observing that the facts leading to this litigation between the Panchayat Samiti and the State disclose a sorry state of affairs. In passing conflicting orders from time to time regarding the location of the headquarters of the petitioner-Samiti, the Government has betrayed signs of effeminate indecision or vacillation which indicates that those orders were passed on considerations other than the interests of the rural area which the petitioner-Samiti is intended to serve. This is further apparent from the fact that the impugned decision of the Government is in direct conflict with the guiding principles that it had laid down in its circular letter, dated 5th January, 1961, addressed to the Deputy Commissioner, to which a reference has been made in the opening part of this order. The town of Majitha, where under the impugned orders of the Government the headquarters of the petitioner are to be located is not within the jurisdiction of the petitioner-Samiti. It is not a rural area but a town, and it is in no way better suited than Kathu Nangal, the unanimous choice of the petitioner-Samiti, to serve the needs of the rural population under its jurisdiction.

For the reasons stated earlier, I, however, find no force in this petition and dismiss the same with costs.

R.N.M.

ELECTION PETITION

Before A. N. Grover, J.

KAPUR SINGH,—*Petitioner*

versus

DEVINDER SINGH GARCHA AND ANOTHER,—*Respondents*

Election Petition No. 2 of 1967

July 31, 1967

Constitution of India (1950)—*Article* 84—*Taking of an oath and also making affirmation—Whether mutually destructive and render each other nugatory—Representation of the People Act (XLIII of* 1951)—*S.* 36(5)—*Proceedings for*

scrutiny of nomination papers adjourned for couple of hours to decide a point of law—Such adjournment—Whether contravenes the section and renders the proceedings illegal.

Held, that the Constitution of India has prescribed by Article 84 that a person in order to be qualified for being chosen to fill a seat in Parliament must take an oath or affirmation in the prescribed form but that does not mean that if a person takes an oath as also makes an affirmation, the result is reduced to zero, and that he can neither be said to have taken an oath nor made an affirmation. There is no such requirement that an affirmation can be made only if it is first declared that a person is an atheist or does not have any religious faith. It is entirely left to the choice of a particular individual either to take an oath or make an affirmation irrespective of any declaration or *asseveration* of a religious behalf. Therefore, when an oath is followed by an affirmation, it cannot be said that belief in God is cancelled by disbelief or religious faith is wiped out by doing an act which normally would be done by a person who does not have such faith. It is a matter of common knowledge and occurrence that persons, who have religious faith and belief in God, prefer to make a solemn affirmation instead of taking an oath. It can even happen that a person may by a genuine mistake take an oath and also make a solemn affirmation by way of abundant caution.

Held, that the words "shall not allow any adjournment of the proceedings" in sub-section (5) of section 36 of the Representation of the People Act, 1951 clearly mean that no adjournment would be allowed at the request of the parties. If for the purpose of deciding a point of law on an objection which is of a complicated nature, the Returning Officer takes a couple of hours, that cannot constitute an adjournment of the nature provided for by sub-section (5) of section 36. The postponement by the Returning Officer of the proceedings for scrutiny of nomination papers for a short period for making up his mind about an objection raised does not render the proceedings illegal and void.

Petition under section 80 *of the Representation of the People Act,* 1951, *praying that the election of respondent No.* 1 *to the Lok Sabha, during the General Elections of* 1967, *be declared as void, under section* 100 *of the Representation of the People Act,* 1951 *on the grounds given in the Election Petition.*

B. S. Chawla, Advocate, for the Petitioner.

S. S. Kang and Bhupinder Singh Bindra, Advocates, for the Respondents.

ORDER.

Grover, J.—The petitioner contested the election held in February, 1967 to the Lok Sabha from the Ludhiana Parliamentary Constituency. He belonged to the Akali Dal—Master Tara Singh

Group (Master Group). Respondent No. 1, the returned candidate, belonged to the Congress party. He polled 1,32,660 votes whereas the petitioner polled only about 28,000 votes and even lost his security deposit. Respondent No. 2 was also a candidate of the Akali Dal but he belonged to Sant Fateh Singh Group (Sant Group). He polled about 1,13,000 votes. The other contestants and the number of votes polled by them as also the parties to which they belonged are set out below :—

(1) Shri Suresh Kumar (Jan Sangh) about 63,000.

(2) Shri Balwant Singh (Republican) about 8,000

(3) Shri Babu Ram Shan (Hindu Maha Sabha), about 8,000.

(4) Shri Hans Raj (Scheduled Caste Federation) about 6,000.

It may be mentioned that the Ludhiana Parliamentary Constituency comprises eight Assembly Constituencies, viz., Ludhiana North, Ludhiana South, Kum Kalan, Killa Rai Pur, Jagraon, Rai Kot, Payal and Dakha.

The allegations in the petition briefly were that the scrutiny of the nomination papers of all the candidates was held in the Court room of the District Magistrate, by the District Returning Officer, Shri B. S. Randhawa, on 23rd January, 1967 at 11 a.m. The petitioner raised an objection against acceptance of the nomination papers of respondent No. 2 on the ground that he had made an oath in the name of God as also subscribed to a solemn affirmation which was done simultaneously and this was in contravention of the requirements of Article 84 of the Constitution. The Returning Officer heard arguments of both sides and pointed out that the said defect was to be found in other nomination papers also and, therefore, he would defer giving a decision till he had concluded a scruitny of the other nomination papers which did not suffer from that defect. After accepting such nomination papers not having the aforesaid infirmity including that of the petitioner, the Returning Officer ordered an adjournment of the proceedings till 2 p.m. on the same day. At 2-10 p.m. he heard further arguments but he pulled out a paper which had already been typed from his file and read it out accepting the nomination papers of respondent No. 2. He also proceeded to accept the nomination papers of other which had not been accepted earlier. The correctness and legality of the order of the Returning Officer accepting the nomination papers of respondent No. 2 (copy of

which was attached as Annexure "A") were assailed on the ground that the requirements of Article 84 were mandatory and the taking of an oath and subscribing to a solemn affirmation constituted a contravention thereof and that reliance on paragraph 7(7) of Chapter II of Hand-Book for Returning Officers (General Elections 1967) by the Returning Officer was wholly unjustified and was not permissible. It was next alleged that respondent No. 2 was a candidate put up by the Group with the election symbol of the "scales" in contradistinction to the old election symbol of the Shiromani Akali Dal, the "Hand", which symbol had been allotted to the Group from which the petitioner stood (para 11 of the petition). According to the petitioner, he and respondent No. 2 were Panthic candidates and their combined votes came to 1,47,824 and although they fought under different symbols, it followed that if the nomination papers of respondent No. 2 had not been wrongly and illegally accepted, the petitioner as the only candidate of the Shiromani Akali Dal would have secured all the votes actually cast for the Dal and he would have won the election. It showed that the result of the election in so far as it concerned the returned candidate had been materially affected by the improper acceptance of the nomination papers of respondent No. 2. The specific grounds for getting the election of respondent No. 1 declared void were contravention of Article 84 of the Constitution and infringement of the provisions of section 36(5) of the Representation of the People Act, 1951, in the matter of acceptance of the nomination papers of respondent No. 2 as also reliance by the Returning Officer on paragraph 7(7) of Chapter II of the Hand-Book for Returning Officers which was described as altogether irrelevant and inapplicable.

Respondent No. 1 filed a written statement in which certain preliminary objections were raised but which need not be mentioned. It was admitted that the petitioner had raised an objection to the acceptance of the nomination papers of respondent No. 2 but it was averred that the decision given by the Returning Officer was perfectly valid and legal. According to the answering respondent, Shiromani Akali Dal, which is a recognised political party, had two groups, one headed by Master Tara Singh and the other by Sant Fateh Singh but a strong political animosity subsisted between the two groups. The Master Group was given the symbol of "human hand" whereas the Sant Group was allotted the symbol of "scales". In all predominantly Sikh Constituencies each of these Groups had set up candidates for election. In some of the Constituencies it so

happened that the Master Group had set up a candidate but the Sant Group had not, and in that case the Sant Group entered into an alliance with some other party to defeat the nominee of the Master Group. Similarly, where the Sant Group had set up a candidate and the Master Group had not, the latter entered into an alliance with some other party to defeat the candidate of the Sant Group. The Master Group had put up their candidates in all the eight Assembly Constituencies within the Ludhiana Parliamentary Constituency while the Sant Group had sponsored their candidates in six Constituencies excluding Ludhiana North and Ludhiana South. In Ludhiana South the Sant Group was supporting Shri Bhajan Singh, a candidate of the Communist Party, and in Ludhiana North the Sant Group was supporting a candidate other than the candidate of the Master Group. Before the elections, six political parties, i.e., the Sant Group, Communist Party of India (Marxist), Communist Party of India, P.S.P., S.S.P. and the Republican Party of India had fomred an electoral alliance and jointly supported the candidate or candidates sponsored by these parties. Shri Arjan Singh had been put up as a candidate by the Republican Party for the Ludhiana Parliamentary Constituency as also Shri Narjan Singh and Balwant Singh. The first two withdrew after the nomination papers of respondent No. 2 had been accepted. Shri Balwant Singh did not withdraw. It was denied that the petitioner was entitled to combine the votes secured by himself and by respondent No. 2. It was further claimed that respondent No. 2 had secured the number of votes which he did, not only because he was the nominee of the Sant Group but also for many other reasons, viz., personal popularity, his influence with the voters, and the help which the workers of the Sant Group gave to him, etc. The petitioner who was a sitting member of the Lok Sabha from the Constituency in question got very small number of votes which showed that he was not popular in the Constituency. If respondent No. 2 had not contested, the probability was that the votes which some members of the electorate might have cast for the Sant Group would not have been polled for the petitioner who was the nominee of the Master Group because of the political animosity which existed in an extreme measure between these two Groups. It was, therefore, not possible to surmise how many votes would have been polled by the petitioner if respondent No. 2 had not been allowed to contest the election.

The folowing issues were framed on 8th May, 1967 :—

(1) Whether the nomination papers of respondent No. 2 had been improperly accepted by the Returning Officer ?

(2) Whether the adjournment of the proceedings by the Returning Officer as alleged in paragraphs 5 to 8 rendered the proceedings illegal and void ? If so, what is the effect ?

(3) If issue No. 1 is decided in favour of the petitioner, whether the result of the election has been materially affected so far as the returned candidate is concerned ?

(4) Relief.

The counsel for the petitioner did not produce any evidence with the exception of getting the records kept in the office of the Returning Officer, Ludhiana, for the Ludhiana Parliamentary Constituency in respect of the nomination papers filed by respondent No. 2 produced which was done by Shri Narinder Singh, Election Naib-Tehsildar, Ludhiana, on 12th July, 1967 when he happened to be present in Court. Respondent No. 1 made his own statement and did not produce any other evidence.

On the first issue, reference has been made by Mr. Chawla to clause (a) of Article 84 of the Constitution. It provides that a person shall not be qualified to be chosen to fill a seat in Parliament unless he is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule which is as follows :—

> "I, A.B., having been nominated as a candidate to fill a seat in the Council of States (or the House of the People) do swear in the name of God
> ——————————that I will bear true faith and
> solemnly affirms
> allegiance to the Constitution of India as by law established and that I will uphold the sovereignty and integrity of India."

Clause (a) was substituted for the previous one by the Constitution (Sixteenth Amendment) Act, 1963. In the statement of objects and reasons by which Bill No. I of 1963, was introduced in Lok Sabha on 21st January, 1963, it was stated, *inter alia*, that the Committee on National Integration and Regionalism appointed by the National

Integration Council was of the view that every candidate for the mebership of a State Legislature or Parliament, and every aspirant to; and incumbent of, public office should pledge himself to uphold the Constitution and to preserve the integrity and sovereignty of the Union. In the original file containing the nomination papers in the typed form of oath or affirmation to be made by a candidate to the House of People/Legislature of a State, respondent No. 2 had not crossed out anything and had just filled in his name and signed it. This is how the text reads in the original nomination papers—

> "I, Mohinder Singh, having been nominated as a candidate to fill a seat in the Lok Sabha/Punjab Vidhan Sabha do swear in the name of God
> ——— ——————that I will bear true faith and
> solemnly affirm
> allegiance to the Constitution of India as by law established and that I will uphold the sovereignty and integrity of India."

The Assistant Returning Officer, Ludhiana, made an endorsement:
"Oath taken and signed in my presence to-day."

It is aparent that respondent No. 2 did not even delete the words "Punjab Vidhan Sabha" from the typed form which it was necessary for him to do since he had been nominated as a candidate for the Lok Sabha. Similarly, he did not cross out one or the other of the alternatives, namely, "swear in the name of God" or "solemnly affirm" which it has been suggested on behalf of respondent No 1 was clearly the result of inadvertence. The fact, however, remains and this in face of the finding in the order of the Returning Officer, dated 21st January, 1967 has not and cannot be controverted by respondent No. 1 that respondent No. 2 had made an oath as also a solemn affirmation simultaneously. According to the Returning Officer, an oath or affrmation was to be made by the candidate himself if literate or was to be accepted by him after it had been read out to him if illiterate by the Returning Officer or the Assistant Returning Officer and whatever was superfluous had to be deleted by the Returning Officer or the Assistant Returning Officer,—*vide* paragraph 7 of Hand-book for Returning Officers (General Elections 1967); In his opinion, since the oath/solemn affirmation had been taken/subscribed by the candidate so the omission was not of a substantial character as a result of which the nomination papers could be rejected.

Now, Mr. Chawla's main argument is that there is a well-recognised distinction between an oath in the name of God and a solemn affirmation. In Wharton's Law Lexican which refers to English Law, it is stated that an affirmation is a solemn declaration without oath. At first people called Quakers and Moravians were allowed to make it as an indulgence as also Separatists but it was afterwards extended to all persons objecting to taking an oath. By certain statutes and particularly the Evidence Amendment Act, 1869 solemn affirmation could be taken by persons having no religious belief, the former statutes having applied only to persons prevented by a religious belief from swearing. The Act of 1869, however, did not apply to promissory oaths, e.g., to the oath directed by the Parliamentary Oath Act, 1866, as amended by the Promissory Oaths Act, 1868, to be taken by members of Parliament. Finally, the Oaths Act, 1888 had allowed every person objecting to be sworn to affirm, instead of taking an oath, in all places and for all purposes where an oath was required by law. As regards oath, Wharton says that it is an apeal to God to witness the truth of a statement. All who believe in a God, the avenger of falsehood, have always been admitted to give evidence, but the old rule was, that all witnesses must take an oath of some kind. Very gradually, however, the Legislature relaxed this rule, and the privilege of affirming instead of taking an oath had been universally granted by the Oaths Act, 1888. In Stroud's Judicial Dictionary (Volume III), the following statement appears :—

> "An oath is a religious asseveration, by which a person renounces the mercy and imprecates the vengeance of Heaven if he do not speak the truth (*R.* v. *White, Leach,* 430, 431). Sacrment."

In Corpus Juris Secundum (Volume 67), it is stated under the heading "Oaths and Affirmations" in article 4 that at common law a person cannot take a valid oath unless he entertains a belief in the existence of a God who will punish him if he swears falsely. In Article 6(b) it is stated that where a statute prescribes a particular form of oath or affirmation, that form should be followed and that substantial compliance therewith may be sufficient. In Wigmore's Treatise on Evidence, Volume 3, Sections 1816—1818, the following passage is qutie illuminating :—

> "The theory of the oath, in modern common law, may be termed a subjective one, in contrast to the earlier one,

which, may be termed objective. The oath is not a summoning, of Divine vengeance upon false swearing, whereby when the spectators see the witness standing unharmed they knew that the Divine judgment has pronounced him to be a truth-teller, but a method of reminding the witness strongly of the Divine punishment somewhere in store for false swearing, and thus of putting him in a frame of mind calculated to speak only the truth as he saw it."

The course of development of the Indian Law on the subject has been succinctly explained in the following passage from the judgment of the Privy Council in *Indar Prasad* v. *Jagmohan Das* (1), page 172:—

"That law was derived from the English law, with some modifications suggested by Indian conditons. Just as in England, so also in India, it was at one time the rule that there could be no evidence without an oath in the strict sense of the word, and only gradually were exceptions grafted by statute upon that rule. Prior to 1840 the privilege of making an affirmation instead of taking an oath was enjoyed only by Quakers, Moravians and Separatists. By that time it had been found that the taking of an oath was highly objecionable to Hindus and Mohamendans, and Act 5 of 1840 was passed for the purpose of prohibiting the administration of oaths to persons belonging to those communities, a form of affirmation being substituted for an oath. With some extension in 1869 the law so remained until the Act 6 of 1872 was passed. By that Act it was provided that every witness who objected to take an oath might instead make a simple affirmation, and in section 4 will be found the statutory provision which, prior to 1873, enabled volunteers to make oaths in special cases. Sections 8 to 13 of the present Act of 1873 correspond to and have taken the place of that section, and their Lordships can have no doubt that long before that time the Indian view, embodied afresh in the Act, had come to be that which may, briefly, be tken from the words of the

(1) A.I.R. 1927 P.C. 165.

Lord Chancellor in *Omychund* v. *Barker* (2), and quoted by the Judicial Commissioners:

The next thing is the oath. It is laid down by all writers that the outward act is not essential to the oath. It has been the wisdom of all nations to administer such oaths as are agreeable to the nation of the person taking."

The argument of Mr. Chawla is that the taking of an oath as also making affirmation with it are mutually destructive and render each other nugatory. According to him, oath can be taken and will be taken only if a person believes in God or has religious faith whereas an affirmation will be made by a person who either has no religious faith or does not believe in God or in the taking of an oath. I find it difficult to accede to the contention of Mr. Chawla which has the merit of ingenuity but has no substance. The Constitution has certainly prescribed by Article 84 that a person in order to be qualified for being chosen to fill a seat in Parliament must make an oath or affirmation in the prescribed form but that does not mean that if a person takes an oath as also makes an affirmation, the result is reduced to zero, and that he can neither be said to have taken an oath nor made an affirmation. There is no such requirement that an affirmation can be made only if it is first declared that a person is an atheist or does not have any religious faith. It is entirely left to the choice of a particular individual either to take an oath or make an affirmation irrespective of any declaration or asseveration of a religious belief. Therefore, when an oath is followed by an affirmation it cannot be said that belief in God is cancelled by disbelief or religious faith is wiped out by doing an act which normally would be done by a person who does not have such faith. It is a matter of common knowledge and occurrence that persons who have religious faith and belief in God will prefer to make a solemn affirmation instead of taking an oath. It can even happen that a person may by a genuine mistake take an oath and also make a solemn affirmation by way of abundant caution.

It seems to me, however, that in the present case respondent No. 2 simply did not realise that certain words in the prescribed form of the nomination papers required crossing out and that is why

(2) 1 Atk. 21(22).

even the words "Punjab Vidhan Sabha" were not scored out. I am inclined to the same view as the Returning Officer that it was the duty of the Assistant Returning Officer to have called attention of respondent No. 2 to the question of either swearing in the name of God or making a solemn affirmation and scoring out one or the other which was apparently never done. According to paragraph 7 of the Hand-Book for Returning Officers which has been issued by the Election Commission, an oath or affirmation has first to be made and then signed by the candidate before the authorised officer. It is further stated :—

> "It should be borne in mind that mere signing on the paper on which the form of oath is written out is not sufficient. The candidate must make the oath before the authorised officer. Accordingly he will ask the candidate to read the oath or affirmation in English or the Regional language and then to sign and date the paper on which the oath or the affirmation is written."

Even if the Hand-Book does not have any statutory validity it only lays down what ought to be done as a matter of routine by the authorised officer which is in consonance with normal practice and common sense. The Assistant Returning Officer has noted that the oath was taken and signed in his presence. He should have ensured that the words "solemnly affirm" were crossed out and he failed in his duty in the matter. I cannot see in these circumstances how the nomination papers of respondent No. 2 were liable to be rejected on the ground of the infirmity on which the petitioner has relied.

On the second issue Mr. Chawla has referred to section 36(5) of the Representation of the People Act which reads thus —

> "The Returning Officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:
>
> Provided that in case an objection is raised by the Returning Officer or is made by any other person the candidate concerned may be allowed time to rebut it not later than

> the next day but one following the date fixed for scrutiny, and the Returning Officer shall record his decision on the date to which the proceedings have been adjourned."

The petitioner did not produce any evidence to substantiate his allegations that when on the date of the scrutiny the Returning Officer ordered an adjournment of the proceedings till 2 p.m. and when they were resumed at 2-10 p.m., he heard further arguments and pulled out a paper, which had already been typed, from his file and read it out accepting the nomination papers of respondent No. 2. The only facts which stand admitted in the evidence of respondent No. 1 recorded in Court are that the petitioner raised an objection before the Returning Officer at the time of scrutiny to the nomination papers of respondent No. 2. The Returning Officer wanted time to look into the matter and, therefore, he proceeded with the examination of the nomination papers of other candidates. He did not adjourn the proceedings to any other date but finished the scrutiny on that very day. In cross-examination it was admitted by him that S. Gurnam Singh addressed arguments on behalf of respondent No. 2 for a few minutes and the petitioner also argued for about half an hour. After hearing the arguments the Returning Officer said that he would give a decision after looking into the other nomination papers. Respondent No. 1 further stated that he went away after the Returning Officer accepted his nomination papers and before he decided the objections relating to respondent No. 2. In answer to a specific question as to the reason given by the Returning Officer for deferring the decision, respondent No. 1 stated that both sides had submitted their arguments and the Returning Officer wanted some time in order to reach a decision. This was at 12-15 p.m. When respondent No. 1 went to the Returning Officer at 2 p.m. to collect his identity papers he was told by that officer that he had given a decision accepting the nomination papers of respondent No. 2. Mr. Kang objected to the last question being asked on the ground that it was a hearsay. It is to be found in the written statement of respondent No. 1 that there was adjournment of proceedings for some time and that arguments were heard on two occasions which shows that the Returning Officer took some time for giving a decision on the objection raised by the petitioner. Even on the assumption what the petitioner says is right that there was an interruption of proceedings before the Returning Officer between 12-15 p.m. to 2 p.m., it is difficult to see how there has been any contravention of section **36(5)**

of the Act. The words "shall not allow any adjournment of the proceedings" quite clearly means that no adjournment would be allowed at the request of the parties. If for the purpose of deciding a point of law on an objection which is of a complicated nature the Returning Officer takes a couple of hours, surely that cannot constitute an adjournment of the nature provided for by sub-section (5) of section 36. In *Dahu Sao* v. *Ranglal Chaudhary and others* (3) an argument was raised that the Returning Officer had no jurisdiction to postpone the decision as to the validity of the nominations to the following day as the candidate concerned had not asked for any time to rebut the objection which was raised in respect of his nomination papers. A Bench of the Patna High Court repelled the argument and held that although the holding of the scrutiny could not be postponed except when such proceedings were interrupted or obstructed by riot, etc., but the scrutiny could be postponed for a day or two for further scrutiny in order to allow time to the candidate concerned whose nomination was objected to, but clear or express words were not to be found in the proviso to sub-section (5) from which it could be held that the Returning Officer could not reserve his decision to be given on the day following the scrutiny. It might well be that objections of a kind were raised which might require further consideration by the Returning Officer with reference to books, statutes or rules and in absence of clear and express provision the Court was not prepared to stifle the power of the Returning Officer to the extent suggested. Support for this view was found from another case reported as *Parmeshwar Kumar* v. *Lahtan Chaudhary* (4). I find no force whatsoever in the contention raised by Mr. Chawla under issue No. 2 and I hold that the postponement by the Returning Officer of the proceedings for a short period for making up his mind about the objection raised by the petitioner to the acceptance of the nomination papers of respondent No. 2 did not render the proceedings illegal and void.

As issue No. 1 has been decided against the petitioner, it is altogether unnecessary to decide issue No. 3. Even then since the matter has been argued by both sides and an appeal lies to the Supreme Court I propose to give my decision on the said issue. As stated before, Mr. Chawla has not led any evidence whatsoever on

(3) 22 E.L.R. 299.
(4) 14 E.L.R. 444.

behalf of the petitioner from which it could be held that the result of the election has been materially affected so far as the returned candidate is concerned. He has, however, sought to establish his contention by relying on certain admitted and proved facts. According to him, if the nomination papers of respondent No. 2 had not been accepted, the votes which were polled by the latter would have gone to the petitioner. He says that the votes were cast in favour of the Akali Dal and since the petitioner belonged to the Master Group most of the votes or majority of votes which were cast in favour of respondent No. 2 who was also a candidate of the Akali Dal, though of a different Group, namely, the Sant Group, would have gone to the petitioner. He referred to the admission of respondent No. 1 in his cross-examination that the Akali candidates on two previous occasions had won the Lok Sabha seat from the Ludhiana Parliamentary Constituency. He could not say with certainly but, as far as he could recollect, the Congress had won two seats out of the Assembly Constituencies whereas the Akali Dal won six seats in the elections, held in 1962. Respondent No. 1 in his statement which stood unrebutted made it quite clear that there was a good deal of hostility between the two groups, namely, the Sant Group and the Master Group of the Akali Dal. The Sant Group had put up 58 candidates during the election of 1967 to the Punjab Assembly and the Master Group had probably put up more candidates. In no Constituency where the Sant Group did not put up its own candidate did that Group support the Master Group's candidate. The Master Group had put up a candidate against S. Gurnam Singh, the present Chief Minister of Punjab, who belonged to the Sant Group and who contested from the Raipur Constituency. Only two candidates had been returned from the Master Group to the Assembly and none was returned to the Parliament. He further stated that the petitioner had contested the election in 1962 from the Ludhiana Parliamentary Constituency as an Akali candidate when he won with a majority of about 1,800 votes but in the 1967 elections, so far as he knew, the petitioner did not nurse the Constituency and never went to the rural areas. In those areas Master Tara Singh had hardly any influence although he had some influence in the urban areas. All the candidates put up by the Master Group even for the Assembly Constituencies comprising the Ludhiana Parliamentary Constituency had lost their security deposits with the exception of the candidate in the Ludhiana-South Constituency. Respondent No. 1 had polled more than 21,000 votes in the urban Constituencies

of Ludhiana-North and South. In the other six, four seats were won by the Congress and two were won by the Sant Group of the Akali Dal. The petitioner polled about 10,000 votes in the two urban Constituencies. The Congress had a common election programme and all the candidates in the various Assembly Constituencies as also the candidate for the Parliamentary Constituency were working in close collaboration. Respondent No. 2 wielded certain amount of personal influence in the Lok Sabha Constituency as he belonged to Ludhiana District and had big business in various places in that District. He was also President of certain educational institutions. It is quite obvious that the petitioner has totally failed to establish that all or majority of the votes which were polled by respondent No. 2 would have been cast in his favour if the nomination papers of the said respondent had not been accepted. The evidence of respondent No. 1 fully proves that out of the two Groups, the Sant Group of the Akali Dal wielded predominant influence in the Ludhiana Parliamentary Constituency. It is further established that the Sant and the Master Groups had sharp political differences and the Sant Group was not prepared and did not in fact support any candidate of the Master Group even where a candidate from the Sant Group did not contest an Assembly seat. Moreover, the election of a candidate does not depend entirely and completely upon the community to which he belongs or the party which has put him up. Other factors like personal influence also go a long way in winning support for the candidate.

In *Vashisht Narain Sharma* v. *Dev Chand* (5), it has been laid down that the words "the result of the election has been materially affected" in clause (c) of section 100(1) of the Act indicate that the result should not be judged by the mere increase or decrease in the total number of votes secured by the returned candidate but by proof of the fact that the votes would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate and that the language of the aforesaid provision clearly places the burden of proving that the result of the election has been materially affected on the petitioner who impugns the validity of the election. Their Lordships have considered three situations that can arise : (a) where the nomination

(5) 10 E.L.R. 30.

of the returned candidate has been improperly accepted, the result must be materially affected; (b) if the difference between the number of votes is more than the wasted votes, the result cannot be affected at all; and (c) if the number of wasted votes is greater than the margin of votes between the returned candidate and the candidate securing the next highest number of votes (the case before their Lordships was of that kind), it cannot be presumed that the wasted votes might have gone to the latter and that the result of the election has been materially affected. This is a matter which has to be proved and though it must be recognised that the petitioner in such a case is confronted with a difficult situation, he cannot be relieved of the duty imposed upon him by section 100(1)(c). The principle which was held applicable to (c) would be clearly applicable in the present case also. In *Inayatullah Khan* v. *Diwanchand Mahajan* (6), in the election which took place in February, 1957, in the Sehore double-member Constituency to the Legislative Assembly of the State of Madhya Pradesh, Umrao Singh and Mannulal contested the reserved seat, while the remaining three, Inayatullah, Mahajan and Nandlal contested the general seat. The result of the poll was—

"Umraosingh 23,757 votes (Reserved)

Inayatullah 20,696 votes (General)

D. C. Mahajan 20,616 votes (General)

Mannulal 16,509 votes (Reserved)

Nandlal 8,997 votes (General)".

The election was questioned by Mahajan. Inayatullah's election was set aside by the Tribunal mainly because of certain irregularities and defects in the conduct of the election and the counting which followed and that the result of the election had been materially affected. After referring to the observations of their Lordships in the above case, it was said at page 235—

> "From these observations it is, therefore, clear that general evidence of a likelihood, such as has been tendered in this case, is not decisive of the matter under section 100 of the Representation of the People Act. What the party who

(6) 1 E.L.R. 219.

wishes to get an election declared void has to establish is that the result of the poll had in fact been materially affected by the improper acceptance of a nomination paper. To do this, it has to be demonstrated that the votes would have been divided in such a way that the returned candidate would have been unsuccessful."

Applying the law laid down by their Lordships it was held that the evidence tendered was not sufficient to discharge the onus which was upon Mahajan. The result, therefore, was that by allowing Nandlal to contest the election the result of the poll could not be said to have been materially affected. It is noteworthy that the difference between the votes of Mahajan and Inayatullah was only 80. Nandlal had polled 8,997 votes. It was found that Nand Lal was disqualified and could not stand for the election. It was contended that the margin of votes was small and that the result must be taken to have been materially affected because Nandlal had got 8,000 odd votes, which in the event of his not contesting would have gone to Mahajan. Evidence was led by both sides to show how the votes which went to Nand Lal would have been divided and both sides claimed that if Nandlal had not contested the election, the votes would have gone to them. It was in that context that it was decided with reference to the law laid down by their Lordships that it had not been proved that the result of the election had been materially affected. In *Raghunath Misra* v. *Kishore Chandra Deo Bhanj* (7), it was said at page 339—

"The case before us comes under the third category of cases, enumerated by the Supreme Court. The returned candidate, respondent No. 1, secured 17,700 votes; the appellant obtained 15,568 votes and respondent No. 3 obtained 3,589 votes. We are not concerned with the votes obtained by other candidates. The number of wasted votes is 3,589 in case the nomination of respondent No. 3 is improperly accepted. This number 3,589 of wasted votes is greater than the margin of votes between respondent No. 1 and the petitioner, the difference between them being only 2,132 votes. In such a case, as laid down by the Supreme Court, it cannot be presumed that all these wasted votes might have gone to the petitioner."

(7) 17 E.L.R. 321.

All the above decisions are quite opposite and in the present case there can be no escape from the conclusion that the essential requirement of section 100(1)(d)(i) has not been satisfied even if it be assumed that the nomination papers of respondent No. 2 had been improperly accepted.

For all the reasons which have been given above, this petition fails and it is dismissed with costs which are assessed at Rs. 631.30 (inclusive of Rs. 500 as counsel's fee) payable only to respondent No. 1.

K. S. K.

ELECTION PETITION

Before A. N. Grover, J.

JAGAN NATH,—*Petitioner*

versus

SOHAN SINGH BASI AND ANOTHER,—*Respondents*

Election Petition No. 35 of 1967

August 3, 1967

Representation of the People Act (XLIII of 1951)—S. 9-A—Disqualification for being chosen as and being a member of either House of Parliament or the State legislature—When suffered—Private company entering into contract with the appropriate government—Director of such company—Whether so disqualified.

Held, that section 9-A of the Representation of the People Act provides that a person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any work undertaken by, that Government. In order that a person could be said to be disqualified for being chosen as, and for being a member of either House of Parliament or of the State Legislature, three conditions must be satisfied. They are, first, that there must subsist a contract between the person and the Government; secondly, that the contract must be one entered into by the person in the course of his trade or business; and, thirdly, that the contract with the appropriate Government must be for the supply of goods or for the execution of any works undertaken by that Government.