A NARENDER SINGH

v.

MALA RAM AND ORS.

SEPTEMBER 15, 1999

B [DR. A.S. ANAND, C.J., S. RAJENDRA BABU AND R.C. LAHOTI, JJ.]

Representation of the People Act, 1951:

C *Sections 83(1) and 123—Election Petition—Corrupt practice—Affidavit—In support of—Requirement of filing—Allegations of improper rejection of nomination papers of some candidates and improper acceptance of nomination papers of the returned candidate by the Returning Officer in collusion with him—High Court held that the said allegations did not amount to corrupt practices and the so called collusion was merely embellishment* D *to the said allegation—Held : High Court's view justified and reasonable—Where no corrupt practice arising under S.123 is put to issue or any trial held thereon, preliminary objection that such allegation is not supported by affidavit as required under S.83(1), not sustainable.*

Election petition—Nomination papers—Improper rejection and E *acceptance—Insufficient evidence—Effect of—Allegations of improper rejection of nomination papers of some candidates and improper acceptance of nomination papers of the returned candidate—Evidence of Returning Officer corroborated by other witnesses on several aspects particularly in regard to procedure adopted by him for acceptance or rejection of the* F *nomination papers—No clinching material to hold in favour of the election petitioner—Evidence on record capable of two interpretations—One in favour of the returned candidate and the other in favour of the election petitioner. Held : Under these circumstances, the High Court erred in upsetting the election of the returned candidate on the basis of such testimony.*

G *Election—Trial of—Burden of proof—Held : Onus to prove essential facts, which constitute cause of action, is upon election petitioner. Oral evidence should be assessed carefully.*

Election Petition—Trial of—Evidence—Appreciation of—Held : If the evidence adduced is capable of drawing two inferences, one in favour of the H *returned candidate and the other in favour of the election petitioner, the*

former should be preferred. A

The appellant was elected to the State Legislative Assembly. The respondent, defeated candidate, filed an Election Petition before the High Court challenging the election of the appellant on the grounds of improper rejection of nomination papers of some candidates and improper acceptance of nomination papers of the appellant by the Returning Officer in collusion B with the appellant.

The appellant raised a preliminary objection that the allegations raised in the election petition amounted to corrupt practices and inasmuch as no affidavit was filed in support of such corrupt practices, the election petition could not be tried. C

The High Court held that the allegations did not amount to corrupt practices and, therefore, even if the petition was not supported by an affidavit, the petition must be deemed to be properly filed. However, the High Court examined the Returning Officer and other witnesses and allowed the election petition on the basis of such evidence. Hence this appeal. D

Allowing the appeal, the Court

HELD : 1.1. The High Court's view that the election of the returned candidate was being challenged on the ground of improper rejection of nomination papers of some of the candidates and improper acceptance of the E nomination papers of the returned candidate and all other allegations were mere embellishment to the same is justified and reasonable.[443-H; 444-A]

1.2. When no corrupt practice arising under Section 123 of the Representation of the People Act, 1951 was put in issue or any trial held thereon, the preliminary objection that the allegations of corrupt practice F were not supported by an affidavit as required under Section 83(1) of the R.P. Act cannot be sustained. [444-B]

2. In the instant case the evidence of the Returning Officer is corroborated by other witnesses on several aspects particularly in regard to the procedure adopted by him for rejection or acceptance of the nomination G papers. On the basis of the evidence on record two inferences are possible to accept either the version of the Returning Officer or that given by the election petitioner and his witnesses. There is no clinching material at all to hold in favour of the election petitioner. Hence, High Court erred in upsetting the election of the returned candidate on the basis of such testimony. [451-D; 452-E; B-C] H

A **3. The onus to prove the essential facts, which constitute the cause of action in an election petition, is upon the person making it, namely, the election petitioner. What evidence would be sufficient to prove a particular fact depends upon the circumstances of each case. When the evidence adduced is capable of drawing an inference either way, the view that is favourable to the returned candidate will have to be preferred. [450-B]**

B

Ram Singh **v.** *Col. Ram Singh,* **[1985] Supp. SCC 611;** *Rahim Khan* **v.** *Khurshid Ahmed,* **[1975] 1 SCR 643 and** *Thakur Sen Negi* **v.** *Dev Raj Negi,* **[1993] Supp. 3 SCC 645, relied on.**

C CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 5776-77 of 1997 Etc.

From the Judgment and Order dated 11.7.1997 of the Punjab and Haryana High Court in Election Petition Nos. 5 and 6 of 1996.

D Rajinder Sachar, Prabha Shankar Mishra, Rao Ranjit, Vishnu Sharma, Anup Banerji, Sushil Kumar Jain, Ms. Anupama Sharma, Shiv Sagar Tiwari, H.M. Singh, Atul Kumar and Ranbir Yadav for the appearing parties.

The Judgment of the Court was delivered by

E **RAJENDRA BABU, J.** Election to the Haryana Legislative Assembly was held on April 27, 1996 and the appellant before us [hereinafter referred to as 'the returned candidate'] was elected to the Legislative Assembly from No.89, Ateli Vidhan Sabha Constituency. On notification for election being issued, 88 nomination papers were filed. The returned candidate was sponsored F by the Indian National Congress. At the time of scrutiny some of the nomination papers were rejected by the Returning Officer on the ground that oath or affirmation as contemplated under Article 173 of the Constitution had not been taken either before the Returning Officer or any other competent authority and, therefore, their nomination papers were invalid. Ultimately after withdrawal G of their candidature 47 candidates remained to be elected. The returned candidate secured 22144 votes while his nearest rival, Om Prakash, secured 19270 votes and the appellant was declared elected. Om Prakash, the defeated candidate, filed election petition No. 6/96 on the ground that nomination papers of Suresh Kumar and Yogender amongst others had been improperly rejected. Mala Ram filed election petition No. 5/96 contending that his H nomination papers had been improperly rejected. In these cases, contention

put forth was that Yogender, Suresh Kumar and Mala Ram had taken oath or affirmation as contemplated under Article 173 of the Constitution but the Returning Officer asked each one of them to take the receipt later and that he refused to give the receipt cn the same day of taking oath on the ground that he was busy and on the next day after scrutiny he rejected the nomination papers as aforesaid.

The returned candidate raised several preliminary objections in both election petitions Nos. 5 and 6/96. The learned Judge by an order made on November 20, 1996 held that the allegations would not amount to corrupt practice and, therefore, even if the petitions had not been supported by an affidavit the petition must be deemed to have been properly filed. In election petition No. 5/96, similar preliminary objection has been raised but the High Court did not give any decision probably in view of its earlier order in election petition No. 6/96. The High Court allowed the election petitions filed by the respondents and held that the nomination papers filed by Mala Ram, Suresh Kumar and Yogender have been improperly rejected and, therefore, the election of the returned candidate is void and liable to be set aside. Hence two appeals are filed by the returned candidate. The Returning Officer has also preferred a special leave petition challenging certain observations made and findings recorded against him and this Court by an order made on December 8, 1997 has directed to tag on the said special leave petition to the civil appeals preferred by the returned candidate.

The preliminary objection raised before the High Court is that Section 83(1) of the Representation of the People Act, 1951 [for short 'the 1951 Act'] provides that where the petitioner alleges any corrupt practice the petition shall also be accompanied by an affidavit in the prescribed form in support of such corrupt practice and the particulars thereof. In this case it was alleged that the election petitioner had made certain allegations of corrupt practice and the same having not been supported by an affidavit, the petition cannot go to trial. The allegations in this regard are contained in paragraph 4 of the election petition and for purpose of convenience, we will set out the entire paragraph 4 of the petition which is as under :

> "4. That Shri Vineet K. Garg, Addl. Deputy Commissioner, Narnaul was appointed as Returning Officer for 89 Ateli Assembly constituency. Shri Vineet K. Garg was favourably inclined towards the Congress candidate i.e. the respondent. We wanted to help the Congress candidate even going out of the way and he did help the Congress

A candidate i.e. the respondent and acted in a most arbitrary and whimsical manner at the behest of the Congress candidate i.e. respondent and he was in collusion with him. He illegally and properly rejected the nomination papers of Shri Suresh Kumar son of Shri Tara Chand, resident of Katkhai, Tehsil Narnaul, District Mohindergarh and B Yogender son of Shri Sher Singh, resident of Ratta Kalan, Tehsil Narnaul, District Mohindergarh at the behest of the Congress candidate i.e. respondent as Shri Suresh Kumar belong to Scheduled Caste and the Congress candidate i.e. respondent was of the view that all the Scheduled Castes are with the Congress party in Haryana (rather the Indian National Congress party as a whole was considering the C Scheduled Castes as their definite vote bank) and he was considering that in case Suresh Kumar contests the election he will get a large number of Scheduled Caste votes and that would damage his chances in election, he prevailed upon the Returning Officer Shri Vineet K. Garg and got his nomination paper rejected in a most unwarranted D manner which will be spelt out in the later part of this petition. Similarly, he got the nomination paper of Shri Yogender son of Shri Sher Singh rejected illegally and improperly for non-existent and fabricated reasons as Shri Yogender was a strong contender for the Bahujan Samaj Party ticket and was sure to get the ticket and was most suitable, formidable and popular candidate amongst the other E contenders of the Bahujan Samaj Party."

In paragraphs 5 to 11 of the petition, the petitioner repeatedly alleged that the Returning Officer at the behest of the returned candidate improperly rejected the nomination papers of Suresh Kumar and Yogender. On the basis of these allegations the election of the returned candidate was challenged and F according to the election petitioner the same was liable to be set aside as the nomination papers of the aforesaid two persons had been improperly rejected. The preliminary objection raised was to the effect that the allegations of collusion between the returned candidate and the Returning Officer in rejecting the nomination papers of Suresh Kumar and Yogender would amount to an G allegation of corrupt practice as defined in Section 123(2) to (7) of the 1951 Act and since these allegations are not supported by an affidavit the election petition is not maintainable and in any case paragraphs 4 to 11 of the petition are liable to be struck off.

The Election Petitioners took the stand that the main thrust of the H petition is on improper rejection of the nomination papers of Suresh Kumar,

Yogender and Mala Ram and on improper acceptance of the nomination papers of the returned candidate; that the election petitioners are not challenging the election of the returned candidate on the ground of his committing any corrupt practice and it was further pleaded that the averments made in paragraphs 4 to 11 of the petition do not satisfy the requirements of corrupt practice as defined in Section 123(2) and (7) of the 1951 Act and, therefore, there was no need to support the same with an affidavit. The learned Judge in the High Court took the view that it was not necessary for him to examine whether the allegations made in paragraphs 4 to 11 of the petition constitute any corrupt practice within the meaning of Section 123(2) to (7) of the 1951 Act since election of the returned candidate is not being challenged on the ground of his having committed any corrupt practice; that even if there was a collusion between the returned candidate and the Returning Officer, the same would neither be tried nor record any finding thereon which can in any way prejudice any party or person. In the view of the High Court, the substance of the allegations made in paragraphs 4 to 11 was to the effect that the nomination papers of Suresh Kumar and Yogender were improperly rejected and collusion was alleged only as a motive for the Returning Officer to reject the nomination papers but what was really to be determined was whether the nomination paper of Suresh Kumar and Yogender were improperly rejected or not. If the election petitioner is successful in proving that the nomination papers of these two persons were improperly rejected then no other question would arise and the petition would succeed. On the other hand, if he is unable to prove that the nomination papers were improperly rejected the petitioner would fail. In either event the court would not be recording any finding in regard to the commission of any corrupt practice nor has the petitioner charged the returned candidate with the commission of any such practice. On this basis, the preliminary objections were overruled.

Shri Rajinder Sacher, the learned senior Advocate appearing for the returned candidate, submitted that when, in fact, the allegations contained in petition amount to corrupt practice, affidavit in support thereof was absolutely necessary and in the absence of an affidavit these allegations cannot stand and the same need to be struck off and thus if those allegations were struck off nothing in the petition remained to be considered and the entire petition has to be rejected.

On a proper construction of the averments made in the course of the election petition, the High Court understood the allegations only to mean that the election of the returned candidate was being challenged on the ground

A of improper rejection of the nomination papers of Mala Ram, Suresh Kumar and Yogender or improper acceptance of the nomination papers of the returned candidate and all other allegations were mere embellishments to the same, we do not think that the view taken by the High Court in the circumstances of the case was not justified or unreasonable. When the order made clear that no corrupt practice as arising under Section 123(2) to (7) of the 1951 Act would be put in issue or any trial held thereon all apprehensions of the returned candidates stood allayed. Therefore, the order made by the High Court on the preliminary objection raised by the returned candidate is correct and has got to be upheld.

According to the calendar of events nomination papers could be filed from 27.3.1996 to 3.4.1996. The case of the election petitioner (in E.P. 6/96) was that Suresh Kumar and Yogender personally presented their nomination papers before the Returning Officer on 7.4.96 at 2.13 p.m. and 2.15 p.m. respectively and that they made and subscribed to the oath before him at the time of presenting the nomination papers. It is also alleged that the nomination papers of the returned candidate have been improperly accepted by the Returning Officer though he did not make and subscribe to oath validly at the time of filing his nomination papers or at any other time before scrutiny. Thus, the crux of the matter is improper acceptance of the nomination papers of the returned candidate and whether the same has materially affected the result of the election in so far as it concerns the returned candidate and improper rejection of the nomination papers of Suresh Kumar and Yogender. In the written statement, the allegation that the nomination papers of Suresh Kumar and Yogender were improperly rejected by the Returning Officer is denied. The returned candidate also denied that he prevailed upon the Returning Officer to reject nomination papers of Suresh Kumar and Yogender and that there was any collusion between him and the Returning Officer. He also pleaded that nomination papers of the returned candidate were properly accepted and he had taken oath before the Returning Officer at the time of presenting the papers.

Two issues have been raised as regards the preliminary objection which had been considered by us earlier. Rest of the issues relevant for the present purpose are as follows :

> "3. Whether the nomination papers of Shri Suresh Kumar and Yogender were improperly rejected by the Returning Officer? If so, its effect?

4. Whether the nomination paper of the returned candidate was wrongly accepted by the Returning Officer? If so, its effect? A

5. Relief."

So far as Issue No. 4 is concerned, it has been answered in favour of the returned candidate and that part of the order is not impugned by any of B the respondents. The only issue that remains is Issue No. 3.

On Issue No. 3, oral evidence was adduced and several documents were marked. The Returning Officer has been examined as R.W.4. He has narrated the sequence of events that took place on the eve of the election held to No. 89, Ateli Legislative Assembly in April, 1996. April 3, 1996 was the last date C for the candidates to file their nomination papers and there was a lot of rush for filing those papers on that day. 50-60 nomination papers were filed on that date. 26 nomination papers had been filed upto 2.4.96 and 62 nomination papers were filed on the last date. Nomination paper at S.No. 27 was the first one to be filed on 3.4.96. The Register of nomination papers does not record D the time at which the nomination papers were filed but the same can be ascertained from the nomination paper itself. The time for filing the nomination papers commenced at 11 a.m. and nomination papers at S. Nos. 27 to 46 were filed on 3.4.96 from 11 a.m. to 1 p.m. On account of heavy rush, the Returning Officer made arrangements in such a manner that the Assistants would also E sit in his room. The nomination papers would be submitted to the Assistants for registration in the Register. After filling up this part of the nomination paper or the oath form required to be filled by his office, nomination papers were presented to him. The Assistants were also verifying the details mentioned in the nomination papers and the oath forms. When he received the nomination papers, he called upon the candidates one by one to take the oath and in the F meantime he was signing their nomination papers and also the oath forms. Error, if any, found in any nomination paper/oath form was brought to his notice and the errors were corrected by him. He used a pen with green ink on the date when he received the nomination paper and the date of the scrutiny. In respect of some of the oath forms received by him, he found that G the signatures of the candidates were already there. After giving them the prescribed oath he did not ask such candidates to sign their oath forms again. In some cases he found that the candidates were not present when their nomination papers were put up to him. He asked his Assistants to call out the names of the candidates so that they could come and take the oath. After the names of the candidates were called out some of them turned up and took H

A the oath while others remained absent and in such cases he noted on the nomination papers that the oath had not been taken. Inasmuch as the forms of the absentee candidates had already been filled up by his Assistants, he also recorded the time and date in his order stating that oath had not been taken on that date and time. The time and date as was recorded by him in his order was the same which had earlier been filled by his Assistants in those forms. In respect of Exh.RW4/1 which is the oath form of Yogender, he had noted that the oath had not been taken at the time and date already filled in by his Assistants and official seals had been affixed at three places on the form. At two places marked at A and B on the form he had put his signatures which were subsequently scored off by him. Exhibit RW4/2 is the nomination paper of Yogender and that form bears his signatures as the Returning Officer. On the back side of the form he passed an order on 4.4.96. Some words in the order had been scored off by him at four places. Exhibit PW3/1 is the nomination paper of Suresh Kumar and the back side of that form bears his signatures as Returning Officer and it also contained an order rejecting the nomination paper which was passed by him on 4.4.96. The scorings in his order at two places were done by him. Exhibit PW 3/2 and RW 1/1 were put up to him in the normal course after the Assistants in his room had filled up the portions therein which were required to be filled up by his office. Suresh Kumar and Yogender were not present when their names were called though in the meantime he had already appended his signatures on their oath forms. When the Assistants called out their names with the help of the Peon they did not come and did not take oath before him and on the reverse side of Exh. PW 3/1 he had made an order on 4.4.96 rejecting the nomination paper of Suresh Kumar because he had not taken the oath before him at the time of presenting the nomination paper. First he wrote the words "rejected" "Oath not made" and put his signatures along with the date. Thereafter, it appears, he realised that he should pass a speaking order while rejecting the nomination paper. Then he scored off his signatures and the date and wrote a complete order. Similarly, he made similar order by scoring off similar phrases in the case of Yogender also. Exhibit PW1/4 is an oath form of Mala Ram and that form had already been signed by Mala Ram. When the oath form was taken up by him, Mala Ram was not present and the Assistants with the help of Peon called out his name but Mala Ram did not appear. He passed an order on the oath form. On 4.4.96, Mala Ram was present in his office at the time of scrutiny. He told him that he did not take the oath on 3.4.96 but he explained to him that was not the stage to take the oath and then he rejected his nomination papers which Exh.PW1/2 and passed the order on the reverse side

thereof. Again he made some correction therein and the cuttings thereon are in his hand-writing. Apart from the nomination papers of Suresh Kumar, Yogender and Mala Ram there were some other nomination papers as well which were rejected by him. Exh. RW 4/3 is the nomination paper of Ram Niwas son of Mahadev. This form also contains similar writings and corrections. He again rejected the nomination paper of Chander Parkash, Exh. PW5/1 and some of the corrections were made in the order and all the corrections were made by him in the order but those were in the ordinary routine. No one raised any objection at the time of scrutiny regarding rejection of nomination papers of Suresh Kumar and Yogender.

In the cross-examination, he was unable to state as to which of the candidates did or did not sign in his presence and similarly he was unable to state whether the returned candidate signed the oath form Exhibit RW 1/4 in his presence after taking the oath and he denied the suggestion that he did not take the oath before him. 15 candidates had filed their nomination papers on 3.4.96 from 11 a.m. to 1 p.m. In answer to the questions that when he found Suresh Kumar and Yogender were not present to take the oath he did not issue a memo to them particularly when their residences were 13 to 11 kms. away from his office and there was time for them to take the oath till the midnight of 3.4.96, he stated that it was essentially for the candidates themselves to ensure to take the oath so as to become eligible for election. Memo was required to be handed over in terms of the Hand Book to the candidates who did not take oath. Since Suresh Kumar and Yogender were not present, memo could not be handed over to them. The nomination papers of Ram Niwas son of Mahadev was rejected at the time of scrutiny. He did not produce his proof of age and since nobody was present on his behalf, no memo could be handed over to him. He admitted that Mala Ram had made an application to him for issue of certified copies of some documents and he allowed the same and the documents required by him were supplied to Mala Ram. The Election Commission had made an enquiry whether any memo in writing was issued and Exhibit RW4/7 was the report of the Peon to the effect that the name of Mala Ram was called out to enable him to take the oath and that report was put up to him in a routine way and he ordered to be placed the same on record. Exhibit RW 4/8 is a certified copy of the nomination paper filed by Mala Ram which was supplied to him. It was supplied to him on 4.4.96 at 4.17 p.m. There is no official stamp under his orders. Exhibit RW4/9 is an office copy of the certified copy of the oath form which was supplied to the petitioner. There is no official seal under his orders whereas the originals of

these documents contained official seal under his orders. He explained that the absence of the seals in the photo copy was on account of the fact the certified copies had been issued on the same day at 4.17 p.m. and the official seals were affixed on the originals subsequently. Official seals had been affixed at several specified places even in respect of those orders which he had passed. In Exhibit PW 1/4, the oath form of Mala Ram his order does not contain the date below his signatures. The same is with respect to the oath forms of Suresh Kumar and Yogender and on the suggestion that Suresh Kumar, Yogender and Mala Ram took oath on 3.4.96, he stated that the orders were passed on 3.4.96 on the oath form and he denied the suggestion that he had passed the order on 4.4.96.

His evidence was subjected to severe scrutiny by the High Court. The High Court took the view that the nomination papers of Suresh Kumar was entered in the Register meant for the purpose at S.No.64 and the Returning Officer certified the same as presented to him by the candidate personally on 3.4.96 at 2.13 p.m. and consequently the word 'proposer' had been scored off. The Returning Officer appeared in the witness box as RW-4 and admitted his signatures at portion marked A-1 on the nomination paper. From this certificate, the learned Judge concluded that Suresh Kumar was present in the office of the Returning Officer on 3.4.96 at 2.13 p.m. when he filed his nomination paper. Suresh Kumar appeared as PW-3. He disbelieved the Returning Officer that he called the names of Suresh Kumar, Yogender or Mala Ram and all the nomination papers and oath forms were stamped by the Assistants in the room of the Returning Officer and Returning Officer signed the oath forms of Suresh Kumar and Yogender certifying that they had taken oath before him. The High Court noted that it was curious that the Returning Officer who was signing the oath form only after the candidates had taken the oath and the statement of the Returning Officer that he signed their oath forms in routine though the candidates were not present was palpably wrong and could not be accepted. He had stated that while the candidates were being called upon to take the oath, he was simultaneously signing their nomination papers and oath forms and even if we take the statement of the Returning Officer at its face value, it could not be believed that Suresh Kumar and Yogender were not present when their nomination papers and oath forms were taken up for examination personally on 3.4.96 at 2.13 p.m. and 2.15 p.m. respectively. The Returning Officer has signed their nomination papers and certified that they were presented by the candidates personally at 2.13 p.m. and 2.15 p.m. If that is so, the fact that the candidate who was personally present at a specified

point of time being absent at that very time when he was to take the oath could not be believed. On that basis, the High Court castigated the Returning Officer very severely and observed as follows :

> "I am, therefore, constrained to hold that the Returning Officer is not telling the truth and as a matter of fact Suresh Kumar was present and took the oath and thereafter the Returning Officer also append his signatures on the oath form certifying that oath had been taken. It was only thereafter that the signatures were scored off by the Returning Officer for reasons best known to him. As held above, Suresh Kumar was present as per the certificate of the Returning Officer himself and to say that he was present but did not take the oath is also not credible. It is unfortunate that an office of the rank of an Additional Deputy Commissioner tampered with the record by scoring off his signatures after Suresh Kumar had taken the oath before him only to prepare the ground for rejecting his nomination paper. He has interfered in the electoral process and has played also with that of Suresh Kumar who was eligible to contest."

Similar reasoning was adopted by the learned Judge in the case of Yogender. In the case of Mala Ram there was much discussion as to the time when the nomination papers were filed i.e. whether at 1.45 p.m. or 2.18 p.m. In either event it would not have very much mattered inasmuch as the nomination papers could be filed till 3 p.m. on that date. The learned Judge ultimately concluded as follows :

> "Before parting I cannot resist observing that the conduct of the Returning Officer in the present case has been most reprehensible and cannot but be deprecated. In a country like ours where democracy has taken its roots it is not only the purity of the electoral system which is a must but the officials chosen to man the elections should also be men of integrity who should not play with the political fortunes of candidates but should let them contest if they are otherwise eligible and allow the people to have the representatives of their own choice. If the system is to be preserved I am afraid a person like Vineet K. Garg who was the Returning Officer in the present case should have no place in it. I am sure that the Election Commission of India will take notice of his conduct and take whatever action is necessary in accordance with law."

A In the matter of appreciation of evidence in election disputes certain principles have been stated by this Court. The general principle is that the onus to prove the essential facts which constitute the cause of action in an election petition is upon the person making it, namely, the election petitioner. What evidence would be sufficient to prove a particular fact depends upon the circumstances of each case. When the evidence adduced is capable of drawing an inference either way, the view that is favourable to the returned candidate will have to be preferred. In *Ram Singh & Ors.* v. *Col. Ram Singh,* [1985] Supp. SCC 611, the principle set out by this Court, by majority, is as follows :

> "In border line cases, the Courts have to undertake the onerous task of disengaging the truth from falsehood, to separate the chaff from the grain. In our opinion, all said and done, if two views are reasonably possible - one in favour of the elected candidate and the other against him -Courts should not interfere with the expensive electoral process and instead of setting at naught the election of the winning candidate, should uphold his election giving him benefit of doubt. Thus is more so where allegation of fraud or undue influence is made."

In election disputes emotions of the public are raised and opinions are sharply divided between groups. In such circumstances oral testimony in favour of one or the other party is easy to be adduced but the same will have to be critically examined and, therefore, oral evidence is to be assessed with a great deal of care. In *Rahim Khan* v. *Khurshid Ahmed,* [1975] 1 SCR 643, it was observed by this Court :

> "We must emphasize the danger of believing at its face value oral evidence in an election case without the backing of sure circumstances or indubitable documents. It must be remembered that corrupt practices may perhaps be proved by hiring half a dozen witnesses apparently respectable and disinterested, to speak to short and simple episodes such as that a small village meeting took place where the candidate accused his rival of personal vices. There is no X-ray whereby the dishonesty of the story can be established and; if the Courts were gullible enough to gulp such oral versions and invalidate elections, a new menace to our electoral system would have been invented through the judicial apparatus. We regard it as extremely unsafe, in the present climate of Kilkenny-cat election compensation and partisan witnesses wearing robes of veracity, to upturn a hard won electoral

victory merely because lip service to a corrupt practice has been rendered by some sanctimonious witnesses. The Court must look for serious assurance, un-lying circumstances or unimpeachable documents to uphold grave charges of corrupt practices which might not merely cancel the election result, but extinguish many a man's public life." A

Again in *Thakur Sen Negi* v. *Dev Raj Negi,* [1993] Supp. 3 SCC 645, it was observed : B

"It must be remembered that in an election dispute, the evidence is ordinarily of partisan witnesses rarely of independent witnesses and, therefore, the Court must be slow in accepting oral evidence unless it is corroborated by reliable and dependable material. It must be remembered that the decision of the ballot not be lightly interfered with at the behest of a defeated candidate unless the challenge is on substantial ground supported by responsible and dependable evidence." C D

In this case the evidence of the Returning Officer is corroborated by other witnesses on several aspects particularly in regard to the procedure adopted by him. The High Court found that the Assistants were receiving the nomination forms and were taking to Returning Officer in batch of 7 to 8 forms along with candidates. After the nomination papers were checked by the Returning Officer candidates were called to take oath and he was signing forms only after their taking oath. Departure in case of Suresh Kumar and Yogender to sign the nomination forms in routine manner is not accepted. That circumstance may lead to an inference that the Returning Officer had committed certain errors or mistakes in maintaining the records in his office but it would not lead to the conclusion that he has rejected the nomination papers of Yogender, Suresh Kumar and Mala Ram *mala fide.* He appears as witness in the case and admits the writing or over-writing/scoring effected on the different forms presented to him. He offered an explanation for the same to the effect that the nomination and oath forms had been filled up and given to his Assistants who later on placed them in groups before him. He caused calling out the names of those persons who are supposed to appear before him and he would administer oath to them. It is the case of the respondents that they had presented the nomination papers in proper order and oath also had been taken by them in the sense that they signed the oath forms. If they were present in the office of the Returning Officer at the time of presentation of the nomination forms, it is submitted, there is no reason to doubt their E F G H

A presence at the time when they were called to take oath. On this aspect also the explanation offered by the Returning Officer is that though time had been noted in the forms actually at the time when he called them they were not available and, therefore, he had to note that they had not taken the oath on the date and time noted therein. Ultimately what boils down for our consideration in this case is word against word stated on oath. On the basis B of the evidence on record as analysed above two inferences are possible - to accept either the version given by the Returning Officer or that given by the election petitioners and their witnesses. On the principles in the matter of appreciation of evidence set out above in the three decisions to which we have adverted to it would not be safe to upset the election on the basis of C such testimony.

However, the learned counsel on behalf of the respondents contended that in this case apart from the oral evidence tendered by the parties there are certain documents which clearly clinch the matter and they are official documents and, therefore, unimpeachable. We fail to appreciate this argument. D Documents to which reference is made are either the nomination forms or the oath forms in respect of which explanation has been offered by the Returning Officer. If the explanation offered by the Returning Officer is accepted then the writings or over-writings or corrections made thereto while scoring off certain words stand explained. Thus these documents again do not tilt the E matter one way or the other. Therefore, we must again notice that there is no clinching material at all in this case to hold in favour of the election petitioners, as has been done by the High Court.

Now, we shall advert to certain circumstances appearing in the case which support the view taken by us.

F

We shall first take up the case of Mala Ram. In the election petition he has stated that he filed his nomination paper at about 1.45 p.m. on 3.4.1996 which was the last date for filing the nomination papers; that, he remained in the office of the Returning Officer beyond 5.00 p.m.; that, he had taken oath G or affirmation as required under the Constitution before the Returning Officer who administered the oath. These averments are reiterated in the evidence tendered by him before the Court. The Returning Officer stated in his evidence that the said Mala Ram appears to have handed over the nomination papers to the staff and had gone away. He did not sign on the said papers as Mala Ram did not present himself when he was called for the purpose of H administering oath to him. Explanation offered by the Returning Officer is that

7 to 8 nomination papers were collected together and placed before him when several persons were standing in his room thinking that the persons who have submitted their nomination papers were present before him he signed all the nomination and oath papers. The petitioner Mala Ram had sent a complaint to the Election Commission of India. We may compare the evidence tendered by him with what he has stated in that complaint a little while later. He had also complained to the Deputy Commissioner, who, according to him, spoke to the Returning Officer.

The evidence of Mala Ram is that he went to the office of the Returning Officer with a group of about 5000 persons and presented his nomination papers to the Returning Officer. After obtaining the nomination papers he filled the same and deposited the form with the clerk of the Returning Officer who took it to the Returning Officer at about 1.45 p.m. and the Returning Officer after checking both the sets of nomination papers filled the time, date and place of presentation in those papers. Thus the clear case set up by Mala Ram is that he himself presented the nomination papers at 1.45 p.m. the Returning Officer filled the same in his handwriting recording the time, place and date whereas the Returning Officer in his evidence has stated that Mala Ram had not come and that the date, time and place had been filled up by some other person and not by him and that there is no dispute between the parties that the Returning Officer had been using the pen with green ink and he was making all the writings in that ink whereas in the original form the time, date and place is filled in blue ink and handwritings also appears to be different. Thus it is highly improbable that Mala Ram could be correct in stating that the Returning Officer himself had altered the time at which he presented the papers although there was an entry to the effect that nomination papers had been presented at 1.45 p.m. and the same has been corrected as 2.48 p.m.. It is difficult to accept the case pleaded by the election petitioner. If the version put forth by Mala Ram is correct then the writing about time, place and date could be in green ink in the writing of the Returning Officer and there is no examination of the Returning Officer on this aspect of the matter when he was in the witness box. After taking oath Mala Ram claimed that the Returning Officer asked the clerk sitting by his side to complete the receipt portion by putting the time, date and place and the official seal of the Returning Officer thereon. The suggestion put forth by Mala Ram in the course of his evidence is that the Returning Officer had duly signed the nomination papers and handed over the same to the clerk but it is clear from the oath form that it did not contain the signature of the Returning Officer

A at all. In so far as the question of filling up of the form is concerned, all that could be said is that only date is filled up as 3-4-96 in both the portions . Mala Ram also stated that in the course of his evidence that serial numbers of his nomination papers at the time of presentation of his nomination papers on the reverse and both of the forms was not given in his presence. The procedure adopted by the Returning Officer is spelt out in the course of his evidence B to which we have adverted to earlier. On the presentation of the nomination papers a serial number was entered in the register. In the case of Mala Ram the two sets of nomination papers having serial numbers 86 and 87 wit' the time duly corrected as 2.48 p.m. are entered. Thus it appears to us that the nomination papers were handed over to the Returning Officer at 2.48 p.m. C when the serial numbers were endorsed on reverse of the both nomination papers. This conclusion is buttressed by the fact that previous nomination paper at serial number 85 bears the time 2.46 p.m. whereas later nomination papers of serial number 88 bears the time 2.55 p.m. which was the last nomination papers submitted before the Returning Officer. The evidence of D Mala Ram in this regard cannot be stated to be reliable inasmuch as the Returning Officer had not filled the time, date and place as contended by him and thus the time stated by him that he presented the nomination papers and took oath at 1.45 p.m. cannot be accepted at all. Mala Ram also stated in the course of his examination that the clerk had filled up the date, place and time in the oath form and the receipt portion. However, none of these papers bear E the signature of the Returning Officer. Thus it cannot be said that oath had been taken by Mala Ram in the presence of the Returning Officer and the Returning Officer had put his signature to that effect. Thus we think that all that he did was that he handed over the documents in the office and the office filled up the same before they corrected the time and handed over it to the F Returning Officer who put up his seal on the nomination paper in token of receiving the same but on the oath form he did not put his signature and noted that the oath had not been taken at 2.48 p.m. on 3.4.96.

There is no cross-examination of the Returning Officer with regard to Deputy Commissioner having spoken to him on complaint of Mala Ram.

G

The evidence of Mala Ram may be compared with what he had complained to the Election Commission (Annexure P-3). It is stated that the said Mala Ram took his oath by reading oath form and signed the form and thereafter delivered the same to the staff. An affidavit of the advocate who assisted and appeared for Mala Ram at the time of filling and submitting nomination and H oath form was also stated to have been attached to the application, but this

affidavit is not forth coming in the evidence in the case. In the complaint made by him the time when he filed the form or the time at which he took oath are not set out and he had obtained the copies of the documents in question on 4.4.96 whereas the complaint made by him is on 5.4.96. He has alleged that he made a complaint to the Deputy Commissioner about the manner in which the Returning Officer has rejected his nomination paper but there is no reference to the same in the course of his complaint. These circumstances will clearly indicate that the said Mala Ram has been making an attempt for improving the case from stage to stage.

Now we shall deal with the case of Suresh Kumar and Yogender. Yogender has not stepped into the witness box at all. Thus the presentation of his form or the person who presented it and whether he had taken the oath or not is not established. In the case of Suresh Kumar the Returning Officer had put his signature to the oath form. Therefore, it was contended by the petitioner that the Returning Officer had put his signature after the oath are to be administered but no receipt was given to them because it was not ready. It could be seen from the oath form that not only the main part of the form but the receipt part of the form also was filled up by the clerical staff and the Returning Officer had signed both parts of the oath form which had been later on scored off. It is clear that the version put forth by the Returning Officer is probable that when 7 to 8 nomination papers had been placed before him together, he went on signing each one of those forms and later on when he realised that the concerned candidate was not present in his office to take oath he scored off the same. If really the Returning Officer wanted to reject the candidate's nomination form on the basis that oath had not been taken, he need have signed the receipt part at all only to score it off later. The evidence discloses that the Returning Officer had in a routine manner put his initial on the oath forms when he checked the identity of the persons who were present and found that the concerned persons were not present he scored off his initials. He looked that the clerical staff had filled up the main part of the oath form and the receipt part. If really the oath had been taken, there is no reason as to why the receipt on which he has put signature could not have been given to the candidate immediately. It is also in evidence of some of the other candidates whose nominations had been rejected were able to obtain the receipt the following day when he went to the office of the Returning Officer at about 10.30 a.m. on 4.4.96 as on 3.4.96 at 3.45 p.m. when he went to the office of the Returning Officer he was told that the Returning Officer was not available whereas evidence of Mala Ram is clear that even

A at 5.00 p.m. the Returning Officer was available in the office. It is not as though the Returning Officer has any animus against Mala Ram, Suresh Kumar or Yogender so as to act *mala fide* or that there is any strong bias in the favour of the returned candidate to favour him. In the absence of any such material it is difficult to state that the version put forth by the Returning B Officer is not worthy of credence. The criticism made by the High Court in appraising the evidence that he tampered with the record by scoring off his signature only with a view to reject the nomination papers of Yogender and Suresh Kumar or in coming to the conclusion that no credence can be placed on the testimony of Returning Officer and that he tampered with the record is not borne out from the record. Therefore, we are of the view that the High C Court was not justified in making these scathing remarks.

On the question as to the attempts made by the Returning Officer to intimate the candidates of the defects in their forms as required by the instructions issued by the Election Commission it is stated that he made an D attempt to get the candidates in question but as they were not available the same could not be served and that was the date on which they filed the nomination papers for filing the same. The next date was for the scrutiny. Therefore, there was not much time left for him to send any intimation regarding the discrepancies in the nomination papers and therefore much cannot be made out without same. In this state of affairs if we appraise the E evidence tendered before the High Court it is difficult to subscribe to the view taken by the High Court that if the candidates were available for the purpose of filing of the nomination papers they could also be available for the purpose of taking oath at the same time particularly when examined in the light of the procedure adopted by the Returning Officer in presenting the papers to the F clerical staff who made a preliminary scrutiny and thereafter put them up to him in bundles/batches of 7 to 8 nomination papers and he was calling out the names of the candidates and thereafter made appropriate entries in the register and gave a number to the nomination form. This circumstance may indicate that Mala Ram, Yogender or Suresh Kumar was present at the time when clerks received the nomination paper but when the papers were placed G before the Returning Officer he found that at that time the candidate was not available to take oath. There was definitely a time gap between the time when the candidates presented the nomination papers to the clerks and thereafter when the Returning Officer called out their names for taking oath. Looked from that angle that the High Court has been unduly critical of the evidence H tendered by the Returning Officer in this regard but ought to have accepted

his case and dismissed the election petition as we propose to do now. We allow the appeals by the returned candidate and the election petition will stand dismissed for the reasons aforesaid. However, in the circumstances of the case there shall be no order as to costs.

A

SLP(C) Nos. 22529-22530 of 1997

B

These petitions have now become unnecessary in view of the order made by us in Civil Appeal Nos.5776-5777/97 and the same shall stand disposed of accordingly.

V.S.S. Appeals allowed.