

## **Mohd. Yasin Shah vs Ali Akbar Khan on 14 April, 1976**

**Equivalent citations: 1976 AIR 1866, 1976 SCR 1, AIR 1976 SUPREME COURT 1866, 1977 2 SCC 23**

**Author: Syed Murtaza Fazalali**

**Bench: Syed Murtaza Fazalali, P.N. Bhagwati, A.C. Gupta**

PETITIONER:

MOHD. YASIN SHAH

Vs.

RESPONDENT:

ALI AKBAR KHAN

DATE OF JUDGMENT 14/04/1976

BENCH:

FAZALALI, SYED MURTAZA

BENCH:

FAZALALI, SYED MURTAZA

BHAGWATI, P.N.

GUPTA, A.C.

CITATION:

1976 AIR 1866                      1976 SCR      1

1977 SCC (2) 23

CITATOR INFO :

R                      1978 SC 351 (15)

R                      1985 SC 89 (13)

ACT:

Jammu & Kashmir Representation of the People Act, S.  
47(2) (c)-Scope of

HEADNOTE:

Section 47(2) of the Jammu & Kashmir Representation of the People Act enacts that the Returning Officer shall examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or in his own motion, after such summary enquiry, if any, reject any nomination on the ground, among others, that the signature of the candidate or the proposer on the nomination paper is not genuine.

For the general election to the State Assembly the

appellant and the respondent (petitioner) filed nomination papers. The nomination paper of the respondent was rejected by the Returning Officer on the ground that when his nomination was called neither he nor anyone on his behalf was present. After the words 'Hence rejected' recorded on the nomination paper the Returning Officer had also added that the signature of the proposer was not genuine. In the election that ensued the appellant was declared elected. The respondent in his election petition alleged (i) that though at the time of scrutiny the Returning Officer was informed by his proposer that the respondent had gone out to ease and requested him to wait for a while, the Returning Officer rejected the nomination paper and refused to reopen the matter even on the respondent's request immediately thereafter and (ii) that the Returning Officer committed forgery by subsequently adding certain words in the order of rejection and by over-writing the signature of the proposer on the nomination paper.

The High Court held (i) that the Returning Officer was not justified in law in rejecting the nomination paper of the respondent on the ground that he was not present at the time of scrutiny, and (ii) that the Returning Officer having become functus officio any subsequent observations which he might have made was irrelevant and since the nomination paper was illegally rejected the election was void and was liable to be set aside under s. 108(1)(c) of the Act.

Allowing the appeal to this Court,

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HELD: The judgment of the High Court is erroneous both on fact and in law and is against the weight of evidence on record and preponderance of probabilities. [27 D]

(1) Although the appellate Court should be slow to disturb a pure finding of fact based on appreciation of evidence by the Trial Court, it is well settled that the sanctity and purity of electoral processes must be maintained. The election of a duly elected candidate cannot be set at naught on the basis of interested or partisan evidence not backed by cogent circumstances or unimpeachable documents. [6 H]

Rahim Khan v. Khurshid Ahmed & Ors. [1975] 1 S.C.R. 643, 656 and D. Venkata Reddy v. R. Sultan & Ors. [1976], 3 S.C.R. 445, referred to.

In the instant case the approach of the High Court was not correct. It had overlooked many essential features. Secondly the High Court had observed that issue No. 1 was wide enough to include the appellant's plea that even if the order of the Returning Officer in rejecting the nomination paper on the ground of absence of the candidate or his proposer was wrong, it could

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still be supported on the ground that the signature of the proposer was not genuine. Yet it had not determined this aspect of the matter. [27 C]

(2) The order of the Returning Officer read as a whole clearly shows that the nomination paper was rejected not only on the ground that the candidate or his proposer was not present but also on the ground that the signature of the proposer on the nomination paper was not genuine. It is true that the Returning Officer had not given any clear finding on this point but s. 47 of the Act did not require a well reasoned decision. All that was necessary was that the Returning Officer should apply his mind and determine the question in a summary manner. Even if the ground on which the nomination paper had been actually rejected was not a permissible ground, if the successful candidate could make out a case that the nomination paper could have been properly rejected on one of the grounds mentioned in s. 47 the rejection would not be improper and the election would be upheld. [22 D-H]

N. T. Veluswami Thevar v. G. Raja Nainar & Ors. [1959] Supp. 1 S.C.R. 623 followed.

(i) In the instant case the fact that P.W. 4 had stated in his evidence that when the Returning Officer called the name of the petitioner no one on his behalf responded knocks the bottom out of the respondent's story that the proposer had been instructed to request the Returning Officer to wait or that the Returning Officer had not acceded to his request. [8 D]

(ii) On a perusal of the Returning Officer's original order it was clear that the entire order had been written in the same ink, with the same pen and appears to have been written in one sitting. There is nothing to show that the second part of the order was added subsequently because the strokes of the letters, the ink used and the general tenor of the writing are the same throughout. [20 B]

(iii) As regards that portion of the Returning Officer's order written by him after writing "Hence rejected" his explanation was that while he was writing his order and had not completed the same, objection was taken by the appellant regarding the genuineness of the proposer's signature and since the clerk had by then put the seal, he had recorded the appellant's objection in this space left and completed his order and signed above the seal. This was corroborated by independent witnesses and there is no reason why the Returning Officer should have added a part of the order subsequently. [20E, 21 A]

(iv) The Returning Officer, while indicating the appellant's objection regarding the genuineness of the signature of the proposer also observed that it was not possible to verify the signature of the proposer in the absence of the candidate as well as the proposer. Thus the absence of the candidate and the proposer had been used, not for the purpose of rejecting the nomination paper, but for the purpose of supporting the conclusion of the Returning Officer that the signature was not genuine. [22 F]

(v) It has been satisfactorily proved that the

signature of the proposer which contained overwriting was not his genuine signature and, therefore, the nomination paper had been properly rejected and the election could not be assailed under s. 108(1)(c) of the Act. From the facts found it was clear that the over-writing present in the signature at the time of scrutiny threw considerable doubt on the genuineness of the proposer's signature. The fact that the proposer and the respondent were absent at the time of scrutiny lends sufficient support to the inference that the signature of the proposer was not genuine. [26 C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1141 of 1974.

Appeal from the Judgment and Order dated 10th June 1974 of the Jammu & Kashmir High Court at Srinagar in Election Petition No. 4 of 1972.

A. K. Sen, Altaf Ahmed and M. Veerappa, for the appellant.

G. S. Pathak, O. C. Mathur, Shri Narain and J. B. Dadachanji, for the Respondent.

The Judgment of the Court was delivered by FAZAL ALI, J.-This is an election appeal against the judgment of the High Court of Jammu & Kashmir dated June 10, 1974, by which the learned Judge allowed the election petition filed before him by the respondent Ali Akbar Khan and set aside the election of the returned candidate Mohd. Yasin Shah who is the appellant before us. The returned candidate will, for short, be referred to by us as 'the appellant' and the respondent Ali Akbar Khan will be referred to as 'the petitioner'. It appears that during the elections held in the year 1972 in the State of Jammu & Kashmir both the appellant and the petitioner were the candidates for election to the Karnah Assembly Constituency of the District of Baramulla in the State of Jammu & Kashmir. There were other candidates also some of whom had withdrawn. One Mohd Yunis was the Congress candidate for this constituency but he was defeated. The petitioner, according to the appellant was merely a covering or a shadow candidate for the Congress candidate Mohd Yunis. The petitioner filed his nomination paper on February 7, 1972 and his proposer was P.W. 1 Ghulam Mohiuddin. According to the petitioner the nomination paper was presented to the Returning Officer R.W. 3 Abdul Rehman Mir on February 7, 1972 by the petitioner who was accompanied with his proposer Ghulam Mohiuddin who had signed as the proposer. The Returning Officer received the nomination paper and granted a receipt for the same. A sum of Rs. 250/- being the election deposit was also deposited and other formalities were duly observed. February 9, 1972, was the last date fixed for the scrutiny of the nomination papers of all the candidates. According to the petitioner he reached the office of the Returning Officer at about 10 A.M. on February 9, 1972, but as he was suffering from dysentery he went to attend the call of nature and instructed his proposer P.W. 1 Ghulam Mohiuddin to take time on his behalf if the name of the candidate was called out. The petitioner's case before the High Court was that the Returning Officer after scrutinising the nomination papers accepted all of them but rejected the nomination paper of the petitioner on the ground of his

absence in spite of the fact that P.W. 1 Ghulam Mohiuddin requested him to wait for the petitioner who had gone to attend the call of nature. It was further alleged that when the petitioner returned he beseeched the Returning Officer not to reject his nomination paper but the Returning Officer refused to reopen the matter as the nomination paper of Mohd. Yunis the Congress candidate had been accepted. The nomination paper of Mohd Yasin Shah the appellant was also accepted. Thereafter the poll was held on March 8, 1972 and the results were declared on March 12, 1972. The appellant Mohd Yasin Shah was declared elected, while Mohd Yunis was defeated. After the results were declared the petitioner applied for a certified copy of the order of rejection of his nomination paper on April 1, 1972, and according to him the Returning Officer tried to avoid giving the copy of the said order which was ultimately given to him on April 3, 1972, April 2, being a Sunday. The sheet- anchor of the case of the petitioner was that the Returning Officer was particularly biased against him and he rejected the nomination paper in order to support the returned candidate in whom he was interested. The petitioner further pleaded that the only ground on which the nomination paper was rejected was that the petitioner did not appear when the Returning Officer called out his name at the time of the scrutiny of his nomination paper. The petitioner further averred that under the law the Returning Officer could not have rejected his nomination paper on the ground of his absence even if it was so. Not content with these allegations the petitioner went to the extent of making a serious and irresponsible allegation against the Returning Officer by averring that the Returning Officer had committed forgery by subsequently adding certain words in the order of rejection and overwriting the signature of the proposer Ghulam Mohiuddin on the nomination paper. Thus, in short, according to the petitioner as his nomination paper was improperly rejected by the Returning Officer, the election of the appellant was void on that ground alone.

The petitioner filed the present election petition with the allegations aforesaid on April 12, 1972. It was alleged that at the time when P.W. 1 Ghulam Mohiuddin was examined as a witness there was some overwriting on the signature of Ghulam Mohiuddin the proposer of the petitioner on the nomination form. Accordingly the petitioner made an application to the Court for permission to file an amended petition by incorporating the fact that the overwriting was brought into existence after the scrutiny of the nomination papers was over and behind the back of the petitioner. The learned Judge, after hearing the parties, ultimately allowed the application and accordingly an amended petition was filed by the petitioner where the allegations regarding interpolation etc. were made. The appellant was also given an opportunity to file his additional written statement.

The petition was stoutly resisted by the appellant who denied, inter alia, all the allegations made by the petitioner and contended that there was absolutely no overwriting on the signature of Ghulam Mohiuddin nor was any forgery committed by the Returning Officer. It was further averred that as neither the petitioner nor his proposer was present when the scrutiny of the nomination paper of the petitioner was taken up by the Returning Officer and as the appellant himself raised the objection that the signature of Ghulam Mohiuddin on the nomination paper was not genuine the Returning Officer having applied his mind upheld the objection and rejected the nomination paper on the ground that the signature of Ghulam Mohiuddin was not genuine as it could not be verified. The appellant also vehemently denied the allegation that the Returning Officer was in any way biased or prejudiced against the petitioner. On the other hand it was averred that the Returning Officer was an independent officer and since the petitioner was a candidate of the Congress if the Returning Officer

could have any leaning at all it would be towards the petitioner rather than the appellant who was an independent candidate opposing the Congress party. The learned Judge, after taking the evidence of the parties, came to the conclusion that from the order of the Returning Officer it would appear that the nomination paper of the petitioner was rejected mainly on the ground of his absence which was not a lawful ground on which the nomination paper could have been rejected under s. 47(2) of the Jammu & Kashmir Representation of the People Act. On the question of the overwriting the learned Judge held that there was no doubt that there was overwriting on the signature of P.W. 1 Ghulam Mohiuddin on the nomination form of the petitioner and perhaps the overwriting was made some time after the scrutiny. But the learned Judge refrained from giving any finding as to who made the interpolation and in what circumstances. As regards the allegation that the Returning Officer had committed forgery the learned Judge does not appear to have accepted the same or given any clear finding on this point, and he steered clear of this fact by observing that as the first part of the order of the Returning Officer rejecting the nomination paper was based on the ground of the absence of the petitioner, the Returning Officer became functus officio and any subsequent observation which he may have made was irrelevant. The learned Judge further seems to have held that the petitioner was not present when the scrutiny of his nomination paper was taken up and the Returning Officer was not justified in law in rejecting his nomination paper on that ground alone. On these findings the learned Judge held that as the nomination paper of the petitioner was illegally rejected the election of the appellant was void and was liable to be set aside under s. 108(1)(c) of the Jammu and Kashmir Representation of the People Act-hereinafter referred to as 'the Act', as amended upto date.

In support of the appeal Mr. Altaf Ahmed learned counsel for the appellant who was followed by Mr. Asoke Sen submitted that the learned Judge has misconstrued the order passed by the Returning Officer rejecting the nomination paper of the petitioner and that the judgment of the High Court is against the weight of the evidence on the record. It was also argued that the learned Judge completely overlooked some of the essential features appearing in the case which completely demolished the petitioner's case. Mr. G. S. Pathak appearing for the petitioner, however, supported the judgment of the High Court and contended that the order of the Returning Officer was mainly passed on the ground of the absence of the petitioner which was not justified by the provisions of s. 47(2)(c) of the Act. He also submitted that a bare perusal of the order of the Returning Officer would clearly show that the second part of the order regarding the genuineness of the signature of the proposer Ghulam Mohiuddin appears to have been inserted subsequently. Lastly, it was submitted that although this Court could reappraise the evidence for itself it should not interfere with the judgment of the High Court on facts unless the High Court had committed an error in its appreciation of evidence or overlooked any material fact. It was further argued that this Court should keep in mind the slowness of the appellate court to disturb a pure finding of fact based on appreciation of evidence by the Trial Court which had the initial advantage of watching the demeanour of the witnesses examined by it. There can be no dispute with the propositions adumbrated by Mr. Pathak, but we would like to mention that it is well settled that the sanctity and purity of electoral process in the country must be maintained. The election of a duly returned candidate cannot be set at naught on the basis of interested or partisan evidence which is not backed by cogent circumstances or unimpeachable documents. In *Rahim Khan v. Khurshid Ahmed & Ors.*(1) this Court observed as follows :

"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. x x x There is no x-ray whereby the dishonesty of the story can be established and, if the Court 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 killkennycat election competitions 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 witness. The Court must look for serious assurance, unlying 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."

In *D. Venkata Reddy v. R. Sultan & Ors.*(2) this Court, in which one of us (Fazal Ali, J.) was also a party, reiterated the principles in the following words :

"In a democracy such as ours, the purity and sanctity of elections, the sacrosanct and sacred nature of the electoral process must be preserved and maintained. The valuable verdict of the people at the polls must be given due respect and candour and should not be disregarded or set at naught on vague, indefinite, frivolous or fanciful allegations or on evidence which is of a shaky or prevaricating character. It is well settled that the onus lies heavily on the election petitioner to make out a strong case for setting aside an election. In our country election is a fairly costly and expensive venture and the Representation of the People Act has provided sufficient safeguards to make the elections fair and free. In these circumstances, therefore, election results cannot be lightly brushed aside in election disputes."

We would now proceed to discuss the various aspects of the case in the light of the principles enunciated by this Court in the aforesaid cases. To begin with, we might mention that most of the facts on which evidence appears to have been led by the petitioner were not pleaded in the election petition at all. For instance, the definite case made out by the petitioner in his evidence was that at the time of the scrutiny of the nomination papers when the name of the petitioner was called out P.W. 1 Ghulam Mohiuddin the proposer of the petitioner was present who drew the attention of the Returning officer to the fact that the petitioner had gone to attend the call of nature and that he should wait for him but the Returning Officer refused to wait and rejected the nomination paper on the ground of the absence of the petitioner. It was further sought to be proved in the evidence that on return the petitioner tried to persuade the Returning Officer to reopen the matter and in fact filed an application before him for recalling the order of rejection of the nomination paper but the Returning Officer was so much prejudiced against him that he tore of the petition submitted before him by the petitioner. It will be noticed that neither in the original petition nor in the amended one there is any mention of the fact that P.W. 1 Ghulam Mohiuddin drew attention of the Returning Officer and asked him to wait, nor is there any mention of the fact that the petitioner on his return submitted a petition to the Returning Officer which was torn into pieces by the Returning Officer. We shall show that these facts are also not proved even by some of the witnesses examined by the

petitioner. It may be pertinent to note here that while in paragraph 14 it was mentioned that when the nomination form of the petitioner was taken up it was reported to the Returning Officer that the petitioner had gone to attend the call of nature but significantly enough it is not mentioned therein as to who was the person who had drawn the attention of the Returning Officer. It seems to us that even at the time of filing his amended petition which was filed after the trial had started the petitioner was not certain of his case and had not yet decided to allot this part to his proposer Ghulam Mohiuddin. P.Ws. 1, 2 and 6 have no doubt asserted in their evidence that P.W. 1 Ghulam Mohiuddin requested the Returning Officer to wait for the petitioner who had gone to attend the call of nature. P.W. 1 Ghulam Mohiuddin who was the proposer of the petitioner and therefore the most interested witness in this case has no doubt testified to the fact that he had drawn the attention of the Returning Officer when the nomination paper of the petitioner was taken up for scrutiny but the Returning Officer did not heed his request and rejected the nomination paper. This witness also stated that petitioner himself told the Returning Officer that he was going to attend the call of nature and that he should wait for him. But the witness does not appear to be sure of his statement as he immediately volunteered to state that as there was lot of noise at that time evidently the Returning Officer did not hear him. The petitioner also says the same thing.

P.W. 2 Qazi Mohammad Abdullah also tries to support the fact that at the time of scrutiny the petitioner was not present and Ghulam Mohiuddin P.W. 1 informed the Returning Officer that the petitioner had gone to attend the call of nature. This witness, however, did not support the allegation of the petitioner that a petition was submitted by him before the Returning Officer which was torn by him. The witness stated thus:

"The petitioner did not submit any petition before the Returning Officer in my presence on the day of scrutiny. There was no such incident in my presence such as the filing of a petition before the Returning Officer and the tearing off that petition by him."

P.W. 6 the petitioner himself no doubt supported his case that he had gone to attend the call of nature when the scrutiny of his nomination paper was taken up and had instructed P.W. 1 Ghulam Mohiuddin to remain present and to ask the Returning Officer to wait. Thus this fact is not proved by any independent witness.

On the other hand the fact that Ghulam Mohiuddin did not respond to the call even though he was instructed, as the petitioner would have us believe, is admitted even by a witness of the petitioner, namely, P.W. 4 Ghulam Qadir Mir, who deposed as follows:

"At the time when the scrutiny of the nomination paper of Ali Akbar Khan was taken up, he himself was not present there. His proposer Ghulam Mohi-ul-Din was present there. The name of Ali Akbar Khan was called out but no one responded and so the Returning Officer wrote down that the candidate was absent and his nomination paper was being rejected. In my presence nothing else happened there."



It would therefore appear from the evidence of this witness that even though Ghulam Mohiuddin was present he did not at all respond when the name of the petitioner was called out. This knocks the bottom out of the story put forward by the petitioner that Ghulam Mohiuddin had been instructed to ask the Returning Officer to wait or that Ghulam Mohiuddin stood up and requested the Returning Officer to wait for the petitioner. Thus the entire story given out by P.Ws. 1, 2 and 6 on this point is falsified by one of the witnesses examined by the petitioner himself.

There is yet another circumstance which throws considerable doubt on this part of the story of the petitioner. P.W. 5 Girdhari Lal counsel engaged by the petitioner at the time of scrutiny according to whose evidence Ghulam Mohiuddin had signed the nomination form in his presence, was also present at the time when the scrutiny of the nomination paper of the petitioner was taken up and in spite of this fact when the name of the petitioner was called out and according to the witness the Returning Officer announced that since he was absent his nomination paper was rejected this witness did not enter a protest on behalf of his client, the petitioner, that the Returning Officer could not have rejected the nomination paper on the ground of the absence of the petitioner. This somewhat unusual conduct on the part of the witness who is a lawyer of some experience clearly shows that neither Ghulam Mohiuddin was present nor the petitioner was present and it is therefore extremely doubtful if this witness was also present at the time when the scrutiny of the nomination paper of the petitioner was taken up by the Returning Officer.

As against this contradictory and discrepant evidence there is consistent evidence of the appellant's witnesses R.Ws. 1, 2, 3 and 4 to the effect that neither the petitioner nor his proposer Ghulam Mohiuddin was present when the scrutiny of the nomination paper of the petitioner was taken up. R.W. 3 is the Returning Officer himself and he appears to us to be an absolutely independent witness being a high Government officer of sufficient experience and there is abso-

lutely no reason for him to depose falsely against the petitioner. The Returning officer stated thus:

"When in spite of repeated calls neither the petitioner nor his proposer turned up before me, then I began to write out the order on the back of the nomination form."

R.W. 1 Mohammad Anwar Shah Masoodi also appears to be an independent witness who was an active Congress worker but he did not see eye to eye with the Congress on the candidature of Mohd Yunis for the constituency in question. There is nothing to show that this witness was in any way interested in the appellant. This witness also categorically stated that neither the petitioner nor the proposer of the petitioner turned up at the time when the name of the petitioner was called out.

R.W. 2 Ghulam Hassan Malik who was also one of the candidates from the Karnah Assembly Constituency and who is a lawyer also corroborated the evidence of the Returning Officer and of R.Ws. 1 & 3 that no one stood up on behalf of the petitioner when the name of the petitioner was called out and that the proposer of the petitioner was also not present at that time in the room. This witness has further stated that no one brought it to the notice of the Returning Officer that the petitioner was ill or that he would be coming soon. The evidence of the witnesses examined by the appellant, therefore, is fully corroborated by the evidence of P.W. 4 Gulam Qadir Mir a witness of

the petitioner as shown above.

Furthermore we find it difficult to believe why the Returning Officer who was an independent person and a Government Officer would refuse to wait for the petitioner if his attention was really drawn to the fact that the petitioner was ill and had gone to attend the call of nature by Ghulam Mohiuddin or any body on behalf of the petitioner. This fact, therefore, clearly shows that the case of the appellant that neither the petitioner nor his proposer was present at the time when the scrutiny of the nomination paper of the petitioner was taken up is true. Even the learned Judge is also inclined to accept this part of the case of the appellant. On a consideration of the evidence of the parties referred to above we are clearly of the opinion that the petitioner has failed to prove that at the time when the scrutiny of his nomination paper was taken up by the Returning Officer either the petitioner or his proposer Ghulam Mohiuddin was present and made any request to the Returning Officer to wait which was not acceded to by the Returning Officer.

Apart from the interested testimony of P.W. 1, 3 and 6 that the petitioner had submitted a petition to the Returning Officer which was torn out by him there is no reliable evidence to prove this fact. To begin with, this fact is not at all mentioned even in the election petition filed by the petitioner even after amendment. The petitioner admits in his statement that he did not mention this fact while instructing his lawyer. Furthermore, if indeed the Returning Officer actually behaved in the manner as the petitioner would have us believe, then it was a very serious matter and the petitioner is not likely to have slept over the matter but would have filed a regular complaint against the Returning Officer to his higher superiors. In fact when there was a delay of only one day in the giving of the copy of the rejection order the petitioner made a great fuss and furore over this petty lapse. Is it possible to believe that the petitioner would sit quiet if the Returning Officer had behaved in such a manner with him by tearing off the petition which was submitted to the Returning Officer? Apart from that P.W. 3 Mohammad Maqbool Mir at p. 87 of the Paper Book has clearly admitted that in his presence no petition was filed by Ali Akbar Khan before the Returning Officer. Even P.W. 5 who was the lawyer of the petitioner stated that he cannot say that Ali Akbar Khan presented any petition before the Returning Officer which the latter tore off. P.W. 4 also says that he did not see the petitioner Ali Akbar Khan or his proposer presenting any application to the Returning Officer which the latter tore off. Thus the mischievous allegation made by the petitioner against the Returning Officer is completely disproved not only from his own conduct but also by the evidence of his own witnesses as discussed above.

Finally even though a very serious allegation was made against the Returning Officer personally, yet, when he was deposing as a witness for the appellant, no suggestion was put to him that any petition was presented to him which he tore off instead of taking any action thereon. Further while P.W. 1 Ghulam Mohiuddin categorically stated in his evidence that the petition which was submitted to the Returning Officer was scribed by Abdul Ahad the petition writer, yet the petitioner made no attempt to examine Abdul Ahad in order to prove this part of his case. In these circumstances, therefore, we disbelieve this part of the case of the petitioner that he had filed any petition to the Returning Officer for reopening the order rejecting his nomination paper. It seems to us that this allegation was a made up story and appears to have been invented in order to make out a case that the Returning Officer was biased against the petitioner and that is why the nomination paper of the

petitioner was illegally rejected by him. The petitioner has however miserably failed to prove this part of the case. If this story is found to be false, it would also demonstrate the falsity of the main allegation made by the petitioner regarding the overwriting on the signature of Ghulam Mohiuddin as also interpolation in the order passed by the Returning Officer rejecting the nomination paper of the petitioner.

This brings us now to the question as to the nature of the order passed by the Returning Officer which is Ext. RW 3/3. Before, however, taking up this matter it may be necessary to dispose of the case of the petitioner regarding the overwriting alleged to have been made subsequently on the signature of Ghulam Mohiuddin on the nomination paper Ext. PW 5/2. The definite case of the petitioner was that at the time when the nomination paper was filed before the Returning Officer R.W. 3, or even at the time of the scrutiny on February 9, 1972, there was no overwriting at all which appears to have been made subsequently. On the other hand the case of the appellant is that the overwriting was already there from before and in fact it was deliberately made so as to afford a ground to the peti-

tioner to set aside the election of the appellant in case he was duly elected. It was suggested that this lacuna was deliberately left so as to invite the Returning Officer to reject the nomination paper and then use this infirmity to upset the election of the appellant. In support of this case the appellant relied upon the following circumstances:

(i) that the petitioner was a mere covering or shadow candidate of the Congress and was not at all interested in contesting the election;

(ii) that once the nomination paper of Mohd Yunis who was the official candidate of the Congress was accepted the petitioner was not at all interested in pursuing his election and it was for this reason that when the scrutiny of the nomination paper of the petitioner was taken up neither the petitioner nor his proposer was present and an imaginary story was invented that the petitioner was ill and had gone to attend the call of nature and Ghulam Mohiuddin the proposer asked the Returning Officer to wait but he rejected the nomination paper of the petitioner; and

(iii) that P.W. 1 Ghulam Mohiuddin the proposer of the petitioner has in an unguarded moment admitted in his statement that on the very day when the nomination paper was rejected i.e. on February 9, 1972, the petitioner informed the witness that he will file a case in the Court against Mohd Yasin the appellant. P.W. 1 deposed thus:

"The petitioner had only then informed me after the rejection i.e. on 9-2-1972 that he will now file a case in the Court against Mohammad Yasin respondent."

This statement clearly lets the cat out of the bag and shows that the petitioner's intention really was to prepare a ground for setting aside the election of the appellant if he was duly elected. Unless this was so, it is not understandable why the petitioner should have made such a statement to P.W. 1 on

the date when the nomination paper was rejected and when he obviously did not know whether or not the appellant would succeed in the election.

We shall now deal with each of these circumstances relied upon by the appellant in support of his case that the entire story of overwriting etc. was a figment of the imagination of the petitioner's mind and perhaps the whole thing was stage-managed so as to invite the Returning Officer to reject the nomination paper of the petitioner.

The appellant has clearly stated in his evidence that the petitioner was merely a covering candidate of the Congress and was put up only as a shield to take the place of Mohd Yunis if the nomination paper of Mohd Yunis was rejected. R.W. 1 who, as we have already pointed out, was an independent witness and was an active worker of the Congress at one time has also categorically asserted that the petitioner was a covering candidate of the Congress. The witness stated thus:

"The petitioner was a candidate set up by the Congress that is to say he was a covering candidate. The congress had given the mandate to Kh. Mohd Yunis but the latter had set up the petitioner as a candidate by way of precaution."

The evidence of this witness appears to have a ring of truth in it. He has clearly stated that he did not agree with the Congress Organization when a mandate was given to Mohd Yunis to stand from the Assembly constituency of Karnan, because in his opinion Mohd Yunis had lost his popularity and there was little chance of his being elected. The result of the election demonstrated that the apprehension of this witness was undoubtedly correct, because while the appellant was duly returned, Mohd Yunis was defeated. In these circumstances we do not see any reason to distrust the evidence of this witness on this point.

R.W. 2 Gulam Hassan Malik who was a lawyer and also a candidate has also stated that the petitioner Ali Akbar Khan was a covering candidate of Mohd Yunis.

The appellant also in his evidence categorically asserted that the petitioner was a covering candidate of the Congress for Mohd. Yunis. It is true that the petitioner has not admitted this fact, but the somewhat contradictory stand taken by him on this point clearly shows that he was undoubtedly a covering candidate. The witness (petitioner) said that if his nomination paper had been accepted he would not have contested as an independent candidate but he had been assured that if the nomination paper of Mohd. Yunis as also of the petitioner were accepted then the Congress was to decide as to who would contest the election. At the same time the petitioner admitted that the mandate of the Congress was given to Mohd Yunis prior to the filing up of the nomination forms. Indeed if the mandate was given by the Congress party to Mohd. Yunis alone, the petitioner was bound to be a dummy candidate only. Another intrinsic circumstance that supports this fact is that while Mohd Yunis and other candidates filed a number of nomination papers so that if one of them was rejected on the ground of any defect or infirmity the remaining nomination forms may be accepted and the candidature of the candidates would not run into difficulty, the petitioner admittedly filed only one nomination paper and did not think it necessary to file another nomination paper. These facts taken together with the subsequent conduct of the petitioner and his

proposer Ghulam Mohiuddin in not being present at the time of the scrutiny of the nomination paper as found by us lends sufficient support to the case of the appellant that the petitioner was merely a dummy candidate.

As regards the other circumstances that after the nomination paper of Mohd. Yunis was accepted, the petitioner was not at all interested in fighting the elections, we find that there is overwhelming evidence to support this inference. We have already pointed out that from the evidence led by the parties it has been established that neither the petitioner nor his proposer were present at the time when the scrutiny of nomination paper was taken up by the Returning Officer on February 9, 1972. In these circumstances, therefore, it follows as a logical corollary that the story of the petitioner that a request made to the Returning Officer by Ghulam Mohiuddin to wait for the petitioner or that any petition was filed before the Returning Officer which was torn by him is a complete myth and has been invented to give credence to the made up story bolstered up by the petitioner. Another intrinsic circumstance which shows that the petitioner was not at all interested in pursuing his election is the fact that the two important persons who were very much interested in his nomination paper not being rejected did not lodge any protest before the Returning Officer or took the trouble of drawing the attention of the Returning Officer that the nomination paper could not be rejected due to the absence of the petitioner. One of these persons was no one else but Girdhari Lal the counsel of the petitioner himself. According to his evidence he knew full well that P.W. 1 Ghulam Mohiuddin had signed the nomination paper in his presence and yet when the nomination paper was taken up for scrutiny he did not care to tell the Returning Officer that as the proposer had signed in his presence there was no question of rejecting his nomination paper. Similarly Mohd. Yunis who was the official candidate of the Congress also remained completely silent and did not draw the attention of the Returning Officer when the nomination paper of the petitioner who was also a Congress candidate was rejected. All these facts, therefore, lead to the inescapable conclusion that the petitioner was not at all interested in contesting the election and by his deliberate conduct he created a situation in which the nomination paper could be rejected so that if necessary he could use this lacuna to upset the election of the appellant.

As regards the last circumstance, namely, that the whole thing appears to have been stage-managed by Mohd. Yunis in order to furnish a ground for setting aside the election of the appellant in case he was elected appears to be probable, particularly in view of the admission made by P.W. 1 Ghulam Mohiuddin to which a reference has already been made. The best person to explain these facts would have been Mohd. Yunis himself and the petitioner has not examined him as a witness at all. It appears from the order-sheet that Mohd. Yunis was summoned and he was present but the petitioner did not choose to examine him. It seems to us that Mohd. Yunis being fully aware that he was the architect of the whole drama did not want to face the Court.

Apart from this circumstance, the evidence led by the petitioner on the question that there was some overwriting in the signature of his proposer P.W. 1 Ghulam Mohiuddin on the nomination form subsequent to the date of the scrutiny is far from convincing.

In view of our finding that neither the petitioner P.W. 6 nor Ghulam Mohiuddin P.W. 1 were present on February 9, 1972 when the nomination paper of the petitioner was taken up for scrutiny by the

Returning Officer, these two witnesses are not at all competent to depose as to whether or not on that date there was any overwriting in the signature of P.W. 1. In these circumstances, therefore, the evidence of P.W. 1 and 6 will have to be excluded on this point. Even so it will be interesting to note that the petitioner P.W. 6 does not say that there was any overwriting on the signature of P.W. 1 Ghulam Mohiuddin on the nomination form but he states that on a perusal of the nomination paper it appears that some ink was spread over his signature. An examination of the signature of Ghulam Mohiuddin would reveal to the naked eye that there is no question of the spreading of any ink over the signature but what has been done is that there is clear overwriting on the signature.

P.W. 2 Qazi Mohammad Abdullah appears to be a close acquaintance of the petitioner and had helped him in engaging the services of Girdhari Lal for the purpose of filling up the nomination paper which was also done at his own house. This witness also states that Ghulam Mohiuddin had affixed his signature in his presence with the fountain- pen of the petitioner. He further asserts that on the date of his deposition he found that there was an overwriting over the signature of Ghulam Mohiuddin. This witness was one of the proposers of Mohd. Yunis who had set up the petitioner as his dummy candidate as held by us. In these circumstances, therefore, this witness was interested and has tried to help the petitioner. Moreover he does not say that on February 9, 1972 when the scrutiny of the nomination paper of the petitioner was taken up by the Returning Officer he had an opportunity to inspect the nomination paper in order to find out whether there was any overwriting on the signature. His evidence, therefore, does not exclude the possibility of the over writing having been made after Ghulam Mohiuddin had signed the nomination paper at the residence of the witness and before the nomination paper was filed or its scrutiny taken up. Furthermore, the witness admits that he is also a Congress worker and knew the petitioner for the last four years. For these reasons, therefore, in the first place the evidence of this witness is interested, and secondly it does not appear to be of any assistance to the petitioner.

The other witness examined on this point is P.W. 3 Mohd. Maqbool Mir. A perusal of the evidence of this witness convinces us that he is an utterly unreliable witness. Although a lawyer of sufficient experience the witness seems to have scant regard for the purity of the legal profession or the norms of professional ethics. He was a counsel of the appellant and had been engaged by him at the time of filing of the nomination paper and its scrutiny. He was present on February 9, 1972 before the Returning Officer on behalf of the appellant. He further admits that he had also agreed to become the agent of other contesting candidates. The order Ext. RW 3/3 clearly mentions that the witness did raise objection on behalf of the appellant regarding the genuineness of the signature of P.W. 1 Ghulam Mohiuddin and yet the witness who appears to have transferred his loyalty to the petitioner deposes with impunity that he did not raise any objection regarding the genuineness of the signature of Ghulam Mohiuddin and that the overwriting did not exist at the time of the scrutiny. The dramatic manner in which he has made his appearance as a witness for the petitioner speaks volumes against the credibility of his testimony. He admits that he had never appeared before the High Court and he happened to come to Srinagar on November 13, 1972 to make some purchases for his uncle who was proceeding on a pilgrimage to Mecca. As he happened to be in the Court premises his name was called out and he was directed to appear as a witness without receiving any summons from the Court. The appellant has categorically stated in his evidence that he had informed this witness that he might have to be examined on his behalf in the trial before the High Court and yet

the witness knowing full well that he was the retained counsel of the appellant readily agreed to depose for the petitioner. Finally the witness admits that he deals with about 100 cases per month and yet he does not pay any income-tax. In view of these circumstances, therefore, we are not in a position to place any reliance on the evidence of this witness. In fact the learned Judge was also not inclined to place implicit reliance on the testimony of this witness and in this connection the learned Judge observed as follows:

"There have been great comments made with regard to the veracity and dependability of the statement of this witness and if the matter had rested only on the testimony of this witness, then it could have been said that some how or other this witness had changed sides and has come to depose but his testimony and the statements made by him have to be judged in the light of the other evidence and the facts and circumstances of the case."

We are now left with the evidence of P.W. 5 Girdhari Lal. This witness was admittedly counsel for the petitioner and was therefore thoroughly interested in supporting the case of the petitioner. The witness has also stated that the nomination paper bore the signature of Ghulam Mohiuddin but at the time when he was deposing there was some overwriting in his signature. The witness says that he was present at the time of the scrutiny and had inspected the nomination form and found that the signature of Ghulam Mohiuddin did not contain any overwriting at that time. He, however, admits that the petitioner Ali Akbar Khan was not present when the scrutiny was taken up and his nomination paper was rejected by the Returning Officer. Indeed if this was so, as a retained counsel for the petitioner, it was his duty to point out to the Returning officer that under s. 47 of the Act the Returning officer was not legally competent to reject the nomination paper merely on the ground of the absence of the petitioner or his proposer. He, however, remained absolutely silent. This clearly shows that either he was aware that the overwriting on the signature of Ghulam Mohiuddin was already there at the time of the scrutiny or that he did not know about it, nor did he care to examine the nomination paper at that time. The witness admitted at p. 106 of the Paper Book that the rejection of the nomination paper on the ground of the absence of the candidate or his proposer was in his opinion improper under s. 47 of the Act. In spite of this fact it is not at all understandable why he did not draw the attention of the Returning officer to this fact, if the Returning officer had rejected the nomination paper merely on the ground of the absence of the petitioner or his proposer. In these circumstances, therefore, there appears to have been a method in his silence which indicate that he was a privy to the whole show put up by the petitioner and wanted that somehow or the other the nomination paper of the petitioner may be improperly rejected so as to afford a ground to his client to upset the election of the successful candidate. In these circumstances, therefore, we are not in a position to place any reliance on the evidence of this witness.

This is all the evidence that the petitioner has led in support of his case that the overwriting on the signature of Ghulam Mohiuddin was made subsequent to the scrutiny of the nomination form.

As against this there is clear and categorical evidence of the appellant Mohd. Yasin Shah R.W. 4 who stated thus:

"After examination of the nomination form, I raised objection that the signature of the proposer appeared to be doubtful and I also said that probably it is not his signature. No one at that time appeared to rebut this objection of mine and to assert that it was the signature of the proposer."

His evidence was fully corroborated by the Returning officer Abdul Rehman Mir, R.W. 3, who has clearly stated thus:

"The nomination form already marked Ext. P.W. 5/2 was presented before me in the same condition in which it is at present. I was also the Returning officer of Lolab, Kupwara assembly constituencies besides the Karnah assembly constituency."

We have already pointed out that R.W. 3 is an independent witness being a high Government officer. The allegations made by the petitioner against him have not at all been substantiated and appear to be totally unfounded as found by us. There is neither any suggestion nor any evidence to show that he was in any way interested in the appellant or biased against the petitioner. On the other hand, R.W. 3 being an independent Government officer would naturally have no leanings towards either party. Furthermore, the most important question to be determined was, if any overwriting was made, who would be interested in making the same? It is obvious that the Returning officer had absolutely no motive to make any overwriting on the signature of P.W. 1. The Returning officer has also admitted in his statement that after the scrutiny the record was deposited by him personally with the District Treasury Officer, Baramulla, as per the directions of the Deputy Commissioner, Baramulla, who was also the District Election officer. In these circumstances, therefore, why should the Returning officer have taken the grave risk of tampering with the record after the same was deposited with the District Treasury officer on the directions of the Deputy Commissioner, Baramulla, and why should he at all do it? Perhaps it was for this reason that the learned Judge did not like to go into this question at all and refrained from making any observation on this aspect of the matter but casually observed that the overwriting might have been brought into existence after the scrutiny. We think that there is absolutely no evidence to support this fact.

Finally there is another intrinsic circumstance which shows that the overwriting must have been there when the nomination paper was filed or was taken up for scrutiny by the Returning Officer. The order of the Returning officer Ext. R.W. 3/3 clearly shows that an express objection was taken by Mohammad Maqbool Mir on behalf of Mohammad Yasin that the signature of the proposer was not genuine. If the overwriting would not have been there, there was absolutely no occasion for the appellant to have raised any such objection. We have examined the signature purported to be of Ghulam Mohiuddin, P.W. 1, and we find that there is clear over-writing by which various letters of the signature of Ghulam Mohiuddin have been tampered with. The Returning officer has also deposed that he had given time to the candidates to examine the nomination papers at the time of the scrutiny in order to submit objections, if any. The appellant and his counsel examined the nomination paper of the petitioner and did raise an objection regarding the genuineness of the signature of his proposer P.W. 1. This objection has been recorded in the order passed by the Returning Officer. In view of these circumstances we see no reason at all to distrust the evidence of the Returning officer R.W. 3 on the point that the nomination paper was in the same condition at



the date of the scrutiny as it was on the date when he was deposing.

There is yet another matter on which there appears to be a serious controversy between the parties. The petitioner's case was that the appellant Mohd. Yasin had not at all raised any objection to the genuineness of the signature of P.W. 1. Ghulam Mohiuddin on the nomination form and that the aforesaid objection was subsequently incorporated by the Returning officer in his order by committing interpolation. On the other hand the appellant's definite case was that after inspecting the nomination paper he raised a clear objection before the Returning officer regarding the genuineness of the signature of the proposer Ghulam Mohiuddin and this objection was not only recorded by the Returning officer at that very time but was also sustained. The case of the appellant is substantially corroborated by the recitals in Ext. R.W. 3/3 the order passed by the Returning officer which must be presumed to be genuine as there is nothing to show that it was either interpolated or brought into existence subsequently. The petitioner's case, however, rests purely on the oral evidence of a few interested witnesses. To begin with, so far as the evidence of P.W. 1 Ghulam Mohiuddin and P.W. 5 The petitioner is concerned the same would be of no assistance in deciding this question because as held by us these two persons were not present at the time of the scrutiny and therefore they were not competent to depose whether or not any objection was taken by the appellant regarding the genuineness of the signature of Ghulam Mohiuddin. It is true that P.W. 3 Mohammed Maqbool Mir. who was the counsel for the appellant has stated that he never raised any objection on behalf of the appellant at the time of the scrutiny. We have already discussed the evidence of this witness and held that he was an utterly unreliable witness for the reasons which we have already given. Moreover he appears to be a turn-coat type of witness and has changed sides as observed by the learned Judge. Finally his evidence is clearly contradicted by the document Ext. R.W. 3/3 wherein it is clearly mentioned that the witness Mohd. Maqbool did raise objection regarding the genuineness of the signature of P.W. 1 Ghulam Mohiuddin on behalf of the appellant before the Returning officer at the time of the scrutiny. In these circumstances, therefore, we are not able to place any reliance on the evidence of this witness.

The last witness on the point is P.W. 4 Gulam Qadir Mir who has no doubt stated that no objection was taken by any body at the concerned time. This witness, however, was an agent of a different candidate and was not at all interested in the appellant and as, according to him, he was at some distance from the Returning officer it is possible that he may not have heard the objection taken by the appellant before the Returning officer. At any rate, the evidence of this witness by itself is not sufficient to demolish other circumstances appearing in the case, particularly the recitals in the documents R.W. 3/3.

As against this, R.W. 1, who, as we have already pointed out, is an independent witness, and being a candidate himself was present at the time when the scrutiny of the nomination took place, and his interest was by no means identical with the appellant and, therefore, had no reason to depose falsely to help the appellant. This witness has categorically stated thus:

"Respondent No. 1 (appellant) at that time raised an objection that he was challenging the signature of the proposer on the nomination paper of the petitioner.

\* \* \* \* \* When there was an objection to the nomination paper of the petitioner by Mohd. Yaseen then he (Returning officer) scrutinised the nomination paper and passed an order which was announced in the absence of the petitioner."

Similarly, R.W. 3 the Returning Officer has also clearly deposed that an objection was raised by the appellant which was recorded in his order. The evidence of R.Ws. 1 and 3 finds ample corroboration from the recitals in the document Ext. R.W. 3/3. Apart from this R.W. 2 who is no doubt a counting agent of the appellant has testified to the fact that the appellant had raised an objection regarding the genuineness of the signature of P.W. 1 Ghulam Mohiuddin. As the evidence of this witness is corroborated by two independent witnesses R.Ws. 1 & 3 we see no reason to disbelieve him. Lastly there is the categorical statement of the appellant himself that he did raise an objection. In these circumstances, therefore, we are satisfied that the evidence led by the appellant far out weighs the interested oral testimony led by the petitioner. In these circumstances, therefore, we find that it has been proved beyond doubt that the appellant did raise an objection regarding the genuineness of the signature of P.W. 1 Ghulam Mohiuddin before the Returning officer on February 9, 1972, at the time of the scrutiny of nomination papers.

It is, therefore, established that at the time when the nomination paper of the petitioner was taken up for scrutiny the overwriting on the signature of P.W. 1 Ghulam Mohiuddin was already there and there is a strong possibility that the overwriting had been deliberately made at the instance of the petitioner so as to furnish a ground for setting aside the election of the successful candidate if the official candidate of the Congress failed to win the election.

Mr. Pathak learned counsel for the petitioner submitted that a bare perusal of the order of the Returning officer would clearly show that there has been some tampering. Before examining this contention we may mention that from the evidence and circumstances discussed above, the following facts emerge:

- (i) that the petitioner was a dummy candidate of the Congress;
- (ii) that R.W. 1 Mohd. Anwar Shah Masoodi had expressed his clear apprehension that there was very little chance of Mohd. Yunis the official candidate of the Congress to win the election, and, therefore, there was every motive for the petitioner to have prepared some ground for assailing the election of the appellant in case he was successful;
- (iii) that on the date of the scrutiny of the nomination papers neither the petitioner nor his proposer were present before the Returning officer;
- (iv) that at the time of the scrutiny the appellant either personally or through his counsel definitely raised an objection about the genuineness of the signature of P.W. 1 Ghulam Mohiuddin on the nomination paper Ext. P.W. 5/2; and

(v) that the overwriting on the signature of P.W. 1 Ghulam Mohiuddin was present even at the date of the scrutiny and perhaps even on the date when the nomination paper was filed before the Returning officer.

In the background of these proved facts, we would now examine whether or not the contention raised by the learned counsel for the petitioner is correct. The order passed by the Returning officer rejecting the nomination paper of the petitioner which is Ext. R.W. 3/3 runs thus:

"The candidate and the proposer are not present. Hence rejected, also an objection has been raised to the genuineness of the proposer's signature by one Mohd. Maqbool counsel for Mohd. Yaseen Shah candidate. I could not verify it for absence of candidate and the proposer."

It was contended by Mr. Pathak that this order runs into two parts. By the first part of the order the Returning officer appears to have rejected the nomination paper merely on the ground of the absence of the candidate and the proposer. By the second part, which according to the counsel for the petitioner appears to have been added subsequently, the objection taken by the appellant regarding the genuineness of the proposer's signature has been recorded, and even so, the Returning Officer has not given any decision on this point. We have perused the original order passed by the Returning officer very carefully, but we find that the entire order has been written in the same ink with the same pen and appears to have been written in one sitting. There is nothing to show that the second part of the order was added subsequently because the strokes of the letters, the ink which has been used and the general tenor of the writing appears to be the same throughout. In these circumstances, therefore, we reject the contention of the petitioner that the second part of the order was added subsequently. We accordingly hold that the allegations made by the petitioner against the Returning Officer in paragraph 26 of the election petition are totally unfounded and the petitioner has miserably failed to prove the same. The entire order of the Returning Officer was written in one sitting and there can be no question of any interpolation having been made by him nor had the Returning Officer any motive to do so. Nevertheless it is true that after having written the order "Hence rejected", the Returning officer appears to have recorded the fact that an objection was raised regarding the genuineness of the proposer's signature. For this R.W. 3 the Returning officer appears to have given a very convincing and reasonable explanation. He says that while he was writing his order and had not completed the same, an objection was taken by Mohd. Maqbool counsel for Mohd. Yaseen regarding the genuineness of the signature of the proposer. At that time the clerk had already put the seal and, therefore, the Returning officer recorded the objection raised by the appellant in the space left and completed his order and thereafter he signed above the seal. The Returning officer R.W. 3 in this connection stated thus:

"When in spite of repeated calls neither the petitioner nor his proposer turned up before me, then, I began to write out the order on the back of the nomination form.....After the scrutiny by them, Mohammed Yaseen as; well as his counsel brought this fact to my notice that the signature of the proposer on the nomination form of the petitioner was not genuine.. ..... The portion in my order regarding the non- appearance of the petitioner or his proposer as well as the portion regarding the

objection about the genuineness of the signature were written by me contemporaneously at the time of passing the order on the nomination form in respect of the scrutiny. The seal is not below my order but it is just in the midst of the portion of my order and the reason for this is that at the time of the scrutiny when I was passing the order, my clerk was also standing by my side and he was affixing the seal and it so happened that while I was hearing the objection in respect of this nomination form, the clerk affixed the seal at that place."

The Returning officer further stated in his evidence that he upheld the objection of the appellant as there was no body on behalf of the candidate to rebut the objection raised by the appellant. The explanation given by the Returning Officer is fully corroborated by the evidence of the appellant and his witnesses, particularly R.W. 1, who is undoubtedly an independent witness. As we have already held that the Returning Officer was an independent witness and a Government official, there is absolutely no reason why he should have added a part of the order subsequently.

It was then contended by Mr. Pathak that even though the Returning Officer recorded the objection taken by the appellant he has not expressed any final opinion or taken any decision in the matter. Our attention was drawn to s. 47(2) (c) of the Act which runs thus:

"47. (2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary enquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:-

\* \* \* \* \*

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine."

It was submitted that the Returning Officer has nowhere held as a fact that the signature of the proposer was not genuine. He has merely indicated the objection raised by the appellant but has not examined the validity of that objection and, therefore, the order must be read as having rejected the nomination paper merely on the ground of the absence of the candidate and his proposer. It is true that under s. 47(2) (c) which is the only relevant provision which applies to this case it was not open to the Returning Officer to reject the nomination paper merely on the ground of the absence of the candidate or his proposer. The learned Judge seems to have accepted the petitioner's argument that on his interpretation of the order and found that the nomination paper was rejected merely on the ground of the absence of the candidate and his proposer. The learned Judge has also held that having rejected the nomination paper any subsequent observations which the Returning Officer made would have to be ignored as he became functus officio. This interpretation of the learned Judge has been adopted by Mr. Pathak learned counsel for the petitioner. On a close and careful reading of the order of the Returning Officer, as a whole, we are unable to agree with the interpretation put by the learned Judge or adopted by the learned counsel for the petitioner. We have already pointed out the facts proved which clearly show that at the time when the Returning

Officer passed the order he had before him the signature of Ghulam Mohiuddin with an overwriting. Both P.W. 1 Ghulam Mohiuddin and counsel for the petitioner have categorically admitted in their statements that the signature in the present form with the overwriting was not the signature of Ghulam Mohiuddin. P.W. 1 at p. 66 of the Paper Book deposed as follows:

"Question: Do you accept this signature to be yours in its present form as it stands ?

Answer: I do not accept this to be my signature in the forms as it stands at present."

Similarly P.W. 5 who is counsel for the petitioner and in whose presence P.W. 1 had signed the nomination paper also admits in clear terms thus:

"In the present form I do not accept that it is the signature of Ghulam Mohi-ul-Din."

Thus if the person who had signed the nomination paper and the lawyer in whose presence Ghulam Mohiuddin had signed the nomination paper were convinced that the signature as overwritten was not the signature of Ghulam Mohiuddin, how can we find fault with the Returning Officer if he also, on a bare perusal of the nomination paper, doubted the genuineness of the signature ? The suspicion of the Returning Officer regarding the genuineness of the signature of the proposer was further reinforced by the fact that a specific objection on this point was taken by counsel for the appellant as recorded in the order itself. Thus the order read as a whole clearly shows that the nomination paper was rejected not only on the ground that the candidate or his proposer was not present but also on the ground that the signature of the proposer on the nomination paper was not genuine. It is true that the Returning Officer has not given any clear finding on this point, but s. 47 of the Act does not require well reasoned decision. All that is necessary is that the Returning Officer should apply his mind and determine the question in a summary manner. The Returning Officer has, in the instant case, indicated objection taken by the appellant regarding the genuineness of the signature of the proposer and has also clearly observed that in view of the objection it is not possible to verify the signature in the absence of the candidate and the proposer. Thus the absence of the candidate and the proposer has been used not for the purpose of rejecting the nomination paper but for the purpose of supporting the conclusion of the Returning Officer that the signature of the proposer was not genuine. Even assuming for the sake of argument that the Returning Officer had in effect and in substance rejected the nomination paper on the ground of the absence of the candidate and the proposer which was not a valid ground for rejection of the nomination paper, this does not put an end to the controversy. There is abundant authority for the proposition that even if the ground on which the nomination paper has been actually rejected is not a permissible ground, if the successful candidate can make out a case that the nomination paper could have been properly rejected on one of the grounds mentioned in s. 47 of the Act, the rejection would not be improper and the election would be upheld. This Court considered this question in *N. T. Veluswami Thevar v. G. Raja Nainar & Ors.*(1) and observed as follows:

"The argument is that if the jurisdiction of the Tribunal is co-extensive with that of the returning officer, then the enquiry before it must be confined to the grounds which were urged before the returning officer. Now, the observations quoted above

were made statedly with reference to R. 47, and assuming that they apply to an enquiry under s. 100(1)(c), the question still remains, what is the jurisdiction of the returning officer in hearing objections to nomination papers ? His jurisdiction is defined in s. 36(2), and the Tribunal must therefore have jurisdiction to decide all the questions which can be raised under that section. The fact that a particular ground which could have been raised was not, in fact, raised before the returning officer does not put an end to his jurisdiction to decide it, and what he could have decided if it had been raised, could be decided by the Tribunal, when raised." p. 635.

"They held, with one solitary exception, that it is permissible, and indeed, it is stated in *Mengh Raj v. Bhimandas*-(1952) 2 E.L.R. 301, 310-as settled law that the rejection of a nomination paper can be sustained on grounds not raised before the returning officer. If the legislature which must be taken to have knowledge of the law as interpreted in those decisions wanted to make a departure from it, it would have said so in clear terms, and in the absence of such an expression, it would be right to interpret s. 100(1)

(c) as not intended to alter the law as laid down in those decisions." p. 636.

"The question now under consideration came up directly for decision before the High Court of Rajasthan in *Tej Singh v. Election Tribunal, Jaipur*- (1954) 9 E.L.R. 193-and it was held that the respondent to an election petition was entitled to raise a plea that the nomination of the petitioner rejected on one ground by the returning officer was defective on one or more of the other grounds mentioned in s. 36(2) of the Act, and that such a plea, if taken, must be enquired into by the Election Tribunal." p. 637 "An unreported judgment of the Andhra Pradesh High Court in *Badrivishal Pitti v. J. V. Narsing Rao*-Special Appeal No. of 1957-has been cited before us, and that also takes the view that in an enquiry before the Election Tribunal, it is open to the parties to support an order of rejection of a nomination paper on grounds other than those which were put forward before the returning officer. We are in agreement with these decisions." p. 637 Mr. Pathak learned counsel for the petitioner sought to distinguish this decision on the ground that while it is open to the Tribunal, or the High Court in the instant case, to examine other grounds on which the nomination paper could have been rejected, yet in the present state of pleadings no such question appears to have been raised before the High Court. This argument does not appear to be factually correct. This plea was specifically raised by the appellant in paragraph-8 of his written statement relevant part of which may be extracted thus:

"The answering respondent challenges the genuineness of the signature of the proposer of the petitioner which could neither be rebutted nor challenged by the petitioner or his proposer as both were absent and hence the rejection of the petitioner was announced by the Returning Officer, who under the circumstances was justified under section 47 of the R.P. Act to reject the nomination paper of the petitioner and as such this rejection cannot be deemed to be in law as improper

rejection and the petitioner cannot now challenge the same as there is no infirmity in the order of rejection by the Returning Officer."

Furthermore in the additional written statement, filed by the appellant after the learned Judge allowed the petitioner to amend his election petition, this point was reiterated in paragraph 2(iv) thus:

"That the signature of the proposer on the nomination form as was also challenged before the Returning Officer is not genuine and the rejection is not improper."

In paragraph-4 of the said additional written statement it was stated thus:

"That the signature of the proposer Ghulam Mohi- uddin not being genuine on the nomination form the rejection is not improper and the petition is liable to be dismissed."

The learned Judge had framed issue No. 1 in the widest possible terms which includes rejection of the nomination paper even on the ground that the signature of the proposer was not genuine which is undoubtedly a valid ground under s. 47(2) (c) of the Act. The issue framed by the learned Judge was as follows:

"1. Whether the nomination paper of the petitioner was improperly and illegally rejected ? O.P.P."

It is manifest that this issue covers the decision on the question as to whether various grounds on which the nomination paper could have been improperly rejected including the ground mentioned in s. 47(2) (c) of the Act. namely, the fact that the signature of the proposer was not genuine. Even the learned Judge clearly understood the pleadings of the appellant to include the fact that the nomination paper was rejected because of the genuineness of the signature of the proposer. In this connection the learned Judge in his order dated November 7, 1972 observed as follows:

"It appears from the petition that the ground was the absence of the petitioner at the time of the scrutiny of the nomination paper but it also appears from the written statement filed by the respondent as well as from the order of the Returning Officer that the nomination paper had also been rejected because of the genuineness of the signature of the proposer. The nomination paper can be rejected on the question of the genuineness as contemplated by clause (c) of Section 47 of the J & K Representation of the People Act of the State."

It was for these reasons that the learned Judge did not think it necessary to recast the issue, because he thought that the plea taken by the appellant in his written statement was fully covered by the issue already framed. In these circumstances, it is clear that the appellant had clearly raised the question that the nomination paper of the petitioner could be properly rejected under s. 47(2) (c) of the Act even on the ground that the signature of the proposer was not genuine. The learned Judge

committed and error in not deciding this particular plea taken by the appellant when he found that the Returning Officer had improperly rejected the nomination paper on the ground of the absence of the candidate and the proposer.

We have, however, examined the various aspects of this question and from the facts found by us it is clear that the overwriting in the signature which was present at the date of the scrutiny also throws considerable doubt on the genuineness of the signature of the proposer Ghulam Mohiuddin as clearly admitted by him and the lawyer of the petitioner himself. The fact that the proposer and the petitioner were both absent on the date of the scrutiny lends sufficient support to the inference that the signature of the proposer Ghulam Mohiuddin on the nomination form does not appear to be genuine. It is also clearly established as found by us that the appellant did raise an objection regarding the genuineness of the signature of the proposer Ghulam Mohiuddin on the nomination form and that there was no one present on behalf of the candidate to rebut or refute the objection taken by the appellant. On the other hand P.W. 5 who was the counsel for the petitioner and in whose presence the proposer Ghulam Mohiuddin had signed the nomination form was actually present at the time of the scrutiny and yet, for reasons best known to him, he did not choose to stand up and point out to the Returning Officer that the objection raised by the appellant was not tenable because the proposer had signed the nomination form in his presence. Lastly the signature which contains the overwriting *ex facie* shows that it was not genuine. In these circumstances, therefore, the only irresistible inference that could be drawn would be that the signature containing the overwriting in the present form, which was in existence even at the time of the scrutiny, could not have been the signature of P. W. 1 Ghulam Mohiuddin. To add to this is the fact that P.W. 1 himself clearly admitted that in the present form, namely, the signature containing the overwriting, he was not in a position to admit that it was his signature. This assertion was fully supported by P.W. 5 Girdhari Lal counsel for the petitioner in whose presence P.W. 1 is said to have signed the nomination form. The learned Judge appears to have entered into the domain of speculation by brushing aside the clear and categorical admission made by P.W. 1 on the ground that the question put to him had placed him on the horns of a dilemma. Once it is proved that the signature in the present form existed even at the time of the scrutiny, then the question put to the witness P.W. 1 was most relevant and the answer given by the witness was both clear and unambiguous. We do not see any vagueness or ambiguity in the answer given by the witness. Instead of taking the clear admission of P.W. 1 on its face value the learned Judge tried to brush it aside on purely speculative grounds. In these circumstances we are unable to agree with the view taken by the learned Judge which is based on a misreading and misinterpretation of the evidence of P.W. 1. For the same reason, we reject the contention of Mr. Pathak that the admission of P.W. 1 was vague. In these circumstances, therefore, we hold that it has been proved to the satisfaction of the Court that the signature of P.W. 1 Ghulam Mohiuddin which contained the overwriting was not his genuine signature. The nomination paper of the petitioner, therefore, could have been properly rejected on the ground that the signature of the proposer was not genuine. Thus the rejection of the nomination paper by the Returning Officer could be supported even on a ground different from the one which may have been taken by the Returning Officer. This being the position the rejection of the nomination paper was proper, and the election of the appellant could not be assailed under s. 108(1)(c) of the Act under which the election could be declared void only if there was an improper rejection of the nomination paper. In the instant case, the rejection of the nomination paper by the Returning Officer being proper one, s.



108(1)(c) was not at all attracted.

It was lastly contended by counsel for the petitioner that this Court ought not to interfere with the decision of the learned Judge unless there were special reasons for doing so. In support of his contention the learned counsel relied upon a decision of this Court in *Laxminarayan and another v. Returning Officer and others*(1) where this Court observed as follows:

"Section 116A of the Act provides for an appeal to this Court from an order of the High Court dismissing an election petition. The appeal lies both on issues of law and of facts ..... The power of the appellate Court is very wide. It can reappraise the evidence and reverse the trial court's findings of fact. But like any other power it is not unconfined: it is subject to certain inherent limitations in relation to a conclusion of fact. While the trial court has not only read the evidence of witnesses on record but has also read their evidence in their faces, looks and demeanour. The appellate Court is confined to their evidence on record. bility lies is entitled to great weight." (See *Saraveeraswami v. Talluri-A.I.R. 1949 P.C. 32*). However, the appellate court may interfere with a finding of fact if the trial court is shown to have overlooked any material feature in the evi-

dence of a witness or if the balance of probabilities as to the credibility of the witness is inclined against the opinion of the trial Court."

The propositions enunciated by the Court are well established and there can be no dispute with the propositions mentioned above. In the instant case, however, we find that the approach of the learned Judge was not correct. We have already pointed out a number of salient features appearing in the evidence which have rendered the case of the petitioner inherently improbable. The learned Judge appears to have overlooked these essential features. Further, the learned Judge himself had observed that issue No. 1 which he had framed was wide enough to include the plea of the appellant, and even if the order of the Returning Officer in rejecting the nomination paper on the ground of the absence of the candidate or his proposer was wrong, it could still be supported on the ground that the signature of the proposer was not genuine. The learned Judge has not determined this aspect of the matter. In these circumstances, therefore, we feel that the judgment of the High Court is erroneous both on fact and in law and although the appellate Court is extremely slow in disturbing the findings of fact, in the instant case, we are satisfied that the judgment of the High Court is against the weight of the evidence on record and preponderance of probabilities.

For the reasons given above, the appeal is allowed, the order of the High Court setting aside the election of the appellant Mohd. Yasin Shah is quashed and the election petition filed by the petitioner is hereby dismissed. The appellant will be entitled to his costs throughout.

P. B. R.

Appeal allowed.

