Supreme Court of India
Chanda Singh vs Choudhary Shiv Ram Verma And Ors. on 19 December, 1974
Equivalent citations: AIR 1975 SC 403, (1975) 4 SCC 393
Author: V K Iyer
Bench: A Alagiriswami, R Sarkaria, V K Iyer
JUDGMENT V.R. Krishna Iyer, J.

1. This election appeal is filed by the defeated candidate, set up by the Indian National Congress, challenging the election of the 1st respondent, the candidate of the Bharatiya Jan Sangh, after an unsuccessful election petition. The constituency is Nilokheri, in Haryana State, and the margin of difference was just 366 votes. The High Court negatived the petitioner's case and hence the appeal.

2. The facts of this case, along the customary course, are that the general elections to the Haryana Legislative Assembly, including for the Nilokheri constituency, were held in March 1972. Although ten persons filed nominations here, the contenders with muscles were the Congress and Jan Sangh candidates, victory according to the Returning Officer's verdict going to the latter but given a close numerical chase by the former. (A vaguely worded application for recount on the spot was rebuffed and later a petition was filed in the case with more specificity to conform to the prescriptions gathered from the rulings of this Court). An election petition, setting out the common plurality of grounds, was in due course filed some of which were discreetly abandoned at the trial and all of which were, on merits, negatived by the High Court. Before us, the fourfold issues pressed covered: (a) character assassination of the appellant; (b) communal appeal to influence the electorate; (c) bribery of some candidates, one a harijan, and another a barber by birth (an Indian caste phenomenon) and a third, a refugee from West Punjab the game being to induce them to mock-contest and, by their caste appeal, split the solid blocks of traditionally Congress votes; (d) illegal and erroneous counting of votes fracturing the sure success of the appellant followed by the unjust refusal of a recount which would have revealed the real result.

3. We will proceed to examine each limb of this complex of challenges, although the highlight of Shri Bhandare's submissions was the justice and right of his demand for a recount; so we will finish with that plea first.

4. The genesis and subsequent development of the case warranting recount of the votes can be traced to the application of the defeated candidate Exhibit P.W. 4/1 presented to the Returning Officer on the date of the count, i.e., March 12, 1972. There in he stated:

Sir, it is respectfully requested that I have some doubt about the correctness of the counting of the votes in the above said constituency. Taking into account the small lead and the way of the counting, it is expected that the recounting may effect the result otherwise. So your honour is requested an immediate recounting in the Nilokheri Constituency.

(Italic, ours) The significance of the hesitant and bald averments, keeping the option for additions and supplementary thinking open, is manifest here. 'Some doubt,' 'small lead' and 'the way of the counting' cannot, even imagination playing, project anything definite. concrete, positive. Such vague

fears and blurred anxieties cannot do duty for the actual requirements of this branch of the law as-we will presently explain. It is seen that Rule 63 of the Conduct of Elections Rules 1961 obligates the candidate to state 'the grounds on which he demands such recount'. It is plain that a mere doubt or small lead or unspecified blemish in the manner of the counting falls short of the needs of the said rule. Naturally, the Returning Officer found no difficulty in rejecting the application in the following terms:

No grounds have been given and no particular Table number has been given where they have any suspicion. In view of the vague allegation and with no particulars, I don't find any ground to order recount.

Rule 63 certainly states that the demand for recount may be rejected) if 'it appears to him (Returning Officer) to be frivolous or unreasonable' and this requirement, it is argued, has been violated. There is no special charm in phrases like 'frivolous or unreasonable'. What is not reasonably grounded or seriously supported is unreasonable or frivolous. Against the background of the paramount consideration of the secrecy of the ballot, the Returning Officer was right in dismissing the request bereft of credible factors and un backed by clearly articulated apprehensions. We may mention even at this stage that here the lead is not tiny, going by the narrowness of margin by which many candidates are returned. Suspicions of possible mischief in the process or likely errors in counting always linger in the mind of the defeated candidate when he is shocked by an un-expected result. The Returning Officer ,has to be careful, objective and sensitive in assessing the legitimacy of the plea for re-running the course. of counting. Victory by a very few' votes may certainly be ground to fear unwitting error in count given other circumstances tending that way.

5. Let us now proceed to see what further materials have been furnished in the election petition to induce the Court to reopen the ballot boxes and order a recount, assuming that in some honest instances genuine information of mistakes and malpractices may be gained days later. The passage of time often embellishes ideas and imports inspiration and the petitioner, by April 26, was equal to the expansive precision of a well-grounded demand for recount according to the legal canons settled by this Court. What was a mere bud of suspicion flowered, into several figures of malpractice and it was alleged with surprising accuracy that '1200 votes polled in favour of the petitioner were illegally declared invalid by the Returning Officer.' Allegations in similar arithmetical strain followed in paragraphs 5, 6 and 7 of the election petition. A separate petition on substantially like lines, under Section 100 of the Representation of the People Act, 1951 (hereinafter called the Act, for short), was filed giving graphic descriptions of the great speed of the counting, of the purposeful 'mistakes' in the number of votes which were not signed by the presiding officer and so on. Without hesitation one might say that this too perfect case for a recount was a clever afterthought, if only one looks at Exhibit P.W. 4/1 for a refreshing contrast. A counter affidavit of marathon length was filed by the opposite party, followed by a direction by the learned Judge that the question of recount would be decided after the evidence was concluded. Elaborate evidence was adduced on this issue, presumably because the petitioner staked much of his fortune on this recount question. P.W. 4, the Returning Officer, however, gave evidence in support of the propriety of the procedure adopted at the time of counting and refuted the imputations regarding illegal reception or rejection of votes and other irregularities. A procession of counting agents passed through the witness box swearing for or

against, according to the fidelity each owed to his candidate. Of course, the petitioner, as P.W. 21 and the 1st respondent, as R.W. 17, also supported their respective cases on oath. The learned Judge in the High Court heard the evidence, rejected the demand for a recount and declined to accept the loyal depositions. A chorus of partisan voices may not produce a symphony of sure truth. If the basic facts are found against and there is nothing worthwhile in the evidence to persuade us to a contrary conclusion there is no foundation for the relief of recount.

6. Even so, since Shri Bhandare has taken us through several rulings of this Court we may refer to some to see if the law lends support to his position. A democracy runs smooth on the wheels of periodic and pure elections. The verdict at the polls announced by the Returning Officers leads to the formation of Governments. A certain amount of stability in the electoral process is essential. If the counting of the ballots are interfered with by too frequent, and flippant recounts by courts a new threat to the certainty of the poll system is introduced through the judicial instrument. Moreover, the secrecy of the ballot which is sacrosanct becomes exposed to deleterious prying if recount of votes is made easy. The general reaction, if there is judicial relaxation on this issue, may well be a fresh pressure on luckless candidates, particularly when the winning margin is only of a few hundred votes as here, to ask for a recount Micawberishly looking for numerical good fortune or windfall of chance discovery of illegal rejection or reception of ballots. This may tend to a dangerous disorientation which invades the democratic order by injecting widespread scope for reopening of declared returns, unless the Court restricts recourse to recount to cases of genuine apprehension of miscount or illegality or other compulsions of justice necessitating such a drastic step. The best surmise, if it be nothing more than surmise, cannot and should not induce the judge to break open ballot boxes. If the lead is relatively little and/or other legal infirmities or factual flaws hover around, recount is proper, not otherwise. In short, where the difference is microscopic the stage is set for a recount given some plus point of clear suspicion or legal lacuna militating against the regularity, accuracy impartiality or objectivity bearing on the original counting. Of course, even if the difference be more than microscopic, if there is a serious flaw or travesty of the rules or gross interference, a liberal repeat or recount exercise, to check on possible mistakes is a fair exercise of power. It is significant to note, while it may not necessarily be proper to ape, that in the United Kingdom, seven recounts were allowed in the elections in a constituency in the 1966 elections, as the Handbook of Instructions to Returning Officers shows. The pronouncements of this , Court have struck a cautious note throughout.

NOW TO THE DECISIONS

7. The power of the Court to direct an inspection of the ballot papers, get a recount done and re-judge the validity or otherwise of disputed votes cannot be controverted, but when should this power, wide and of deep import as it is, be exercised, is the question. In Sumitra Devi's case Mathew J. reviewed the law on the subject with reference to prior decisions and observed:

A recount will not be granted as a matter of right but only on the basis of evidence of good grounds for believing that there has been a mistake in the counting. It has to be decided in each case whether a prima facie ground has been made out for ordering an inspection.

The requirement of an adequate statement of the material facts, reliable evidence to prove the allegations so made, definite particulars to be furnished in the application for inspection as to the illegalities alleged to have been committed in the counting of the ballot papers, have been stressed by the learned Judge, Taking a bird's-eye view of the case law on. the subject, the Court observed:

that an order for inspection would not be granted as a matter of course: that having regard to the insistence upon the secrecy of the ballot papers, the Court would be justified in granting an order for inspection only where the petition for setting aside an election contains an adequate statement of the material facts on which the petitioner relies in support of his case and it is necessary to decide the dispute and to do complete justice between the parties. The Court also said that an order for inspection, of ballot papers would not be granted to support vague pleas made in the petition not supported by material facts or to fish out evidence to support such pleas. The Court emphasized that mere allegations that the petitioner suspects or believes that there has been an improper reception, refusal or rejection of votes will not be sufficient to support an order for inspection. In Dr. Jagjit Singh v. Giani Kartar Singh : this Court again said that an election petition should contain a concise statement of the material facts on which the petitioner relies, that vague or general allegations that valid votes were improperly rejected or invalid votes were improperly accepted, would not serve the purpose and that an application made for the inspection of ballot boxes must give material facts which would enable the tribunal to consider whether in the interests of justice, the ballot boxes should be inspected or not. The Court further said that in dealing with this question, the importance of the secrecy of the ballot papers cannot be ignored and that it has always to be borne in mind that the statutory rules framed under the Act are intended to provide adequate safeguard for the examination of the validity or invalidity of votes and for the examination of their proper counting. The Court emphasized that in some case, the ends of justice would make it necessary for the tribunal or court to allow a party to inspect the ballot boxes End consider his objection about the improper acceptance or improper rejection of votes tendered by voters at any given election; but in considering the requirements of justice, care must be taken to see that election petitioners do not get a chance to make a roving or fishing enquiry into the ballot boxes so as to justify their claim that the returned candidate's election is void.

In Jitendra Bahadur Singh v. Krishna Behari the Court observed that in view of the importance of maintaining the secrecy of be ballot papers, scrutiny can only foe ordered if the election-petition contains an adequate statement of the material facts on which the petitioner relies, that is, the material facts disclosed must afford an adequate basis for the allegations; and. the election tribunal must be prima facie,satisfied that in order to decide the dispute and to do complete justice between the parties, inspection of the ballot papers is necessary.

Indeed, we wholly concur with this statement of the law and do not feel the need to go over the ground again.

8. Hegde J.(in Sashi Bhu-shan's Case made certain observations which are of great moment. For instance, allegations were made in that case in support of the prayer for a recount which, according to the opposite party, had not been raised at the time of the counting of the votes. The learned Judge disposed of this contention as follows:

Assuming that the persons concerned did not inform the Assistant Returning Officer of what they had observed, it does not stop the Election petitioners from taking the pleas in question in the election petitions, though undoubtedly it is a circumstance to be considered on the question of the value to be attached to the allegations made regarding the observations said to have been made at the time of the counting. Assuming that the conclusion reached by the election petitioners was the result, of not merely observing certain facts at the time of the counting but on the basis of various circumstances, some of which came to their notice before the election, some at the time of the counting and some after the counting, that, by itself is not sufficient to brush aside the allegations.

It is true that, merely because someone makes bold and comes out with a desperate allegation, that by itself should not be a ground to attach value to the allegation made. But at the same time serious allegations cannot be dismissed summarily merely because they do not look probable. Prudence requires a cautious approach in these matters. In all these matters. the Court's aim should be to render complete justice between the parties. Further, if the allegations made raise issues of public importance, greater care and circumspection is necessary.

These cases have peculiar features of their own. No such case had come up for decision earlier. Hence decided cases can give little assistance to us. In a matter like allowing inspection of ballot papers, no rigid rules have been laid down, nor can be laid down. Much depends on the facts of each case. The primary aim of the courts is to render complete justice between the parties. Subject to that overriding consideration, courts have laid down the circumstances that should weigh in granting or refusing inspection. Having said that much let us now examine the cases read to us on behalf of the appellants.

On all hands, it is now agreed that the importance of the secrecy of the ballot, must not be lost sight of, material facts to back the prayer for inspection must be bona fide, dear and cogent and must be supported by good evidence. We would only like to stress that in the whole process, the secrecy is sacrosanct and inviolable except where strong prima facie circumstances to suspect the purity, propriety and legality in the counting is made out by definite factual averments, credible probative material and good faith in the very prayer. We may even say that no winning candidate should be afraid of recount and, conditions as they are, a skeptical attitude expecting the unexpected may be correct, informed of course by the broad legal guidelines already set out. Who knows, if infirmities are indicated by evidence, what the result of recount will be? It lies buried in the womb of the sealed boxes and cannot, therefore, be demonstrated without a second judicial inspection. To set the records straight it may be proper to refer to the ruling in Malaichami's Case which affirmed a recount ordered by the High Court. The very recent judgment on recount in Bahrain Bhalaik's Case, Civil Appeal No. 1117 of 1973, decided on 3-12-1974 : reported in AIR 1975 SC 283 flows along the same current.

9.We are satisfied that the approach adopted by the trial Court is substantially sound, that the assessment of the worth of the oral evidence is reasonably correct and the conclusion, reached after a carefully exhaustive consideration of the record such as not to call for interference. The Returning Officer has, without mincing words, convincingly sworn against the veracity of the version presented belatedly by the appellant. To tarnish the counting staff with bias, as has been done in the petition,

is easy for any party who divorces means from ends. When the challenger belongs to the party in power, we need hardly say that a heavy strain is thrown on the strength of the moral fibre of the election staff whose fearless integrity is a guarantee of purity of the whole process but whose fortunes, before and after elections, may be cast with a political government whose key men may sometimes take disturbingly keen interest in the outcome of elections and election petitions. Tire Court should be reluctant to lend quick credence to the mud of partiality slung at counting officials by desperate and defeated candidates although, as Hegde J. has pointed out "what AS more important is the survival, of the very democratic institutions on which our way of life depends". In the present case, partisanship has been imputed to the counting staff but counsel, Shri Bhandare, fairly dissociated himself from that tainted contention. However, he drew our attention to the circumstance that the Judge who ultimately appreciated evidence and delivered judgment was different from him who recorded depositions and, therefore, too much importance to the evaluation by the trial Court should not be attached by this Court. Bearing this circumstance in mind, we notice that there has been a detailed discussion by the High Court of the entire evidence (and wherever the demeanour of the witnesses fell for special notice, the Judge who took down the depositions had left contemporaneous notes thereof). We therefore affirm on facts and on law the refusal by the trial Court of the strenuous plea for recount.

10. We now proceed to the next contention pressed before us based on poster pollution of the electoral constituents' mind. Exhibit P.W, 2/2 is the poster which is a compound of two vices because there is character assassination and communal appeal, offending Section 123 of the Act. No doubt, the Hindi pamphlet (miscalled poster) casts malignant reflections on the virtue 'of the appellant, the telltale title itself being "Black deeds of Chanda Singh". Black, the imputations are, and truth not being pleaded in defence, the crucial question' is as to the factum of publishing such printed filth as is contained in Exhibit P.W. 2/2. Sure, if that pamphlet had been actually published, the grounds under Section 123(3) and 123(4) stand more or less made out. While the miasma of personal maligning and exploitation of communal feelings fouls the election atmosphere more these days, does the unclean record of candidates also escalate? Even so, the need for scrutiny of the allegations in this behalf cannot be over-emphasized since few candidates would be foolish enough, particularly if they have a fair chance of wrecking their electoral prospects in Court by publishing such an obviously offending document, as Ex. P.W. 2/2 reasonably anticipating an election petition with cast-iron proof, well-documented and officially authenticated. Little foresight is required to know that if such a pamphlet as Ex. P.W. 2/2 were circulated on a wide-scale, the opposing candidate, fairly powerful and guided by seasoned supporters, would leave no stone unturned in immediately bringing to the notice of high election officials such a publicly committed corrupt practice. The culprit could be caught red-handed if a copy of the poster itself were produced before the election and the officers concerned alerted to enquire, the petitioner being no novice.

11. With these background observation, we may examine the story of the petitioner which sounds oblique and improbable and collapses like a pricked balloon on an insightful judicial probe. The case stands or fails on the factum of printing such a pamphlet, for if Exhibit P.W. 2/2 was not printed at all it could not have been distributed. In this context, the case of the 1st respondent is that he never go! printed or circulated such a pamphlet but that this must have been a post-election manoeuvre of the petitioner in a frantic bid to snatch, the seat by hook or crook. The tale that is told about Ex.

P.W. 2/2 is that the 1st respondent, willing to wound but afraid to strike, secured the good offices of one Sher Singh, P.W. 3. to play the role of benamidar publisher of the objectionable poster. Shri Shiv Ram, the 1st respondent, approached P.W. 3, according to the latter's deposition and was asked to accompany him, On the way he mentioned to him about the. clever device of getting certain posters printed in the name of the witness 'to avoid any objection'. Of course he who runs and reads may realise that Exhibit P.W. 2/2 is a scurrilous paper to which no man of decency would subscribe. May be, some people in election lose their sense of moral values, but how can. one take unscrupulous men at their word? P.W. 3 fell in with the suggestion and the two together met the printer Lala Ram, P.W. 2, P.W. 3 made out an endorsement as if he were the author. Exhibit P.W, 2/2A. 2000 copies were got printed and later read or distributed at various meetings of the Jan Sangh. This ease has been rejected as baseless by the trial Court. Findings of fact in election cases will not be interfered with in appeal unless palpable errors are present. None which shakes our faith in the validity of the appreciation of evidence has been brought home. It is interesting that P.W. 3 claims to have been a polling agent of the 1st respondent while the latter denies that fact altogether. The evidence of this witness, who is a self-condemned be namidar ready to be a character assassin, is improbable on a fair reading; nor is his demeanour straightforward, as the trial Judge noted. The petitioner has striven to salvage his case by reliance on the evidence and documents of P.W. 2, the printer, and the books and registers in the Deputy Commissioner's Office. The printing was done allegedly in the Karnal Times Co-operative Printing Press of which P.W. 2 is the Manager. The account book of this press is said to have been maintained by one Kanwar Bhan. He was summoned as C. W. I at the close of the evidence of the parties. He had been directed to produce the account book since that record had been suspiciously kept back by P.W. 2. When Lala Ram left the witness-box and withheld the book which might have thrown light on the payment of printing charges, suspicion was naturally excited. When the evidence was closed the Court summoned the accountant of the press for production of the relevant books which would betray the case of the petitioner in case there was an omission, of the crucial entry therein. The cinematographic sequence of the series of events connected with Lala Ram and the issue of a Commission, the Commissioner hurrying to the press and the house of the printer, Lala Earn being reported seriously ill in a Karnal hospital, the accountant Kanwar Bhan reaching Court without the relevant, book and turning up the next day again unhelpful with a cock and bull story explaining non-production all this strange chain of events leaves us in no doubt that the mendacious progress of the poster theory, hardly visible in the first letter of the Deputy Commissioner, largely embryonic in the election petition as originally filed, developing more concretely by the time of the amendment of the petition, dubiously dressed up in bill books and suspicious testimony of the printer and the benamidar author of the poster and climaxing in the tragic exposure through the issue of a Commission and the summons by Court to the accountant Kanwar Bhan has to be dismissed as a post-election fabrication and a hoax practised on, the Court for what it was worth. Election. Tribunals will do well to direct prosecutions of fabricators and perjurers when clearly established to be such, as partI of Operation Glean-up of Elections.

12. We have been taken through the details of the depositions concerned as also of the Commissioner's report, and the whole episode reads fantastic, leaving us in no hesitation to disbelieving P.W. 2. Moreover, he admits he is a Congress sympathiser and confesses to a contravention of Section 127A of the Act which obliges printers of election materials to send a copy

to the District Magistrate together with a declaration. Counsel far the appellant, in extenuation, pleaded that hardly anyone in that constituency or the next appears to have complied with the provision which perhaps remains a dead letter. Of course, P.W. 2 admits that he is aware of the provision which makes it an offence punishable with, six months' imprisonment (or with fine of Rupees 2000/- or with both) for a printer not to send a. copy of a declaration about the printing of any election pamphlet or poster together with a copy of the document. The paramount, importance of excluding literary contamination of the election eve atmosphere is penalty protected by Section 127A and statutory safeguards cannot be treated as printed jokes by citizens. We regard this section not as an idle norm in the statute book but a legal mandate with a claw. We hope Election Authorities will be activist enough to enforce this provision and help eliminate a noxious practice, If really P.W. 2 had printed and had failed to comply with the provision of law, he was a self-exposed criminal. The probability is that he is a perjurer rather than an offending printer. May be. he has obliged the appellant under pressure but it is not necessary to speculate as to how the dramatic events in which this witness played a role at all could have happened, were he a straightforward manager o£ a cooperative printing enterprise.

13. We will see if the appellant's case can be rescued by reference to official documents and the testimony of R.W. 4, the concerned clerk in the Deputy Commissioner's office. Even here, the appellant's chances are bleak. The High Court has explained how the testimony of R.W. 4, the assistant in the Deputy Commissioner's Office, Karnal, has contradicted the receipt of the alleged poster in the Deputy Commissioner's Office. We have been persuasively taken through the oral and documentary evidence bearing on this part of the case but are satisfied that the High Court has not erred in its conclusion. The fact that in the records of the Deputy Commissioner's office there is not any poster relating to the last General Elections to the State Assembly from Nilokheri constituency' or from any other constituency is used by Shri Bhandare to absolve P.W,. 2 from the offence he has obviously committed if his version were true. We are disinclined to disturb the finding of the trial Court.

14. The distribution of injurious leaflets at meetings is sought to be proved through P.Ws. 7, 8 and ,10 and attempted to be disproved through R.Ws. 8, 9, 10 and 17. All that we can say is that the burden that lies on the petitioner to establish corrupt practice is heavy and has not been discharged through his witnesses or documents. Lip service to corrupt practice with lethal effect on the apparent verdict of the electorate cannot easily pass muster in Court, lest a grave risk to the poll system be involved. So much so, only if the oral evidence be of sterling worth, and given strong documentary and circumstantial sup port can the Court act on it to upset an election. In short, the composite plea of communal appeal and injurious personal imputations, dependent, as it is on Exhibit P.W. 2/2, must be dismissed, notwithstanding the witnesses to distribution already adverted to and the testimony of P.Ws. 9, 17 and 18 who speak to the aspect of communal appeal at, meetings.

15. We are left with the last ground of bribery covered by issue No. 4. Here is a curious phenomenon of electoral politics in India. The type of strategy alleged to have been re sorted to in this case and not un known in elections is of splitting blocks of votes habitually going to a party by the device of setting up candidates without hope for themselves but with potential to break the prospects of others, thanks to communal, parochial and other irrelevant 'car rots' they dangle before illiterate

voters. Anyway, in the present case, respondents 2, 4, 5 and 6 are alleged to have been set up at the instance of the 1st respondent and financed by him so as to lop off the ballot fat of the petitioner. The 5th respondent being a Harijan was expected to carry away some Harijan votes. The 6th respondent is a water-carrier by caste (!) and hopefully would lure away voters of his caste. The 4th respondent is a refugee from Pakistan and the sympathies of fellow refugees would flow in his direction. The case of the petitioner is that there was a pre-concert with these persons for the diabolic purpose of distracting votes from the Congress ballots. Money was paid and campaign financed by the 1st respondent in an endeavour to boost his chances as against his chronic rival at the polls. Surprisingly, two respondents, R.W.S 1 and 8. have on oath admitted receipt of money, thereby confessing to a corrupt practice under Section 123(A)(a). The un edifying episodes in this regard are proved by RW 1, RW 2, PW 13 to PW 16. Of course, RW 17, the 1st respondent, by his evidence has sought to rebut this charge. After giving anxious consideration to the serious imputation and the evidence adduced to uphold it, we endorse the finding of the High Court, expressed thus:

In view of foregoing discussion there is no option but to hold that the election petitioner has singularly failed to discharge the onus of proving the allegations of corrupt practice of bribery under this issue and accordingly I decide issue No. 5 against him If a defeated candidate can bribe into false testimony a few unscrupulous fellow candidates who have miserably failed at the polls and secured only paltry votes, any returned candidate can be put in peril. The Court cannot accept at face value witnesses who have no compunction in owning that they are conspirators in bribery for the sake, of vote splitting at the elections. While we lament the life style of our elections to the extent such mal-practices creep in and embolden the setting up of such a plea as here, we feel that, judging by the massive dimensions of the polls undertaken periodically by the largest democracy in the world, this bribe game does not pay.

16. On the whole we agree that there is no merit in this appeal and, accordingly, dismiss it with costs.