken. So this case stands on a different footing and the decisions reported in Brij Mohan Singh Vs. Priya Brat Narain Sinha and Others, will apply in full force to the present case. He further submitted that no adverse inference can be drawn for non-examination of respondent No, 3 as he is not a competent witness to depose about his date of birth.

12. Considering the argument advanced by the parties and the evidence on record the position that emerges in that: --

In order to prove the date of birth of respondent No. 3 to be 25-4-1957 the petitioner relies on the Tabulation Register (Ext. 8) of the Board of Secondary Education and the entry (Ext. 8/1) made therein with respect to Sarat Kumar Rout, the entry in the admission register of Ravenshaw Collegiate School of 1969-70 (marked Z/10 for identification), the application form to appear in the Annual B. A. Examination of 1975 (marked Z/9 for identification), the application form for admission into 2nd Year Degree Class of Angul College (marked Z/8 for identification) and the particular of candidates appearing in the H. S. C. Examination (marked X for identification which is the extract of Ext. 8/1). In the above documents the date of birth of Sarat Kumar Rout has been mentioned as 25-4-1957. Of course the documents marked X, Z/8, Z/9 and Z/10 could not be proved according to law. There is also no evidence that the entries in the above documents including Ext. 8 are with respect to respondent No. 3. No oral evidence has been led to connect respondent No. 3 with the aforesaid entries. Dr. Dash argued that adverse inference should be drawn against respondent No. 3 as he avoided the witness box. Had he been examined these documents could have been confronted to him and he would have been forced to admit that the entries relate to him. Assuming that the aforesaid entries are with respect to respondent No. 3, the position is that in the admission register of Ravenshaw Collegiate School the date of birth of respondent No. 3 has been mentioned as 25-4-1957 and this date has been necessarily carried forward to the Tabulation Register (Ext. 8) and subsequently to the application forms (marked Z/8 and Z/9). No oral evidence has been adduced by the petitioner that the date of birth of respondent No. 3 is 25-4-1957 and the date has been given by a competent

person like the father of respondent No. 3 to the school authorities.

On the other hand, on behalf of respondent No. 3, in order to prove his age to be more than twenty-five years, reliance has been placed on the electoral roll (Ext. A) of 1975 and the entry (Ext. A/1) made therein with respect to respondent No. 3 where his age has been mentioned as twenty-three years, the electoral roll (Ext. B) of 1980 and the entry (Ext. B/1) therein where the age has been mentioned as twenty-eight years, the horoscope (Ext. C) and the extract of birth register (Ext. D) where the date of birth has been mentioned as 30-1-1951 and the prescriptions (Exts. E and E/1) granted by the Doctor (R. W. 5) in the year 1965 where the age of respondent No. 3 has been mentioned as fourteen years. The oral evidence of the maternal uncle (R. W. 6), father (R. W. 7) and the family priest (R. W. 2) is also there in support of the case of respondent No. 3 which has been discussed earlier.

13. As held in (1958) ELR (Bom) 386 , much reliance cannot be placed on entries in the school admission registers which are not proved to have been made on the basis of the statement made by a person, e. g. the father of the boy, who knew the true date of his birth. It is well settled that it would depend entirely on the totality of evidence offered by the rival parties as to what value can be properly attached to them and no hard and fast rule can be laid down as to whether the one kind of evidence should prevail or the other. This must depend on the facts and circumstances of each case.

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. In this case the petitioner depends solely on the entries in the school and college records (even assuming that the documents marked Z/8, Z/9 and Z/10 are to be taken into consideration) to prove the date of birth of respondent No. 3 to be 25-4-1957. However, there is no oral evidence to support his case. On the other hand there is overwhelming evidence -- both oral and documentary -- on behalf of respondent No. 3 to prove his date of birth to be 30-1-1951.

14. On behalf of respondent No. 3, much reliance has been placed on the decision reported in Brij Mohan Singh Vs. Priya Brat Narain Sinha and Others, . In that case the respondent (who had filed the election petition) was the defeated candidate and in order to prove the age of the appellant to be less than twenty-five years he placed reliance on the entry in the admission register of the school (Ext. 2), application made by the appellant for the post of Sub-Inspector of Police (Ext. 8) and the certificate issued by the Bihar School Examination Board (Exhibit 18). In these documents the date of birth of the appellant was mentioned as 15-10-1937. On the other hand, the appellant placed reliance on the Hath Chitha book kept at the time of birth wherein his date of birth was mentioned as 15-10-1935. While deciding the case the Hon'ble Supreme Court relied on the Hath Chitha book regarding proof of the age of the appellant and did not place reliance on the documents produced on behalf of the petitioner-respondent. The Court observed (at p. 287) :--

"..... once this wrong entry was made in the admission register it was necessarily carried forward to the Matriculation Certificate and was also adhered to in the application for the post of a Sub-Inspector of Police.

XX XX XX However much one may condemn such an act of making a false statement of age with a view to secure an advantage in getting public service, a judge of facts cannot ignore the position that in actual life this happens not infrequently. We find it impossible to say that the Election Tribunal was wrong in accepting the appellant's explanation. Taking all the circumstances into consideration we are of opinion that the explanation may very well be true and so it will not be proper for the Court to base any conclusion about the appellant's age on the entries in these three documents, viz., Ex. 2, Ex. 8 and Ex. 18."

Reliance has also been, placed on Bhagwan Dass Singla Vs. Harchand Singh and Another, which have been referred to earlier. These decisions apply in full force to the facts and circumstances of this case.

15. In view of the overwhelming evidence -- both oral and documentary -- adduced on behalf of respondent No. 3, I am of the opinion that it has been clearly established that the date of birth of respondent No. 3 is 30-1-1951 and the claim of the petitioner that the date of birth of respondent No. 3 is 25-4-1957 cannot be accepted. As such respondent No. 3 was more than twenty-five years of age at the time of filing the nomination. So these issues are answered against the petitioner and in favour of respondent No. 3.

16. Issue No. 6 :-- In view of the aforesaid finding that the date of birth of respondent No. 3 is 30-1-1951, the petitioner is not entitled to any relief. His prayer that he should be declared ejected is not tenable.

17. In the result, therefore, the election petition fails and is hereby dismissed with costs which are assessed at Rs. 250/-.