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## GENERAL SECRETARY

Advocates' Association,  
High Court, Allahabad

Office: -Advocates' Association, 3<sup>rd</sup> Floor, New Building,  
High Court, Allahabad.

ELECTION PETITION NO. 5 OF 1971

1022  
03-06-77

Raj Narain

.....Petitioner

Vs.

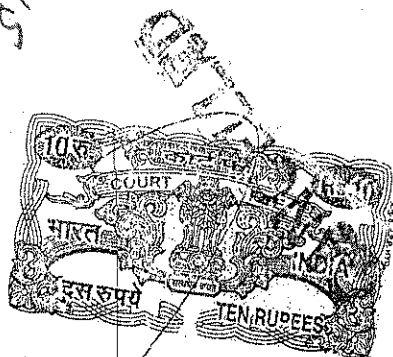
Smt. Indira Nehru Gandhi

..... Respondent

Copy of Judgment dated: 12.06.1975

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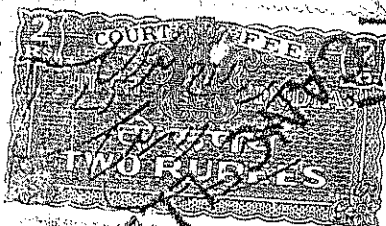
Date of Application 03-06-77  
Date of Ready 21-06-77  
Date of Issue 21-06-77  
Serving Clerk 47



Pub. 205 Raj 114  
AIR 2001 Calcutta 349  
205 Raj 114 vs. A. Singh

Secretary  
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11345-22/1/61  
27/4/61  
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IN THE COURT OF JUDICATURE AT ALLAHABAD.

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ELIGIBILITY PETITION NO. 5 OF 1971

(Under Section 30/81 Representation of  
People Act 1951)

Shri Raj Warain, son of Shri Anant Prasad  
Singh, resident of village Ganjari, Post  
Dangapur, District Varanasi.

... Petitioner.

Versus

1. Smt. Indira Nehru Gandhi, daughter of  
Pt. Jawaharlal Nehru, resident of  
1, Lodhi Road, (Purbi Bhag)  
Allahabad (at present resident at  
No. 1, Safdarjung Road, New Delhi).

2. Swami Advaita Nand, son of Shri  
Brahma Nand, resident of 13 North  
Avenue, M.P.'s Flat, New Delhi.

... Respondents

To

The Hon'ble the Chief Justice and his  
company Judges of the aforesaid court.

The petitioner abovenamed states as  
follows:-

1. That the petitioner is a member of the

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(Reserved judgment)

J U D G M E N T

In

ELECTION PETITION NO. 5 of 1971,  
connected with  
WRIT PETITION NO. 3761 of 1975.

PRESENT:

The Hon'ble J.M.L.Sinha ..... Judge.

Delivered

on

12th June 1975.

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A826

INDEX OF JUDGMENT.

Particulars	Pages
1. Petitioner's case	1-4
2. Respondent's case	4-8
3. Issues	8-12
4. Finding on Issue no. 2	12-28
5. Finding on Issue no. 3	29-56
6. Finding on Issues 4 & 7	57-62
7. Finding on Issue no. 10	62
8. Finding on Issues 5 & 8	63-66
9. Finding on Issue no. 6	67-86
10. Finding on Issue no. 9 & W.F.	86-128
11. Finding on Addl. Issue no. 2	129-163
12. Finding on Addl. Issue no. 3	164-191
13. Finding on Issue No. 1 (first set) & Additional Issue no. 1	191-256
14. Order	256-258

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A821  
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(Reserved judgment).

ELECTION PETITION NO. 5 of 1971,  
connected with  
WRIT PETITION NO. 3761 of 1975.

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Hon'ble J.M.L. Sinha, J.

In the elections that took place for the Lok Sabha in 1971, Sri Raj Narain (hereafter to be called the petitioner) and Shrimati Indira Nehru Gandhi (hereafter to be called the respondent no. 1) were the principal contenders from 22 Rae Bareilly parliamentary constituency. The other two candidates in the field were Rameshwar Dutta Mandov and Swami Advaitanand. The respondent no. 1 obtained 1,83,309 votes. The petitioner got 71,499 votes. Rameshwar Dutta Mandov and Swami Advaitanand got 4,839 and 16,627 votes respectively. The respondent no. 1 was accordingly declared elected. The petitioner has filed the present petition, challenging the election of respondent no. 1. Shorn of the grounds not pressed or adhered to, the rest of the grounds on which the election has been challenged are as follows: -

- (1) That the respondent no. 1 held herself out as a prospective candidate from 22 Rae Bareilly constituency immediately after the dissolution of the Lok Sabha.
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On 27th November 1970 and that, for the furtherance of her election prospects, she obtained and procured the assistance of Sri Kashpal Kapur, a Gazetted officer in the Government of India holding the post of Officer on Special Duty, and thereby the respondent no. 1 committed a corrupt practice under section 123(7) of the Representation of the People Act, 1951.

(2) That the respondent no. 1 and her election agent procured the assistance of members of the Armed Forces of the Union for furtherance of her election prospects, inasmuch as the members of the Armed Forces arranged planes and helicopters of the Air Force at her instance for her flights to enable her to address meetings in her constituency, and thereby the respondent no. 1 committed another corrupt practice under section 123(7) of the Representation of the People Act.

(3) That the respondent no. 1 and her election agent also obtained and procured the assistance of a number of Gazetted officers and members of the Police Force for the furtherance of her election prospects, inasmuch as the services of the District Magistrate, Rae Bareilly, the Superintendent

A 826  
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of Police, Rae Bareilly and the Home Secretary, U.P. Government were utilised for the purposes of -

(a) construction of rostrums and installation of loudspeakers at various places within the constituency where the respondent no. 1 addressed her election meetings;

and

(b) making arrangements of barricading and posting of police personnel on the routes by which the respondent no. 1 was to travel in her constituency and at the places where she was to address meetings, in order to give publicity to her visits and to attract larger crowds,

and thereby the respondent no. 1 committed another corrupt practice under section 123(1) of the Representation of the People Act.

(4) That Sri Yashpal Kapur, the election agent of respondent no. 1, and her other agents with the consent of Sri Yashpal Kapur, freely distributed quilts, blankets, dhotis and liquor among the voters to induce them to vote for her and thereby the respondent no. 1 committed the corrupt practice of bribery under section 123(1)(A)(b)(ii) of the Representation of the People Act.

(5) That the respondent no. 1 and her election agent made extensive appeals to the religious symbol of cow and calf and thereby committed a corrupt practice under section

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123(3) of the Representation of the People Act.

(6) That Sri Yashpal Kapur, the election agent of respondent no. 1, and some other agents or persons with his consent hired and procured a number of vehicles for the free conveyance of electors to the polling stations and thereby committed a corrupt practice under section 123(5) of the Representation of the People Act.

(7) That the respondent no. 1 and her election agent incurred or authorised expenditure in contravention of section 77 of the Representation of the People Act and thereby committed a corrupt practice under section 123(6) of the Representation of the People Act.

The respondent no. 1, denying the aforesaid allegations made against her, pleaded: -

(I) That Sri Yashpal Kapur resigned from his post on 13th January 1971 and the resignation was accepted with effect from 14th January 1971, in regard to which a notification dated 25th January 1971 was issued by the Prime Minister's Secretariat. In the Additional Written statement it was

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added that Sri P.N.Haksar, the then Secretary to the Prime Minister told Sri Yashpal Kapur on the same date, on which the resignation was tendered, that it was accepted and that formal orders would follow.

(II) That Sri Yashpal Kapur became her election agent on 4th of February 1971, and that during the period he was Gazetted officer in the Government of India he did not do any work in furtherance of her election prospects.

(III) Referring to the use of planes and helicopters of the Air Force, the respondent no. 1 admitted that on 1st of February 1971 she went by a plane of the Air Force from Delhi to Lucknow, from where she went by car to Rae Bareilly, addressing meetings enroute. She further admitted that on 24th of February 1971 she went by a helicopter of the Air Force to Gonda on regular party work and that from there she went by car to Lucknow, Unnao and Rae Bareilly, addressing public meetings in several constituencies besides her own. She referred to the Pillai Committee Report and the Office Memorandums issued by the Government of India to plead that the

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aforesaid flights were made by her in compliance thereof. It was further pleaded by her that, under the rules, bills for those flights were to be paid by the A.I.C.C. and most of them had already been paid. According to her, neither did she nor her election agent solicit, require or order the use of Air Force planes, and that the Government of India provided the planes as part of their normal duty.

(IV) That the respondent or her election agent did not obtain the assistance of the District Magistrate, Rae Bareilly and the Superintendent of Police, Rae Bareilly nor that of the Home Secretary, U.P. Government for any of the purposes alleged in the petition. She then referred to the instructions issued by the Comptroller & Auditor General of India dated 29th November 1958 ~~and to that of~~ the Accountant Generals of all the States, as also to the letter dated 12th January 1959 issued by the Government of India. She then pleaded that the arrangements for posting of police on the routes which she followed and the arrangements of rostrums were made by the State Government itself in compliance of those instructions. In regard to the

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loudspeakers, she pleaded that they were arranged by the District Congress Committee and not by the officers of the State Government. Respondent no. 1 denied that any directions or instructions in that regard were issued by her or her election agent.

(V) That allegations regarding distribution of blankets, dhotis and liquor were absolutely false.

(VI) Referring to the symbol of cow and calf, the respondent no. 1 pleaded that -

(a) it was not a religious symbol

and that it was wrong that extensive appeals were made by her or her election agent to that symbol. She added that she and her election agent merely informed the voters that the symbol of Congress (R) was cow and calf and that the voting mark should be put against that symbol,

and

(b) the decision of the Election Commission allotting the symbol of cow and calf to her party was final and could not be made

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A826

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a ground of attack, nor can the Court go into that question, in the present proceedings.

(VII) That the allegations regarding hiring and procuring of vehicles and the use thereof for conveyance of the voters to the polling stations <sup>was</sup> false.

(VIII) That the allegation that the respondent no. 1 or her election agent incurred expenditure in excess of the prescribed limit was also wrong.

On the pleadings of the parties one set of issues was framed by the Court on 19th of August 1971. Three additional issues were framed on 27th April 1973. These issues are as follows: -

I S S U E S.

(1) Whether respondent no. 1 obtained and procured the assistance of Yashpal Kapur in furtherance of the prospects of her election while he was still a Gazetted Officer in the service of Government of India. If so, from what date?

(2) Whether at the instance of respondent

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no. 1 members of the Armed Forces of the Union arranged Air Force planes and helicopters for her, flown by members of the Armed Forces, to enable her to address election meetings on 1.2.1971 and 25.2.1971; and if so, whether this constituted a corrupt practice under section 123(7) of the Representation of the People Act.

✓ (3) Whether at the instance of respondent no. 1 and her election agent Yashpal Kapur, the District Magistrate of Rae Bareilly, the Superintendent of Police of Rae Bareilly and the Home Secretary of U.P. Government arranged for rostrums, loudspeakers and barricades to be set up and for members of the Police Force to be posted in connection with her election tour on 1.2.1971 and 25.2.1971; and if so, whether this amounts to a corrupt practice under section 123(7) of the Representation of the People Act.

✓ (4) Whether quilts, blankets, dhotis and liquor were distributed by agents and workers of respondent no. 1, with the consent of her election agent Yashpal Kapur, at the places and on the dates mentioned in

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Schedule A of the petition in order to induce electors to vote for her.

(5) Whether the particulars given in paragraph 10 and Schedule A of the petition are too vague and general to afford a basis for allegations of bribery under section 123(1) of the Representation of the People Act.

(6) Whether by using the symbol of cow and calf, which had been allotted to her party by the Election Commission, in her election campaign the respondent no. 1 was guilty of making an appeal to a religious symbol and committed a corrupt practice as defined in section 123(3) of the Representation of the People Act.

(7) Whether on the dates fixed for the poll voters were conveyed to the polling stations free of charge on vehicles hired and procured for the purpose by respondent no. 1's election agent Yashpal Kapur, or other persons with his consent, as detailed in Schedule B to the petition.

(8) Whether the particulars given in paragraph 12 and Schedule B of the petition are too vague and general to form a basis for allegation regarding a corrupt practice under section 123(5) of the Representation of

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the People Act.

(9) Whether respondent no. 1 and her election agent Yashpal Kapur incurred or authorised expenditure in excess of the amount prescribed by section 77 of the Representation of the People Act, read with rule 90, as detailed in para 13 of the petition?

(10) Whether the petitioner had made a security deposit in accordance with the rules of the High Court as required by section 117 of the Representation of the People Act.

(11). To what relief, if any, is the petitioner entitled?

ADDITIONAL ISSUES.

(1) Whether respondent no. 1 obtained and procured the assistance of Yashpal Kapur in furtherance of the prospects of her election while he was still a Gazetted Officer in the service of the Government of India. If so, from what date?

(2) Whether respondent no. 1 held herself out as a candidate from any date prior to 1.2.1971 and if so, from what date?

(3) Whether Yashpal Kapur continued to be in the service of Government of India from and after 14.1.1971 or till which date?

During the pendency of the election petition in this Court, the Parliament amended section 77 of the Representation of the People Act by Ordinance No. XIII of 1974, which has now been replaced by Act No. 58 of 1974. The petitioner has filed Writ Petition No. 3761 of 1975, challenging the vires of the Amending Act, and that writ petition has been connected with the present election petition. The writ petition can have a bearing only on issue no. 9. I shall, therefore, address myself on the contentions raised on either side in the writ petition while dealing with issue no. 9. The respondents impleaded in the writ petition are the Union of India and Smt. Indira Nehru Gandhi (respondent no. 1 in the election petition).

#### FINDINGS.

##### ISSUE NO. 2:

It is the admitted case of the parties that on 1st of February 1971 the respondent no. 1 travelled by an I.A.F. plane from Delhi to Lucknow, from where she went by car to Rae Bareilly and that, besides filing her nomination paper at Rae Bareilly, she also made election speeches at various places in

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her constituency. It is also not disputed that on 24th of February 1971 the respondent no. 1 went by an I.A.F. helicopter from Delhi to Gonda, from where she went by car to Rae Bareilly (via Unnao and Lucknow), reaching Rae Bareilly on 25th February 1971; and that on the said date she also delivered election speeches at various places inside her constituency. According to the allegation contained in the petition, the respondent no. 1 thereby procured the assistance of members of the Armed Forces of the Union for furthering the prospects of her election, which is a corrupt practice under section 123(7) of the Representation of the People Act.

At the time of argument learned counsel for the petitioner stated that since on 24th February 1971 the respondent no. 1 travelled by an I.A.F. helicopter to Gonda, it is possible to contend that the said journey was made by the respondent for party work and not to further her own election prospects and, consequently, the fact of the respondent no. 1 using an I.A.F. helicopter on 24th February 1971 can be excluded from consideration under this issue. Learned counsel, however, stressed that the journey made by the respondent no. 1 on 1st of February 1971 by an I.A.F. plane from Delhi to Lucknow was to enable her to file her nomination paper at Rae Bareilly and to deliver election speeches in her constituency and, consequently, that should constitute a corrupt practice under section 123(7) of the Act.

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The contention of the respondent no. 1 in reply thereto is two-fold: -

(a) that the respondent no. 1 or her, election agent did not solicit, require or order the use of the Air-Force plane (para 12(d) of the written statement),

and

(b) that in view of the Pillai Committee Report, and the Office Memorandums issued on its basis from time to time, the Government provided an aeroplane for her journey as part of their normal duty and, consequently, the fact of the respondent having travelled by an I.A.F. plane from Delhi to Lucknow on 1.2.1971 cannot constitute a corrupt practice.

Now, so far as the first part of the contention is concerned, it is not possible to accept it. The Office Memorandum dated 17th August 1968 (Exh. 126) was issued when the respondent no. 1 was the Prime Minister. This Office Memorandum was also operative on 1st of February 1971 when the impugned flight was made by the respondent no. 1. Under this Office Memorandum, read along with the previous Memorandums, and the Pillai Committee Report, the respondent no. 1, as Prime Minister of the country, was entitled to make

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use of an I.A.F. aircraft while travelling for non-official purposes as well. In answer to interrogatory no. 24 it was admitted on behalf of the respondent no. 1 that she was aware of the existence of the Government Order and the substance thereof. Even during her deposition in Court the respondent no. 1 admitted that when the Prime Minister goes on an election tour, a plane of the Indian Air Force is put at her disposal and that such plane is flown by members of the Indian Air Force. The respondent no. 1 further admitted during her deposition that though the tour programmes concerning the party work are sent by the All India Congress Committee, they are finalised after her approval is obtained. According to Sri Seshan (P.W. 53), Private Secretary to the respondent no. 1, instructions are sent from the Prime Minister's Secretariat to the Air Headquarters for arranging for an I.A.F. aeroplane for the tour of the Prime Minister, even when the tour is non-official, and it is then the duty of the Air Headquarters to arrange for the same. Wing Commander K.G. Mohan Chand (P.W. 49), Deputy Director, Air Traffic Control & Co-ordinating Officer, V.I.P.'s, Air Headquarters stated during his cross-examination<sup>made</sup> on behalf of respondent no. 1: -

"It is correct that on receipt of the tour programme of the Prime Minister it is my duty to arrange for the aircraft according to her programme on the basis of

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the Standing Order of the Government of India."

Since the tour programme is sent from the Secretariat of respondent no. 1, after her approval is obtained, since the respondent no. 1 as Prime Minister full well knew that thereafter it was the duty of the Air Headquarters to place a plane at her disposal, there is no escape from the conclusion that, by sending the tour programme to the Air Headquarters, the respondent no. 1 required an I.A.F. plane being placed at her disposal. The fact that the respondent no. 1 did not require any particular plane being placed at her disposal is not material. It may not be out of place to add here that in answer to interrogatory no. 27 the respondent no. 1 admitted that the aircraft and helicopter used by her on 1st February 1971 and 24th and 25th February 1971 were flown by members of the Air Force. During her deposition in Court ~~she~~ <sup>she</sup> also stated that when she boarded the plane on 1st of February 1971 in order to make her journey from Delhi to Lucknow, she was aware that the plane was to be flown by the members of the Indian Air Force.

It should, therefore, be accepted that a plane of the Indian Air Force, manned by Armed Forces of the Union, was placed at the disposal of the respondent no. 1 on 1st of February 1971 at her instance for her flight from Delhi to Lucknow and the respondent

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no. 1 thus did obtain the assistance of the members of the Armed Forces of the Union, who constituted the crew on the I.A.F. plane.

This takes me to the second limb of the contention raised on behalf of the respondent no. 1, namely, whether the aforesaid assistance of the Armed Forces of the Union was obtained by the respondent no. 1 in furtherance of her election prospects, or the Government placed the plane at her disposal as part of their normal duty, in view of the Pillai Committee Report and the Office Memorandums issued on the basis thereof.

It will be convenient first to refer to the Pillai Committee Report and the Office Memorandums issued on the basis thereof.

A copy of the Pillai Committee Report has been filed by Sri V. Srikantan (R.W. 4), Deputy Secretary, Ministry of Defence, Government of India. It is Exh. A-22 on record and is dated 17th October 1971. In para 12 thereof it is stated: -

"The position of the Prime Minister is for a different reason also special. Whether at headquarters or away from it in camp or in transit, the disposal of public business must have first claim on his time and attention. It is, therefore, clearly in the public interest to ensure

that when he goes on tour the arrangements for his travel are such as would eliminate the long irritating delays which, depended on normal modes of public transport, inevitably entails. It is equally necessary to ensure that during the journey adequate facilities are provided for him for the transaction of official business. For these as well as security reasons which are no less important, we consider that the Prime Minister should use the I.A.F. aircraft for all journeys by air.

In para 13 of the interim report it is said that there may be occasions 'when the object of a journey undertaken by the Prime Minister may be prominently connected with the work relating to the party of which he is a leader'.

In para 14 of the interim report the Committee examined as to on what terms the I.A.F. aircraft may be employed on journeys undertaken by the Prime Minister otherwise on official duty.

It will thus transpire on a perusal of the interim report of the Pillai Committee that, while referring to the unofficial tours to be made by the Prime Minister by the I.A.F. Aircraft, the Committee had in mind, in all probability, the work relating to the party of which the Prime Minister happens to be the leader, and not the work exclusively and personally

(19)

relating to the Prime Minister.

On 20th October 1951 the Ministry of Defence issued a press note (Exh. A-23) on the basis of the interim report of the Pillai Committee. After highlighting what was stated in the interim report of the Pillai Committee about the desirability of the Prime Minister travelling by an I.A.F. aircraft, it stated: -

" The Prime Minister in his capacity as the leader of his political party, recently had, and will in future continue to have, occasion to undertake journeys by air for other than official purposes. The nature of the journey on such occasions is different from normal official tours, but the Prime Minister cannot on this account divest himself, for the period of the journey, of his position and responsibility as head of the Government. The business of the Government never comes to stand still and the Prime Minister is never off duty. Whatever the character of the journey performed by him, the need for eliminating delays in travel, for providing facilities for the transaction of official business during the journey and for making suitable security arrangements remains unchanged. It is, therefore, desirable that, even for journeys by air for other than official

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purposes, the Prime Minister should, as far as possible, travel by I.A.F. Aircraft."

From the underlined portion occurring in the aforesaid press note it will appear that even in this press note, while referring to the non-official tours, what the Ministry of Defence had in its mind were the tours made by the Prime Minister in his capacity as the leader of his party.

Exh. A-24 is the final report of the Pillai Committee and is dated 20th May 1953. It only refers to its interim report, so far as the use of the I.A.F. Aircraft by the Prime Minister is concerned. Exh. 126 is the Office Memorandum dated 17th August 1968, which was issued in supersession of the previous Memorandums, (which it is not necessary to refer) Para II (d) thereof reads as follows: -

" The aircraft of the V.I.P. flight are to be used on official duty only. In the case of the Prime Minister, it is necessary that, even on occasions when he/she has to undertake journeys mainly for reasons other than official duties, he or she would be able to travel by I.A.F. Aircraft for the due performance of his/her duties as the head of the Government as well as for reasons of security."

A cumulative reading of all the aforesaid papers gives an impression that, while referring to non-official purposes, what was conceived was the work of the party to which the Prime Minister belonged and not the work relating exclusively to the Prime Minister.

Assuming, however, that the flights for non-official purposes, referred to in the interim report of the Pillai Committee and the Office Memorandums, also included flights made by the prime Minister for works exclusively relating to him, it cannot be ignored that the interim report of the Pillai Committee had an advisory nature and the press note and Office Memorandums relied upon by the respondent are mere administrative orders. Nothing contained therein can render the provisions contained in the Representation of the People Act nugatory. If a Prime Minister used the I.A.F. Aircraft for official purposes, obviously such use cannot be in conflict with section 123(7) of the Representation of the People Act. Similarly, if a Prime Minister used the I.A.F. Aircraft for the political work of the party, that too will not be in conflict with the aforesaid provision contained in the Representation of the People Act. If, however, the Prime Minister uses an aircraft exclusively for the purposes of frequently flying to his/her constituency during the period of his/her election with the sole purpose of doing election propaganda, it has the potentiality

of violating the provision contained in section 123(7) of the Representation of the People Act, for, by making use of the I.A.F. Aircraft for frequently flying into his/her constituency as a candidate he/she avails of the means for quick and speedy movement in his/her election campaign. The aircraft being manned by the Armed Force of the Union, the use thereof under such circumstances can fall within the mischief of section <sup>123(7)</sup> ~~127(7)~~ of the Act. Neither the interim Pillai Committee Report nor the Office Memorandums referred to by respondent no. 1 can under such circumstances salvage the position.

Learned counsel for respondent no. 1 referred me to Article 298 of the Constitution and urged that it was within the executive power of the Union to establish a commercial wing of the I.A.F. Aircraft for the exclusive use of the Prime Minister and a couple of other dignitaries of the Government. Learned counsel pointed out that according to Office Memorandum dated 3rd December 1951 (Exh. 125) as well as Office Memorandum dated 17th August 1968 (Exh. 126) fare for the air journeys made by the Prime Minister for other than official purposes was recoverable at the rate specified in the said Memorandums, and it should, therefore, be accepted that, while permitting the use of the I.A.F. planes by the Prime Minister for other than official purposes, the Union in exercise of its executive power established a commercial wing of the I.A.F. Aircraft for the use of the Prime Minister. Learned counsel for

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respondent no. 1 urged that, in that view of the matter, the use of the I.A.F. Aircraft by the Prime Minister for any purpose whatsoever cannot be violative of section 123(7) of the Representation of the People Act. I have given my careful thought to the argument raised, but I am unable to accept it. It is true that under Article 298 of the Constitution the Union can, in exercise of its executive power, indulge in commercial activities and it can while doing so also establish air service. That should, however, be an independent service open to all and sundry. Permitting the use of the I.A.F. aircraft to the Prime Minister <sup>only</sup> for non-official purposes on payment of certain fare cannot be construed as establishing a commercial wing of the Air Force by the Union in exercise of its executive power under Article 298 of the Constitution. It only means extending a special privilege to the Prime Minister. Article 298 of the Constitution can have no application to it.

Learned counsel for respondent no. 1 then referred me to the Full Bench decision of the Delhi High Court in the case Prakashvir Shastri and others v. Union of India and others (A.I.R. 1974 Delhi 1) and urged that the validity of the Office Memorandum dated 17th of August 1968 has been upheld in that case. The validity of the said Memorandum in that case, however, was examined vis-a-vis Article 14 of the Constitution and not vis-a-vis any provision

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contained in the Representation of the People Act. The case referred to by learned counsel for the respondent no. 1 has, therefore, no bearing on the point in issue before me and, consequently, no reliance can be placed by the respondent no. 1 on that decision.

The question that, however, still remains to be considered is whether on the facts of this case it can be said that, in obtaining the service of the Armed Forces of the Union, who manned the Aircraft by which the respondent no. 1 travelled on 1st of February 1971 from Delhi to Lucknow, she obtained their assistance for the furtherance of her prospects in the election.

The petitioner filed copies of some tour programmes of the respondent no. 1, besides examining Wing Commander K.G. Mohan Chand (P.W. 49), who filed office copy of the bill relating to the flight made by respondent no. 1 on 1st of February 1971 from Delhi to Lucknow. On the basis thereof the petitioner sought to make out that the said flight was made by respondent no. 1 only to reach Rae Bareilly to file her nomination paper and do her election propaganda. A perusal of the record, however, reveals that factually it was not so. The petitioner himself filed copy of a letter dated 27th January 1971 (Exh. 27) from the Under Secretary, U.P. Government to the District Magistrate, Lucknow, the District Magistrate, (

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Rae Bareilly, the Estates Officer, Lucknow, the Commissioner, Lucknow and the Inspector General of Police, Lucknow. Along with this letter is annexed a copy of the tour programme of the respondent no. 1. A perusal of this tour programme shows that on the 2nd of February 1971, on her return from Rae Bareilly to Lucknow, the respondent no. 1 was to fly by the I.A.F. Aircraft to Panagarh. Sri N.K.Seshan (P.W. 53), Private Secretary to the Prime Minister, produced in Court a file which, inter alia, contained the bill for the non-official journeys made by the respondent no. 1 in the I.A.F. Aircraft from 1st of February 1971 to 7th of February 1971. Sri Seshan stated that this bill was prepared by his office on the basis of the bill received from the Air Headquarters. These bills were flagged by Sri Seshan as 'B' and 'X' respectively. It is true that these bills were not got marked as exhibits. The fact, however, remains that the file was produced in Court in the presence of counsel for the respondent no. 1 and Sri Seshan made the required statement in regard to those bills. Consequently there can be no valid objection<sup>15</sup> in reference being made to those bills. That apart, Raj Kumar Singh (P.W. 56), In Charge Legal Affairs Department and Assistant Secretary, Parliamentary Affairs of All India Congress Committee, also produced in Court a file containing the tour programme of the respondent no. 1 for the period from 1st of February 1971 to 7th of February 1971. That tour programme was admitted by the respondent no. 1

and got formally exhibited in the case (Exh. A-64). The aforesaid documents clearly revealed that on 1st of February 1971 the respondent no. 1 set out from Delhi on an extensive election tour of the country, visiting a number of places, including Lucknow, Panagarh, Shantiniketan, Serampur, Kalkunda, Calcutta, Bahrapur, Krishna Nagar, Teetagarh, Gauhati, Agartala, K'gram, Silchar, Mohanbari, Rawriah, Hoopsi, Kooch Behar, Purnea, Malganj and Malda. Since the respondent no. 1 had to file her nomination paper at Rae Bareilly during the same period, she landed at Lucknow and drove from there to Rae Bareilly for that purpose. After filing her nomination paper and delivering a few speeches, both inside and outside her constituency, she came back to Lucknow to resume her flight onwards on her election tour.

In the context of the aforesaid facts, it cannot be held that by flying in the I.A.F. Aircraft on 1st of February 1971 the respondent no. 1 obtained the assistance of the Armed Forces of the Union for furtherance of her prospects at the election.

Learned counsel for the petitioner urged that ~~mere use~~ use is not a necessary ingredient of the corrupt practice under section 123(7) of the Representation of the People Act. It was stressed by him that the flight made by the respondent no. 1, in so far as it extended between Delhi and Lucknow, was connected

(27)

with the respondent no. 1 filing her nomination paper at Rae Bareilly and doing election propaganda. Learned counsel further urged that it is immaterial whether the respondent no. 1, while travelling by the I.A.F. Aircraft from Delhi to Lucknow, did or did not intend to further her election prospects thereby. According to learned counsel, once it is shown that the flight had facilitated the filing of the nomination paper by the respondent no. 1 at Rae Bareilly and doing of election propaganda, she must be held guilty of corrupt practice under section 123(7) of the Act. In support of his argument regarding mens rea, learned counsel referred me to the decision of the Supreme Court in the case Dr. Y.S. Parmar v. Hira Singh (A.I.R. 1959 Supreme Court 244).

I have, however, already stated that the flight made by the respondent no. 1 from Delhi to Lucknow was not connected with her filing of nomination paper or with her doing election propaganda in her constituency. As already stated earlier, on 1st of February 1971 the respondent no. 1 had set out on a general election tour of the country. Since, however, she had also to file her nomination paper at Rae Bareilly during the same period, she landed on way at Lucknow and then drove to Rae Bareilly for that purpose. Having reached there she also delivered a few speeches. It cannot, therefore, reasonably be said that the use of the I.A.F. Aircraft was directly connected with her election work. As for the case referred to by

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(28)

learned counsel for the respondent no. 1, it cannot be ignored that it related to utilising the services of the personnel of the Armed Forces as polling agent. Clause (2) of Explanation 1, appended to section 123(7) of the Representation of the People Act, as it then existed, stated that for the purposes of sub-clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election, if he, inter alia, acts as a polling agent of that candidate. It was in that context that the Supreme Court said that the question of mens rea was not relevant. That observation cannot have an universal application. It was so pointed out in the case Babu Bhai Vallabh Das Gandhi v. Pilloo Homi Mody (36 Election Law Reports, Gujerat, 108 on pp 123-124), and Haji Abdul Wahid v. B.V. Keskar (21 E.L.R. 409 at p. 432 (Allid.)).

For the reasons stated above, I find that, on the basis of the respondent no. 1 having flown in an I.A.F. Aircraft from Delhi to Lucknow on 1st of February 1971, she cannot be held guilty of having obtained the assistance of the Armed Forces of the Union for furtherance of her election prospects and thereby of having committed a corrupt practice under section 123(7) of the Representation of the People Act.

Issue no. 2 is accordingly answered against the petitioner and in favour of respondent no. 1.

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A826  
28ISSUE NO. 3:

In para 9 of the petition it is alleged that the respondent no. 1 and her election agent obtained and procured the assistance of the Gazetted Officers and members of the Police Force in the service of the Government for furthering the prospects of her election. Further clarifying the allegation, it is stated that the services of the District Magistrate of Rae Bareilly, the Superintendent of Police, Rae Bareilly, and the Home Secretary, U.P. Government were utilised by the respondent no. 1 on 1st of February 1971 and 25th of February 1971 for the construction of rostrums, for erection of barricades, for making arrangements of loudspeakers at the places of the meetings, and for posting police along the route by which the respondent no. 1 was to travel. According to learned counsel for the petitioner, this amounted to a corrupt practice under section 123(7) of the Representation of the People Act.

The respondent no. 1 in her written statement denied that either she or her election agent obtained the aforesaid assistance of the District Magistrate, Rae Bareilly, the Superintendent of Police, Rae Bareilly and the Home Secretary, U.P. Government. She admitted that rostrums were constructed at some places where she addressed the meetings. She, however, added (in para 13(k) and 13(l) of the written

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A826  
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(30)

statement) that the rostrums were constructed by private contractors under the direction issued by the State Government and that none of the Gazetted Officers of the State Government, mentioned in para 9 of the petition, were in any manner connected with the construction thereof. Erection of barricades and posting of police was not denied by the respondent. With regard to the loudspeakers, the respondent pleaded that they were arranged by the District Congress Committee. The respondent then referred to the instructions issued by the Comptroller and Auditor General of India on 29th November 1958 (Exh. 123) and to the letter of the Government of India dated 12th of January 1959 (Exh. 124) and pleaded that the aforesaid arrangements were made by the Government on its own initiative in the discharge of their Governmental duties and by the officers of the Government in the discharge of their duty.

The fact that rostrums were got constructed and barricading was got done by the Superintendent of Police, Rae Bareilly, is supported by a mass of documentary evidence, besides oral evidence. Exh. 148 is the letter dated 31st March 1973 from the U.P. Police Headquarters, Allahabad, to the Deputy Secretary, Home Department. It clearly states that five rostrums were constructed for the meetings addressed by the respondent no. 1 on 1st of February 1971, and one prefab. rostrum and barricade were transported by

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truck from Allahabad to Rae Bareli for another meeting addressed by the respondent no. 1 on the same date. According to this letter, a cost of Rs 8,000/- was incurred on the construction of five rostrums and a cost of Rs 490/- was incurred in transporting the prefab. rostrum from Allahabad to Rae Bareli. Exh. 149 is the letter dated 2nd February 1973 from the Superintendent of Police, Rae Bareli, to the U.P. Police Headquarters, Allahabad, containing the same information. Exh. 154 is a letter dated 1st of February 1972 sent by the Superintendent of Police, Rae Bareli to the U.P. Police Headquarters, Allahabad, containing the details of the expenditure incurred in connection with the arrangements made on 1st of February 1971. This also shows that a sum of Rs 8,000/- was incurred in the construction of rostrums and a sum of Rs 490/- was incurred in connection with the transporting of the prefab. rostrum and barricade. It is not necessary to mention here other details of expenditure contained in this letter. Exh. 185 is a radiogram dated 26th January 1971 sent by the Superintendent of Police, Rae Bareli to the U.P. Police Headquarters, Allahabad soliciting sanction for the construction of rostrums and barricades through the P.W.D. Exh. 184 is the radiogram dated 28th January 1971 according sanction for incurring expenditure on barricading and construction of rostrums through the P.W.D. Exh. 186 is the copy of a letter dated January 26,

A 826  
32

(32)

1971 sent by the Superintendent of Police, Rae Bareilly to the Executive Engineer, P.W.D., Rae Bareilly apprising him that the respondent no. 1 would be addressing meetings at seven places specified in the letter and that all the meetings, except one, shall require construction of rostrums and barricades. Exh. 156 is the letter dated 4th January 1972 sent by the Superintendent of Police, Rae Bareilly, to the Offg. Executive Engineer, P.W.D., Rae Bareilly, acknowledging receipt of bills for construction of barricades and rostrums at the seven places specified therein and requesting the Executive Engineer to submit separate bills for barricading and construction of rostrums. Exh. 155 is the letter dated 1st of February 1972 from the Executive Engineer, P.W.D., Rae Bareilly to the then Superintendent of Police, Rae Bareilly, enclosing therewith separate bills of expenditure incurred in erection of barricades and rostrums on the occasion of the visit of respondent no. 1 on 1st of February 1971.

It is not necessary to refer to the other papers. The aforesaid documents overwhelmingly show that rostrums were got constructed through Government agency for the purposes of the meetings addressed by the respondent no. 1 in Rae Bareilly on 1st of February 1971.

Exh. 199 is a radiogram dated 17th of February 1972 from the Superintendent of Police, Rae Bareilly, to

the U.P. Police Headquarters, Allahabad, soliciting sanction for construction of rostrums and barricades for six meetings to be addressed by the respondent no. 1 on 25th of February 1971. Exh. 201 is the letter dated 17th February 1971 from the Superintendent of Police, Rae Bareilly, to the Executive Engineer, P.W.D., Rae Bareilly, apprising him of the places where the respondent no. 1 was to address meetings on the 25th February 1971, and requesting him to take up the construction of rostrums and barricades on top priority basis, to be completed by 22nd of February 1971. Exh. 193 is a letter dated 23rd June 1971 sent by the Superintendent of Police, Rae Bareilly to the U.P. Police Headquarters, Allahabad, apprising him, inter alia, of the cost incurred in the construction of barricades and rostrums in connection with the meetings addressed by the respondent no. 1 on 25th of February 1971. Exh. 190 is the letter dated 27th September 1972 sent by the U.P. Police Headquarters to the Deputy Secretary, U.P. Government, Home & Police Department, apprising the Government of the cost incurred over the construction of rostrums and barricades in connection with the meetings addressed by respondent no. 1 in Rae Bareilly, on 25th of February 1971. It is conclusively proved by these documents that rostrums were constructed through Government agency for the meetings addressed by the respondent no. 1 in her constituency on 25th of February 1971.

Learned counsel for the petitioner also referred me to the evidence of Sri E. Lawrence, the then S.D.M., Dalmau (district Rae Bareilly) (R.W. 10) and to the evidence of Sri Mohinder Singh, District Magistrate, Rae Bareilly (R.W. 36) in order to show that rostrums for the purposes of the meetings of the respondent no. 1 were <sup>always</sup> got constructed through officers. Sri E. Lawrence (R.W. 10) stated during his deposition that barricading and construction of rostrums are done by the P.W.D. and payment for the same is made by the Superintendent of Police of the district concerned, though the actual work of putting up of barricades and construction of rostrums is done by the contractors. Further on, he stated in cross-examination that it was the duty of the Sub-Divisional Officer to make sure that a rostrum was constructed at the place in his sub-division where the Prime Minister proposed to address the meeting. He also stated that the Superintendent of Police and the District Magistrate asked the Public Works Department to get the rostrum constructed at the place where the meeting is proposed to be addressed by the Prime Minister and that the S.D.O. personally goes to that place to supervise the construction of rostrums. During his re-examination by learned counsel for the respondent no. 1 he affirmed that he had personal knowledge regarding the rostrum and barricade constructed in connection with the meeting addressed by the respondent no. 1 at Rae Bareilly on 1st of February 1971 because he knew the Assistant Engineer who got it done and because he had himself seen the rostrum being

A 826  
35

constructed and the barricade being put up. Sri Mohinder Singh (R.W. 36) was the District Magistrate at Rae Bareilly during the election that took place in 1971. He stated, "whenever the tour programme of the Prime Minister is received, whether the visit is official or unofficial, they inspect the site of the meeting to be addressed by the Prime Minister; and the Superintendent of Police then, besides making other security arrangements, sends a letter to the Executive Engineer, Public Works Department, to invite tenders for construction of rostrums and barricades". He <sup>further</sup> stated that if a rostrum is constructed, barricading is also done because it is a part of that work.

There is thus not an iota of doubt that it were the Gazetted Officers of the State, particularly the Superintendent of Police, Rae Bareilly and the Executive Engineer, P.W.D., Rae Bareilly, who got the rostrums constructed for the purposes of the meetings addressed by the respondent no. 1 in her constituency on 1st of February 1971 and 25th of February 1971.

As for the arrangement of loudspeakers, no evidence, oral or documentary, has been led by the petitioner in order to prove that arrangement for loudspeakers was done by or through the Government officers. On the contrary, there are some papers which lend support to the contention raised on behalf of respondent no. 1 that the arrangement of loudspeakers was done by the District Congress Committee. Exh. 177

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is a letter dated 29th January 1971 sent by the Superintendent of Police, Rae Bareilly, to Sri Gaya Prasad Shukla of the Central Congress Office, Rae Bareilly. It states that, according to the verbal decision reached between them, Sri Gaya Prasad Shukla was to make arrangements of loudspeakers for the meetings of the respondent no. 1. The letter being dated January 29, 1971, it obviously refers to the meetings addressed by the respondent no. 1 on 1st of February 1971. Exh. 193 is a letter dated June 23, 1971, from the Superintendent of Police, Rae Bareilly, to the U.P. Police Headquarters, Allahabad, containing details of the expenditure incurred in connection with the visit of respondent no. 1 to Rae Bareilly on 25th of February 1971. It explicitly states that no expenditure was incurred in connection with the arrangement of loudspeakers for the meetings addressed by the respondent no. 1 as the same was arranged by the party concerned.

Learned counsel for the petitioner, however, contended that even though the loudspeakers were not arranged by the Government officers for the purposes of the meetings addressed by the respondent no. 1 in her constituency, there is unimpeachable evidence on record to show that the Government officers arranged for supply of power for the functioning of the loudspeakers at some places where the respondent no. 1 addressed her election meetings. This appears to be

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A 826  
37

(37)

correct. Exh. 147 is copy of a letter dated 24th July 1973 sent by the Superintendent of Police, Rae Bareli to the President, U.P.C.C., Lucknow, stating that the respondent no. 1 had addressed meetings at Harchandpur, Jagatpur, Parewa and Reohara (besides Bachrawan, which was not in Rae Bareli constituency), in connection with the election, on 1st of February 1971, that power had been supplied for functioning of loudspeakers in those meetings, and that five bills for a total amount of Rs 1151/- were sent for payment in that connection to the U.P.C.C. Office. It was requested that the payment may be expedited. Exh. 146 is the letter dated 1st September 1973 from the President, U.P.C.C. to the Superintendent of Police, Rae Bareli, which indicates that a cheque for Rs 1151/- was forwarded by the U.P.C.C. in payment of the aforesaid bills for supply of power. Exh. 154 is a copy of the letter dated 1st of February 1972 from the Superintendent of Police, Rae Bareli to the Police Head quarters, Allahabad, containing a break-up of the expenditure incurred in connection with the visit of respondent no. 1 to Rae Bareli on 1st of February 1971. This also lends support to the fact that arrangement for supply of power for functioning of the loudspeakers at some meetings addressed by the respondent no. 1 was made through the Government officers. Exh. 178 is a letter dated January 29, 1971, from the Superintendent of Police, Rae Bareli, to the Assistant Engineer, Hydel, asking him to make available power at

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Harchandpur and Jagatpur for installation of public address system for the meeting of the respondent no. 1 on 1st of February 1971.

The above-mentioned papers conclusively prove that arrangements had been made by the Government officers for supply of power for the functioning of the loudspeakers at some of the election meetings addressed by the respondent no. 1. But for the same, it would not have been possible for the respondent no. 1 to effectively address these meetings.

The fact that police had been posted along the routes by which the respondent no. 1 had to travel and that the police was also posted at the places where the respondent no. 1 addressed election meetings has not been controverted by her. As also stated earlier, the erection of barricades along the routes and erection of barricades at the places of meetings was also not denied by her. According to respondent no. 1, the aforesaid arrangements were made by the State Government in discharge of its Governmental duties.

It is a matter of common knowledge that on the occasion of the visit of the Prime Minister of the country vast crowds gather in order to see and hear him/her. People also swarm along the routes by which he/she travels in order to have a glimpse of him/her. It is the first duty of every Government to maintain law and order in the State. If the police were not

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A 026  
29

(39)

posted and barricades were not put up along the routes by which the respondent no. 1 travelled as also at the places where she addressed the meetings, it may not have been possible for the Government to control the crowd. Failure in that regard could lead to a law and order situation and no Government worth the name can take any risk in that regard. Needless to say that neither the post of the police along the routes and at the places of the meetings, nor the erection of the barricades at the two places could contribute to the furtherance of the prospects of the respondent no. 1 in the election. Exception cannot therefore validly be taken by the petitioner in regard to the said arrangements made by the Government. I am accordingly in agreement with the plea put forward by the respondent no. 1 that the posting of police along the routes and at the place of the meetings as well as the setting up of barricades at the two places was done by the Government in discharge of its Governmental duties.

The construction of rostrums and the supply of power by or through the officers of the State Government, however, stand at a different footing. The rostrums constructed by the officers of the State Government enabled the respondent no. 1 to address her meetings from a dominating position. The resources of the Government having been employed, the rostrums were got constructed in the shortest possible time so that they were ready by the time the respondent no. 1

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A 826  
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reached the places where she had to address the meetings. Further, even though the loudspeakers had been arranged by the District Congress Committee, supply of power for the same was arranged by the officers of the State Government. But for it the loudspeakers would have been ineffective and it would not have been possible for the respondent no. 1 to make her speech audible to the entire audience. The construction of the rostrums and the arrangement of the supply of power for the functioning of the loudspeakers, therefore, amounted to assisting the respondent no. 1 in her election campaign which put her in a clearly advantageous position over her opponents. I do not think it was indispensable for the State Government for maintenance of law and order, or security, that its officers should have taken upon themselves to get rostrums constructed for the meetings of the respondent no. 1 and to make arrangements for the supply of power for the functioning of the loudspeakers at her meetings. Both the things could be left to be arranged by the political party concerned.

Reliance has been placed by learned counsel for the respondent no. 1 on the Instructions (Exh. 123) dated 29th November 1958 issued by the Comptroller and Auditor General of India to the Accountant Generals of the State, the letter dated 12th of January 1959 (Exh. 124) issued by the Government of India to the Chief Secretaries of all State Governments,

A-826  
41

(41)

enclosing therewith copy of the Instructions issued by the Comptroller and Auditor General and the letter dated 19th November 1969 (Exh. A21) issued by the Government of India, Ministry of Home Affairs, to all State Governments, in order to contend that it was the duty of the State Government and its officers to arrange, inter alia, for the construction of rostrums and for putting up of public address system in the meetings addressed by the Prime Minister. Now, so far as the secret instructions (enclosed with Exh. 124) issued by the Comptroller and Auditor General of India are concerned, it is not explicitly stated therein that those instructions will also apply on the occasion of the election meetings addressed by the Prime Minister as a candidate within her own constituency. It is worthy of notice that in the Blue Book (which contains detailed instructions regarding security arrangements of the Prime Minister) election meetings were specifically excluded. This is apparent from the first paragraph of the letter (Exh. A21) issued by the Ministry of Home Affairs, Government of India, on 19th November 1969. Learned counsel for the petitioner also produced before me Lok Sabha Debates dated April 18, 1973. Rule 71(6) of the Blue Book, as it originally existed, has been reproduced in Column 241 of these Debates as follows: -

"It has been noticed that the rostrum arrangements are not always properly made because the hosts are sometimes unable to

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bear the cost. As the Prime Minister's security is the concern of the State, all arrangements for putting up the rostrum and the barriers at the meeting place will be borne by the State, whatever may be the occasion for which the public meeting is called, except election meetings."

Now, if the instructions issued by the Comptroller and Auditor General of India in 1958 are read with rule 71(6) of the Blue Book, as it originally existed, it becomes abundantly clear that the instructions contained therein did not apply to election meetings, much less to the meetings addressed by the Prime Minister as a candidate in her own constituency.

Rule 71(6) of the Blue Book was amended in 1969, as is apparent from the letter Exh. A-21 dated 19th November 1969 issued by the Government of India to all State Governments. The relevant part of amended rule 71(6) reads as follows: -

"It has been noticed that the rostrum arrangements are not always properly made because the hosts are sometimes unable to bear the cost. As the security of the Prime Minister is the concern of the State, all arrangements for putting up the rostrum,

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(43)

A 826  
43

the barricades etc. at the meeting place, including that of an election meeting, will have to be made by the State Government concerned."

It was thus for the first time in 1969 that arrangements pertaining to election meetings were also made the responsibility of the State Government. It is, however, extremely doubtful whether even the amendment of rule 71(6) of the Blue Book in 1969 required the State Government and its officers to make arrangements for rostrums and loudspeakers at the meetings which the Prime Minister was to address in his/her own constituency as a candidate. Assuming, however, that it did, it cannot be ignored that the instructions issued by the Comptroller and Auditor-General of India (enclosed with Exh. 124) and the instructions contained in the letter of the Government of India dated 19th November 1969 (Exh. A-21) are instructions of administrative nature and they cannot override the provisions contained in section 123 of the Representation of the People Act. Consequently, if it is shown that the construction of rostrums and arrangement for supply of power for the functioning of the loudspeakers at the meetings addressed by the respondent no. 1 falls within the mischief of section 123 (7) of the Representation of the People Act, neither the instructions issued by the

A 824  
44

(44)

Comptroller and Auditor-General of India nor the instructions issued by the Government of India through its letters dated 12th of January 1959 (Exh. 124) and 19th November 1969 (Exh. A21) can come to the rescue of the respondent no. 1.

The question that, therefore, ultimately falls for consideration is whether the fact that rostrums had been got constructed and supply of power for the functioning of the loudspeakers was arranged by the Gazetted officers of the State Government, particularly the Superintendent of Police, the Executive Engineer, P.W.D. and the Engineer, Hydel Department, for the meetings addressed by the respondent no. 1 as a candidate in her constituency, brings the matter within the mischief of section 123(7) of the Act.

Sub-section (7) of section 123 of the Representation of the People Act reads as follows: -

"The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance other than the giving of vote for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and

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A 826  
45

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belonging to any of the following  
classes, namely -

- (a) gazetted officers;
- (b) ...
- (c) ...
- (d) ...
- (e) ...
- (f) ...

In the light of the above provision, the first question that arises for consideration is whether on the facts found proved it can be said that the assistance of the gazetted officers of the State was obtained or procured by the respondent no. 1.

The words 'obtain' and 'procure' imply some initiative or effort on the part of the returned candidate. According to Webster's New International Dictionary, the word 'obtain' means to take hold of, to gain or attain possession or disposal by some planned action or method. The meaning assigned to the word 'procure' in the same dictionary, inter alia, are to bring about, obtain, to get possession of by care or effort. In Moti Lal v. Mangla Prasad (A.I.R. 1958 Allahabad 794 at p. 797) it was observed: -

" We think that the word 'obtain' in section 123(7) has been used in the sense of the meaning which connotes purpose or effort behind the action of the candidate. The word has not been used in the sub-section in the sense of a mere passive receipt of

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A 828  
46

(46)

assistance without the candidate even being conscious of the fact that the assistance has been rendered. In order to bring the case under sub-section (7), it must be shown that the candidate did make some effort or perform some purposeful act in order to get the assistance." (underlining is by me) 7

In case Giresh Misra v. Ram Nath Sharma and others (17 Election Law Reports 243 at p. 253) a Division Bench of the Assam High Court observed: -

" The words 'obtain' or 'procure' or 'abetting' or attempting to obtain or procure' any assistance necessarily imply some effort on the part of the candidate or his agent. Mere passive receipt of assistance is not contemplated by the section."

Similar view has been expressed in the case Babu Bhai Vallabh Das Gandhi v. Pileo Homi Mody (36 Election Law Reports 108 on pp. 126 and 127) and C. Chiranjeevulu Naidu v. E.S. Thyagarajan (25 Election Law Reports 201 at p. 217).

In para 13(c) of the written statement the respondent no. 1 admitted that rostrums were constructed at Harchandpur, Rae Bareilly, Jagatpur, Paterwa and Reuhara. In para 13(d) of the written statement the respondent no. 1 quoted extensively from the instructions dated 29th November 1958 issued by the

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Comptroller & Auditor-General of India, copy whereof was sent by the Government of India to the Chief Secretaries of all the States under their letter dated 12th January 1959 (Exh. 124). It may be recalled that under the aforesaid instructions it is the duty of the State Government, inter alia, to make loudspeaker arrangements and to provide for rostrums for non-official meetings of the Prime Minister also. In para 13(e) the respondent no. 1 made reference to the letter of the Government of India dated 19th November 1969 (Exh. A-21), which amended rule 71(6) of the Blue Book to bring the election meetings also within the ambit of the instructions issued by the Comptroller & Auditor-General. In answer to interrogatory no. 28 the special attorney of the respondent no. 1 admitted that the respondent no. 1 was generally aware of the substance of the rules and instructions. (The words "such use of Indian Air Force planes by the P.M." appear to have been inserted in the reply by inadvertence). In reply to interrogatory no. 29 it was admitted that the respondent no. 1 was a party to the decision of the Union Government on the basis of which the letter dated 19th November 1969 (Exh. A-21) was issued. During her deposition in Court the respondent no. 1 again said that, according to the standing instructions from the Government of India, whenever the Prime Minister visits any State and addresses meetings, including election meetings, necessary arrangements in connection with it have to be made by the officers

A826  
48

of the State Government. She added that she was aware of those instructions even prior to 1st of February 1971. From all these facts it is apparent that, with the issue of letter from the Government of India dated 19th November 1969 (Exh. A-21), the respondent no. 1 held that it was also the duty of the State Government to arrange for construction of rostrums and installation of public address system for her meetings, regardless of the fact whether those meetings were to be addressed by her as a candidate in her own constituency or otherwise.

Sri Yashpal Kapur (R.W. 32), earlier Private Secretary and O.S.D. in the respondent's secretariat, deposed that when a regular tour programme of the Prime Minister is prepared, the Private Secretary to the Prime Minister issues it to the authorities concerned after it is approved by the Prime Minister. The respondent no. 1 also conceded in <sup>her</sup> ~~his~~ deposition that the tour programmes concerned with the political work are prepared by the A.I.C.C. and are finalised after her approval is obtained. In answer to interrogatory no. 3 of the second set it was admitted that the tour programmes are issued, among others, to the State Government.

Now, since the instructions issued by the Comptroller & Auditor-General read with the letter of the Government of India dated 12th January 1959 (Exh. 124) and the letter of the Government of India

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A 826  
49

(49)

dated 19th of November 1969 (Exh. A-21) required the State Government to construct rostrums and to arrange for the public address system for the election meetings of the respondent no. 1, besides making other arrangements, and since the respondent no. 1 believed that it also applied to the election meetings to be addressed by her in her constituency, it should be presumed that the purpose behind sending those tour programmes to the State Government was that the State Government should make all those <sup>arrangements</sup> for the meetings of the respondent no. 1. In other words, the tour programmes carried an implied direction that the State Government should also get constructed rostrums and arrange for public address system for the election meetings to be addressed by her on 1st of February 1971 and 25th of February 1971. It should be presumed that the respondent no. 1, as Prime Minister of this country, and with five years' experience of that office behind her in 1971, also knew that the said work was to be done by the officers of the State Government. In fact respondent no. 1 stated in her cross-examination that she was aware that, according to the Standing Orders, necessary arrangements in connection with the meetings, including election meetings, had to be made by the officers of the State Government.

As already stated earlier, the word 'obtain' occurring in section 123(7) <sup>only</sup> implies some effort or initiative on the part of the returned candidate.

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Since the tour programmes were sent from the office of the respondent no. 1 with her approval and they contained an implied direction that the State Government may, inter alia, arrange for construction of rostrums and for loudspeakers for the meetings of the respondent no. 1, the needed initiative had thereby emanated from her. Further, on her own admission, respondent no. 1 knew that the aforesaid arrangements shall be made by the officers of the State Government. The arrangements having been made the respondent no. 1 availed of the same in all the meetings on 1st of February 1971 and again in the meetings addressed on 25th of February 1971. She did not do anything <sup>in between</sup> before the two dates to disavow those arrangements or to prevent the officers of the State Government again undertaking them on 25.2.1971. The only reasonable conclusion that can under the circumstances be reached is that the respondent no. 1 'obtained' the assistance of the officers of the State Government, within the meaning of that expression used in section 123(7) of the Act.

The question that next falls for consideration is whether the assistance had been obtained for the furtherance of the prospects of the election of respondent no. 1.

The position of the respondent no. 1 in her constituency first of all was that of a candidate. Her position as Prime Minister came thereafter. What she could not do as a candidate, she could as well not do as Prime Minister. She could not therefore obtain the assistance of the Government Officers in her election campaign. Yet we find that it was done. <sup>services of the</sup> The officers of the State Government were obtained for construction of rostrums. The resources of the State Government were utilised for that purpose. At some of the meetings the officers of the State Government also arranged for supply of power for the functioning of the loudspeakers, as shown earlier. The assistance of the State Government was thus obtained so that the respondent no. 1 could effectively

address the meetings for the furtherance of her prospects in the election. It may ~~also~~ not be out of place to add that the association of the senior officers of the State Government with the arrangements of rostrums and loudspeakers in the meetings of the respondent no. 1 was <sup>v. also</sup> likely to create an impression on the mind of the electors within the constituency that the Government was assisting the respondent no. 1. It can, therefore, be safely said that the assistance of the officers of the State Government was obtained for the furtherance of the prospects of the election of respondent no. 1.

Learned counsel for the respondent no. 1 urged that the construction of rostrums and arrangements of loudspeakers could not in any way further the prospects of the respondent no. 1's election and, consequently, even if it be held that the assistance of the officers of the State Government had been obtained by the respondent no. 1 for the said purposes, it cannot constitute a corrupt practice. In support of his arguments learned counsel referred me to the cases: (1) Raj Krushna Bose v. Binod Kanungo and others (9 Election Law Reports 295, Supreme Court), (2) Satya Dev Bushahri v. Padam Dev and others (10 Election Law Reports 103 at pp. 112 and 117) and (3) Chandrashekhar Singh v. Sarjee Prasad Singh and another (22 Election Law Reports 206 at p. 217, Patna). On a perusal of these cases, however, I find that they are distinguishable. In the first case the Court said that section 33(2) of the Act, as it then existed, conferred a right on every person

A 028  
52

(52)

to subscribe as proposer or seconder as many nomination papers as there were vacancies to be filled. It was further held that section 123(8) /    which now corresponds to section 123(7) <sup>7</sup> was to be interpreted in harmony with section 33(2) and, interpreting in that manner, the act of a Government servant subscribing any nomination paper as a proposer or seconder <sup>and not free</sup> within the mischief of section 123(8). In the second case the Court held that in view of the duties that a polling agent has to perform, it cannot be said that the fact of a Government servant acting as a polling agent for any candidate can constitute a corrupt practice. In reaching this conclusion it was also taken into consideration that, while the relevant section contained a prohibition against the appointment of certain persons as election agent, there was no such reference to the appointment of polling agents. The Court proceeded to say on page 120 -

"To hold that Government servants are, as such and as a class, disqualified to act as polling agents would be to engraft an exception to the statute, which is not there."

In the third case the son of the returned candidate, who was a Sub-Inspector of Police under suspension, had driven the jeep of Sarvasri S.K.Sinha and Morarji Desai when they came into the constituency for election

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campaign and the Court observed: -

"Mere driving of the jeep of Dr. S.K.Sinha and Sri Morarji Desai, even if proved cannot be said to be any assistance in the furtherance of the prospects of the respondent's election from a person in the service of the Government. Mere driving of the jeep is an act of carrying the leaders who were important members of either State Government or Central Government and the Sub-Inspector of Police, even if he was on leave could be expected, if required, to show this much of courtsey to the important leaders who were members of the Government too."

It is worthy of notice that in this case the Sub-Inspector of Police had not rendered any service directly to the candidate but had rendered some service by way of courtsey to two leaders of outstanding importance who were also members of the Government. Thus on facts none of the three cases referred to by learned counsel for the respondent no. 1 is analogous to the case before me.

Learned counsel for the respondent no. 1 also referred me to Articles 256 and 257 of the Constitution and urged that the earlier mentioned instructions were issued by the Government of India in exercise of its executive power. Under those

Articles. The Representation of the People Act was, however, enacted by the Parliament in exercise of its constitutional power. Therefore, whether or not the earlier mentioned instructions were issued by the Government of India under Articles 256 and 257 of the Constitution, they cannot override the mandate of the Parliament contained in the Act. // Learned counsel for the respondent no. 1 stressed that the Prime Minister of a country commands special position and that it is mandatory that arrangements for her security are made even when he/she visits a particular constituency as a candidate seeking election from there. Learned counsel urged that the provisions contained in the Representation of the People Act should not be interpreted in a rigid manner and that allowance should be given to that position while interpreting them. I have, however, already said earlier that the construction of rostrums and arrangements of public address system are not intimately connected with security and could be conveniently allowed to be arranged by the party concerned. But assuming that security was involved in the constructions of rostrums, the fact remains that the Representation of the People Act makes no concession in favour of the Prime Minister or any other office-bearer of the Government. According to law, as it stands, obtaining assistance of the officers specified in section 123(7) of the Act by a candidate for furtherance of her election prospects is a corrupt practice, regardless of the fact <sup>when</sup> ~~that~~ the

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candidate is an ordinary person or a person holding high office in the Government. If it were felt that the position of the Prime Minister required some concession being made in the matter, the Legislature could be moved to make necessary provision in that regard in section 123(7) of the Act. In the absence of any such provision, the mere fact that the respondent no. 1 happened to be the Prime Minister cannot undo the effect of her obtaining assistance of the officers of the State Government for furtherance of her election prospects.

Learned counsel for the respondent no. 1 also urged that, according to the evidence on record, the respondent no. 1 did not make any canvassing for herself while addressing meetings on 1st of February 1971 and 25th February 1971 and that she only did propaganda for the party. On this basis it was urged that any assistance given to the respondent no. 1 in those meetings could not be held to be assistance for furtherance of the election prospects of the respondent no. 1. This argument cannot be accepted for any moment. The respondent no. 1 was the only congress candidate from Rae Bareilly parliamentary constituency. The respondent no. 1 pleaded in para 15(a) of the written statement that she had requested the voters to put the prescribed mark on the symbol of cow and calf. As a congress candidate that was her symbol also. Therefore, when she asked the electors within the constituency of Rae Bareilly to put their mark against

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A826  
56

(56)

the symbol of cow and calf, she clearly canvassed for herself.

In view of all that has been said above, I hold that the respondent no. 1 obtained the assistance of the officers of the State Government, particularly the District Magistrate, the Superintendent of Police, the Executive Engineer, P.W.D. and the Engineer, Hydel Department for construction of rostrums and arrangement of supply of power for loudspeakers in the meetings addressed by her on 1st of February 1971 and 25th of February 1971 and further that the said assistance was for the furtherance of the prospects of the respondent no. 1 in her election. The respondent no. 1 was thus guilty of a corrupt practice under section 123(7) of the Act.

Issue no. 3 is accordingly answered against the respondent no. 1 and in favour of the petitioner.

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ISSUES NOS. 4 & 7:

These issues arise out of the allegations contained in para 10 and para 12 of the petition. In para 10 it is alleged that Sri Yashpal Kapur, the election agent of respondent no. 1, and her other agents with the consent of the said Sri Kapur, distributed a large number of quilts, blankets and dhotis as well as liquor among the electors of the constituency with the object of inducing them to vote for respondent no. 1. According to Schedule A-1, which contains the details of this corrupt practice, distribution of blankets, dhotis, quilts and liquor was done in Salon, Bhaon, Dalmau, Harchandpur, Sareni and Lalganj. In para 12 of the petition it is alleged that Sri Yashpal Kapur, the election agent of the respondent no. 1, and some other agents and persons with his consent, hired and procured a number of vehicles for the free conveyance of electors to various polling stations in the said constituency on 1st March, 3rd March and 5th March 1971. The details of this corrupt practice are mentioned in Schedule B-1 and, according to that schedule, this corrupt practice was committed at polling stations Rahi, Bhaon, Salon, Sareni, Harchandpur and at six polling stations situate in Rae Bareilly proper and three polling stations situate in Bawan Buzurg.

The respondent no. 1 in her written statement

A-026  
50

(58)

stoutly denied the commission of both the alleged corrupt practices.

The petitioner in order to prove the aforesaid allegations examined Sri A.C. Mathur (P.W. 19) and Budhu (P.W. 24) only.

Sri A.C. Mathur (P.W. 19) was Presiding Officer at Rahi polling station on 1st of March 1971. He said that on that date some person, whose name he did not remember, handed over to him an application (Paper No. A-295) and that he made an endorsement on that application. Application (Paper No. A-295) purports to have been given by Sarat Kumar Singh, Polling Agent of the petitioner at Rahi polling station, alleging that the workers of the respondent no. 1 were transporting voters by bus UPF 214. The endorsement made by Sri Mathur on this application is Exhibit 55 and it reads as follows: -

" Received (?) with the remark that the vehicle under reference has not been seen by me personally. However, the application is being forwarded to the Section Magistrate."

The petitioner did not examine Sarat Kumar Singh, the purported author of the complaint (Paper No. A-295); and Sri A.C. Mathur, the Presiding Officer has not said anything, either in his deposition or in the endorsement made by him on that complaint, lending support to him. The evidence of Sri A.C. Mathur thus

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A 226  
59

(59)

fails to prove that any voters were transported by or on behalf of the respondent no. 1 free of cost to Rahipur polling station.

This takes me to the other witness, namely Budhu (P.W. 24). He is a resident of village Bhaon. He deposed that on the date of polling a big jeep came to the village; that the people were saying that the jeep belonged to Smt. Premwati; that the jeep carried the flag and posters of the Congress Party; and that it made 8 or 10 trips for carrying the voters. He said that Smt. Premwati remained present in the village till about 3 p.m.

Now, if it were true that voters had been transported in the manner alleged by Budhu P.W., some complaints about the same should have been made by the polling agent of the petitioner at the relevant polling stations and evidence about the same could be adduced. No such evidence has, however, been adduced. The oral testimony of Budhu alone cannot, therefore, be given much credence. That apart, the respondent examined a number of witnesses to rebut the evidence of Budhu (P.W. 24). Smt. Premwati (R.W. 21) herself entered the witness-box and made a statement on oath to the effect that she did not come to Rae Bareilly constituency during the period of election and that she remained busy in connection with the election of Smt. Shiela Kaul ~~from~~<sup>in</sup> Lucknow City constituency. It is true that Smt. Shiela Kaul was also a candidate of Congress (R) <sup>is</sup> and an aunt of

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A 826  
60

(60)

respondent no. 1. However, the mere fact that Smt. Premwati (R.W. 21) was working for the aunt of respondent no. 1 cannot constitute a sufficient ground for discarding her testimony.

Other witnesses examined by the respondent no. 1 in this connection are Gajraj Singh (R.W. 19), a resident of village Sarai Damu, Lalu (R.W. 20), also a resident of village Sarai Damu, Ganga (R.W. 22), Pradhan of village Jamalpur Nankari, Kuir (R.W. 23), another resident of village Jamalpur Nankari and Thakur Ambika Singh (R.W. 24). Gajraj Singh and Lalu R.Ws. said that they had gone to give their votes at the polling station situate in Mohammadpur Kuchari. ~~and~~ They further said that they and other people of their village had gone on foot to cast their votes and that it was wrong that any jeep or tractor was utilised to transport any voters from their village to the polling stations. Ganga and Kuir R.Ws. deposed that they went to Bhaon polling station to cast their votes. They further said that they and other people of their village went to the polling station on foot and that it was wrong that any vehicle had been used for transporting them to the polling station. It may be mentioned here that according to the statement made by Budhu in cross-examination, Kuir and Gajraj Singh were among the persons who had been transported by jeep. Thakur Ambika Singh (R.W. 24) was named in Schedule B-1 as one of those persons who transported voters. He stated on oath that he never transported

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A826  
61

(61)

any voters from any place in the constituency to any polling station. The above being the state of evidence, I find that the petitioner failed to prove that the election agent of the respondent no. 1, or any other person with his consent, transported voters free of cost to any polling station.

In support of the allegation that blankets, dhotis or quilts were distributed, it is Budhu (P.W. 24) only who has made a statement. According to him, Madan Mohan Misra and some other persons visited his village on the date preceding the election for distributing the aforesaid articles to the voters in village Bhaon. He also claimed to have received one dhoti. He further named Kuir and said that, among the residents of Jamalpur Nankari, he was one of those who had been distributed cloth.

The respondent examined Shitla Bux Singh (R.W. 15), Kuir (R.W. 23) and Thakur Ambika Singh (R.W. 24). According to the Schedule A-1 appended to the petition, Shitla Bux Singh was one of those persons who got blankets etc. distributed. Shitla Bux Singh entered the witness-box to deny it on oath. Kuir (R.W. 23) contradicted that part of the statement of Budhu (P.W. 24) wherein he said that cloth had also been distributed to him. Thakur Ambika Singh (R.W. 24) is Pramukh of the Kshettra Samiti. He also denied having participated in connection with the distribution of quilts, kambals, dhotis etc. in any part of the

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constituency.

In the aforesaid circumstances, reliance cannot be placed on the solitary testimony of Budhu in order to accept that any quilts, blankets, dhotis etc. were at all distributed on behalf of respondent no. 1 in the constituency.

Issues nos. 4 and 7 are accordingly decided against the petitioner and in favour of respondent no. 1.

ISSUE NO. 10:

In para 22 of the written statement the respondent no. 1 pleaded that the security deposit was not <sup>made</sup> ~~made~~ according to rules and hence this issue. This question, however, stands concluded with the decision of this Court in case, Election Petition No. 1 of 1971 (Brahma Datta v. Paripurna Nand & others), decided on 9th November 1971. The objection taken in this case is precisely the same as was raised in Election Petition No. 1 of 1971. Learned counsel for respondent no. 1 has failed to show any reason for which the present case may be held to be distinguishable on facts from the case of Brahma Datta v. Paripurna Nand & others (supra). In view of the decision of this Court in that case, I find that the security deposit made by the petitioner was in order.

The issue is accordingly answered in favour of the petitioner and against the respondent no. 1.

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ISSUES NOS. 5 & 8:

In the written statement filed by respondent no. 1 it was pleaded that para 10 read with Schedule A and para 12 read with Schedule B of the petition furnish<sup>ed</sup> no particulars of corrupt practice and were, therefore, liable to be struck off.

The allegation contained in para 10 of the petition, briefly stated, is that the election agent of the respondent no. 1 and her other agents with the consent of the election agent, freely distributed quilts, blankets, dhotis and liquor among the electorate to induce them to vote for respondent no. 1. Schedule A contained the names of the persons who distributed the aforesaid articles, the names of the places where they were distributed. The allegation contained in para 12 of the petition is that on 1st March 1971, 3rd March 1971 and 15th March 1971 the election agent of the respondent no. 1, and some other persons with his consent, hired or procured a number of vehicles for free conveyance of electors to various polling stations. Schedule B, accompanying the petition, disclosed the names of the persons who transported the voters, the registration number of the vehicles used by them for transporting voters, the names of the polling stations to which the voters were transported, and the dates on which they were transported.

From the order dated 20th September 1973, passed

A826  
64

(64)

by K.N.Srivastava, J. it appears that after the statements of 15 witnesses on the side of the petitioner had been recorded, it was pressed on behalf of the respondent no. 1 that issues nos. 5 and 8 be decided as preliminary issues. After hearing learned counsel for the parties, it was held by K.N.Srivastava, J. that allegations contained in paras 10 and 12 were vague in some respects. In regard to para no. 12 and Schedule A, he pointed out that it did not disclose -

- i) whether the liquor, blankets, quilts and dhotis were distributed at the same time and place or separately; and
- (ii) so far as big places like Salon and others mentioned in Schedule A are concerned, the places where the alleged corrupt practice was committed should have been specifically mentioned.

In regard to para 12 and Schedule B, it was pointed out by K.N.Srivastava, J. that the allegations contained therein were vague in following manner :-

- (1) The petitioner should have given the details as to which vehicle mentioned in Schedule B was procured or hired by which worker or agent of respondent no. 1.
- (2) The names of polling stations from or to which the voters were carried required to be disclosed;
- (3) It was also required to be disclosed

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A-828  
65

(65)

whether the vehicles mentioned in Schedule B were tractors, taxies, buses or motorcars.

Other objections raised on behalf of the respondent were rejected with the following observation: -

" The other objections are of a technical nature about the vagueness and they have no force in them."

In consequence of the above order passed by K.N.Srivastava J. the petitioner furnished better particulars.

Counsel for both the parties were again heard and thereafter a detailed order was passed by me on 29th of August 1974. By that order the particulars furnished by the petitioner in regard to distribution of blankets, quilts and dhotis were accepted as sufficient and those particulars were allowed to be incorporated. With regard to the other allegation about the distribution of liquor, it was held that it continued to remain vague and consequently, that part of para 10 of the petition which related to distribution of liquor, was ordered to be deleted.

In regard to particulars furnished to clarify the allegation contained in para 12, the only objection raised before me was that the description of Amresh Prasad Srivastava, Zulfiqar Khan and Anand Kumar,

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(66)

A-8246  
66

mentioned in column 1 of Schedule B-1 (sought to be substituted for Schedule B) was not sufficient to enable the respondent to fix their identity. That objection was upheld and it was directed that while Schedule B may be substituted with Schedule B-1, as prayed, the aforesaid names shall be deleted therefrom.

The result of the order dated 29th August 1974 is that thereafter the allegations contained in paras 10 and 12 of the petition, coupled with Schedule A-1 and Schedule B-1 did not suffer from any vagueness. Needless to say that learned counsel for the petitioner also failed to point out at the time of the final arguments in the case that paras 10 and 12, coupled with Schedule A-1 and Schedule B-1, still suffer from any vagueness.

Issues 5 and 8 are accordingly answered in favour of the petitioner and against the respondent no. 1.

ISSUE NO. 6;

In para 11 of the petition it is alleged that the symbol of cow and calf is a religious symbol; that the party to which the respondent no. 1 belongs induced the Election Commission of India to allot to that party the symbol of cow and calf; that the respondent no. 1 made use of and appealed to that religious symbol in each of her election meetings addressed by her in the constituency on 25th of February 1971. It is further alleged that the respondent no. 1 exhorted the voters to cast their votes by putting the prescribed seal mark on the symbol of cow and calf in the meetings addressed by her on 25th of February 1971 at Bhojpur, Murai-ka-bagh, Lalganj, Sothi and other places.

In reply to the above allegation, the respondent no. 1 pleaded that the symbol of cow and calf was not a religious symbol nor was it so regarded by the Hindu community; that it was wrong that her political party induced the Election Commission of India to allot that symbol to her party; that it was also wrong that extensive use of and appeal to the religious symbol of cow and calf was made by her in any of the meetings addressed on 25th of February 1971. She added that during her speeches she merely informed the voters that the cow and calf was the election symbol of Congress (R) and that voting mark should be put on that symbol. Another plea raised on behalf of the respondent no. 1 in this connection was that the decision of the

A-828  
68

(68)

Election Commission in the matter of reservation of symbols was final and, the symbol of cow and calf having been allotted to the Congress (R), to which party the respondent no. 1 belonged, it could not be made a ground for her election <sup>being avoided</sup> under section 100 of the Representation of the People Act.

The evidence adduced by the petitioner under this issue can be classified under two heads:

- (1) Raghubar Mithu Lal Shastri (P.W. 16) and Surya Bali Shukla (P.W. 34) were examined in order to depose about the position of the cow and calf in the Hindu religion. Sant Saram Vedanti (P.W. 33) deposed that he was a member of the Akhil Bhartiya Ram Rajya Parishad. He was examined to prove that in 1952 the Akhil Bhartiya Ram Rajya Parishad applied for the symbol of cow and calf being allotted to it but it was refused on the ground that it was a religious symbol. A.N. Sen (P.W. 54), Secretary, Election Commission of India, was examined to prove that Akhil Bhartiya Ram Rajya Parishad applied for the allotment of the symbol of cow and calf for the general election of 1952 and the same was refused.

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- (2) Ram Nihore (P.W. 25), Raj Kishore Singh (P.W. 26), Ram Kumar (P.W. 46) are witnesses under the second head. They were examined to prove that during her speeches the respondent no. 1 said that cow and calf was a religious symbol and that people should therefore put their mark on that symbol while casting their votes.

So far as the evidence of the witnesses mentioned under the second head above is concerned, learned counsel for the respondent no. 1 urged that since there was no pleading in the petition that the respondent no. 1 made an appeal in any of her election meetings that the symbol of cow and calf was a 'dharmik prateek', the evidence was not in conformity with the pleadings and cannot be looked into. I have already referred to what has been alleged in the petition. As mentioned earlier, all that is stated therein is that in the meetings addressed by the respondent no. 1 on 25th February 1971 she made use of and appealed to the religious symbol of cow and calf. It has not been clarified as to what words were used by the respondent no. 1 while making that appeal. In other words, the pleadings on the point have been left vague in the petition. Learned counsel for the respondent no. 1 urged that the evidence adduced by the petitioner in order to prove that, in the meetings addressed by her, the respondent no. 1 said that cow

and calf was a religious symbol and consequently people should put their mark on that symbol, is not strictly in conformity with the pleadings. Learned counsel pointed out that no amount of evidence can be looked into upon a plea which has not been put forth in the pleadings. In view of the objection raised on behalf of the respondent, learned counsel for the petitioner said at the time of argument that he confined his case only to the use of the symbol of cow and calf. He gave up that part of the case wherein it was alleged that appeals were made to the religious symbol of cow and calf by the respondent no. 1. It is accordingly not necessary to refer to the evidence of Ram Nihore (P.W. 25), Raj Kishore Singh (P.W. 26) and Ram Kumar (P.W. 46), nor is it necessary to refer to the evidence adduced by the respondent to rebut the evidence of the aforesaid P.Ws.

The question that, therefore, remains for consideration is whether the symbol of cow and calf was a religious symbol and the mere use of that symbol as an election symbol constituted a corrupt practice under section 123(3) of the Representation of the People Act.

It will first be convenient to dispose of the evidence of Sant Saran Vedanti (P.W. 33) and A.N.T. Sen (P.W. 34). Sant Saran Vedanti merely stated that

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the Akhil Bhartiya Ram Rajya Parishad applied for the election symbol of cow and calf in 1952 and that the Election Commission refused to grant that symbol to the Akhil Bhartiya Ram Rajya Parishad on the ground that it was a religious symbol.

The statement of Sri Sant Saran Vedanti that Akhil Bhartiya Ram Rajya Parishad, inter alia, applied for the symbol of cow and calf for the election of 1952 finds some support from the statement of Sri A.N.Sen (P.W. 54), Secretary to the Election Commission of India, who stated that it was apparent from the report of the First General Elections in India in 1951-52 that Akhil Bhartiya Ram Rajya Parishad asked for allotment of symbol of "miloh cow with calf and milkmaid". A copy of that report was placed by Sri A.N. Sen on the record of this case and a perusal thereof does show that for the elections of 1952 Akhil Bhartiya Ram Rajya Parishad had applied for the aforesaid symbol. Sri Sant Saran Vedanti, however, failed to place on record any copy of the order passed on the application of Akhil Bhartiya Ram Rajya Parishad for the allotment of the said symbol. He said that a reply had been received from the Election Commission but it was not traceable. In cross-examination he conceded that the reply received from the Election Commission was in English and that he could neither read nor understand English. The statement

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made by Sri Sant Saran Vedanti does not, therefore, constitute a sufficient proof of the fact that the Election Commission of India refused to allot the symbol<sup>of</sup> "milch cow with calf and milkmaid" because it treated that symbol to be a religious symbol. My attention was invited to the views expressed by the Election Commission in their report in the First General Elections in India (1951-52), wherein they said:

"The Commission decided that the symbols should be familiar to, and easily recognisable by, illiterate and ignorant voters and readily distinguishable by them from each other and that no object having any religious or sentimental association, e.g. a cow, a temple, the national flag, a spinning wheel and the like should find a place in the list of approved symbols."

I do not think that on the basis of the above view held by the Election Commission it can be inferred that the symbol of "milch cow with calf and milkmaid" was really treated by the Election Commission as a religious symbol and was refused on that ground. Assuming, however, that the Election Commission had a feeling that the symbol of cow with calf and milkmaid, applied for by the Akhil Bhartiya Ram Rajya Parishad, was a religious symbol, that view is not binding on this Court. The court has to come to its own conclusion on the basis of the material placed before it and not to adopt the view expressed by the Election Commission.

(73)

A 826  
138

Therefore, looked at from any angle, the evidence of Sri Sant Saran Vedanti (P.W. 33) fails to prove that the cow and calf is a religious symbol.

Coming to the evidence of Sri A.N. Sen (P.W. 54), as already stated, he merely said that it appeared from the report of the Election Commission for the year 1951-52 that Akhil Bhartiya Ram Rajya Parishad had applied for the symbol of milch cow with calf and milkmaid. The report filed by Sri Sen further shows that Akhil Bhartiya Ram Rajya Parishad was allotted the symbol of 'Rising Sun', which was their second preference. Nothing is proved either by the statement of Sri A.N. Sen or by the report of the Election Commission for the year 1951-52. I accordingly hold that the evidence of Sri A.N. Sen (P.W. 54) can also have no bearing on the point whether the symbol of cow and calf allotted to the Congress (R) for the elections of 1971 was a religious symbol. In fact Sri A.N. Sen stated that the Election Commission did not consider the symbol of cow and calf to be a religious symbol within the meaning of section 123(3) of the Representation of the People Act and it was for that reason that the said symbol was allotted by the Commission to the Congress (R).

This takes me to the other two witnesses examined on this point by the petitioner, i.e.

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(74)

A 826  
74

Raghubar Mithu Lal Shastri (P.W. 16) and Surya Bali Shukla (P.W. 34).

Raghubar Mithu Lal Shastri claimed to be a scholar of Hindu scriptures. After making a reference to the Vedas, Nirukti, the Bhagwat Puran, the Mahabharat etc., he deposed -

The cow and even the image of cow or any portrait and even things closely associated with cow as sacred, have always been treated as God and worshipped by Hindus."

Now, it is a matter of common knowledge that in all scriptures of the yore resort has been made to similies, metaphors, allegories and hyperboles. Scholars in mythology give allowance to it while understanding the same. A reading of the statement made by Sri Raghubar Mithu Lal Shastri as a whole does not show that cow has been held to be one of the recognised Gods in the Hindu mythology, though it has been held sacred and worthy of great veneration. After making a reference to the 47th and 48th Verse of Chapter XXIII of Yajurveda, the witness said that according to said Verses, Vedas were light like Surya, lake equal to the Ocean is sky, Indra is greater than earth, but there is no measure for cow. The statement that there was no measure for cow does not in my opinion leads to the conclusion that the cow was a God. It can very well mean that cow had no measure for its

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A.828  
75

(75)

utility and usefulness in the Hindu society. Again, after referring to the 10th Kanda of the Yajurveda, the witness said that according to the First, Second and Third Mantras thereof anybody who worships cow when it is born and worships it in its entirety, namely its hair, its hoofs, its colour and its appearance, <sup>is</sup> ~~was~~ fit for being given the cow as a gift. Now, this again does not show that cow was equated with God. It only states that no person should be given a cow in gift unless he adores her, for, if he is not an adorer of a cow, he may maltreat her. Then the witness referred to Verse 101 in Chapter X, Mandal 8 and Mantra 151 of the Rigveda and said that the sense of that Mantra is that cow is the mother of 11 Rudra Gods, daughter of 8 Vasus, sister of 12 Adityas and centre of immortality or nectar. According to the witness, the Mantra carries a mandate that a cow which is without any defect or fault and at the same time not humble should never be killed. Now, the mere fact that cow has been described in the aforesaid part of Rigveda as mother of some Gods and sister of others cannot in my opinion lead to the conclusion that cow was given the status of God. It is well known that the cow's milk has been held to be extremely useful and it is said that it carries medicinal properties. It is also said that one who lives on cow's milk enjoys a long life. It was, therefore, said in this

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Mantra that cow was the centre of immortality or of nectar. It appears that it was also for this reason that cow has been associated with Rudra Gods and Vasus in the aforesaid Mantra. After making a reference to Sloka 10 of Chapter XVI, ~~the~~ third Askandh of the Bhagwat the witness said:

"Those people who treat the highly spiritual Brahmins, cows and living beings having no shelter, who are the very physical body of mine, thinking them to be different from me will have trouble by the vulture like messengers of Yama representing me."

The Hindu belief is that God resides within every living being and more so within those who are holy and live a sacred life. It is also one of the beliefs that God looks after those who are not looked after by anybody. It is in that sense that it has been stated in the Bhagwat that God resides within spiritual Brahmins, cows, and living beings having no shelter. To enjoin that they are treated with respect, it is further stated therein that if anybody treats them to be different from God <sup>he</sup> ~~they~~ will have to suffer consequences for the same. I do not think it can be inferred on the basis thereof that cow was herself a God. In fact Sri Raghubar Mithu Lal Shastri himself made significant concessions

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during his cross-examination to dispel the theory sought to be enunciated by him during his examination-in-chief that cow is God in Hindu mythology. He said that if by seeing the picture of a calf, one's pity is aroused then that calf will be religious symbol. In answer to a further question he said that not only a bullock but any living creature that evoked ~~the~~ <sup>it is</sup> pity ~~was~~ a religious symbol. In answer to the question as to what was the quality, besides being fit for worship, which makes an article a religious symbol, the witness said that if anything or an object serves the purpose of coming in great use in life e.g. to preserve human life, it becomes a thing of worship, and that economics also plays a part in the matter. It is needless to dilate any further on the statement made by Sri Raghubar Mithu Lal Shastri (P.W. 16). I would state at the cost of repetition that his evidence in my opinion does not lead to the conclusion that cow is God and, therefore, a religious symbol.

Learned counsel for the petitioner also referred me to the evidence of Dr. Pattabhi Ram Shastri (R.W. 35) and urged that the statement made by him <sup>leads</sup> also ~~led~~ to the conclusion that cow has been held to be a God in Hindu mythology. I have, therefore, perused the statement of Dr. Pattabhi Ram Shastri (P.W. 34) as well and I am unable to agree with learned counsel for the petitioner. Dr. Pattabhi Ram Shastri clearly

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stated in the examination-in-chief that the picture or portrait of a cow and calf is not a religious symbol. He further stated that in Shastras cow has been mentioned only as one of the dravvas (articles) and in Vedas it has been considered to be the national wealth. He was then confronted with some scriptures in order to elicit from him that cow was God. Most of the scriptures were the same as have been referred to by Dr. Raghubar Mithu Lal Shastri (P.W. 16) and it would be useless to refer to them in detail again. The statement made by Dr. Pattabhi Ram Shastri in cross-examination also leads to the same conclusion, namely that cow has been mentioned with reverence and adoration in the holy scriptures. That certainly does not mean that cow is God or one of the Gods.

Learned counsel for the petitioner then referred to the book 'Gosewa' written by Mahatma Gandhi (Translated by Ram Narain Chaudhary). The portion relied upon by the learned counsel for the petitioner occurs on page 12 of the Book and reads as follows: -

"Phirbhi samanya Hinduon ke liye  
to goraksha ka prem hi Hindu tatva  
ka mukhya lakchanya thahraya hai."

Learned counsel stressed that Mahatma Gandhi was a great scholar and the aforesaid view expressed by him in his book should also lead to the conclusion that

A826  
79

has been held to be a God in Hindu mythology. I cannot ascribe that meaning to the aforesaid words occurring in the Book 'Gosewa'. To my mind that also does not mean anything beyond this that to carry love for cow is one of the tenets of Hindu religion. That obviously is based on the fact that since a long time, rather since the times of the holy scriptures, cow has been treated sacred in Hindu religion. Everything that is sacred does not become God."

Reference was also made by learned counsel for the petitioner to a Book "Gae ki jan bachane ka bayan" by Khwaja Hasan Nizami. Particular stress was laid by learned counsel for the petitioner on the contents of pages 35 and 46-47 of this Book. Page 35 reproduces a Fatwa by one Maulana Abdul Hai. All that has been stressed in it is that cow slaughter was not one of the essentials of Islam, that since cow slaughter offends against Hindu religion and causes pain to the Hindu neighbour, it was necessary for the Muslims to refrain from indulging in cow slaughter. I fail to understand how anything contained in this Fatwa can go to prove that cow is God. It only mentions a humane principle that nothing should be done which offends the followers of another religion. Coming to pages 46 and 47, they purport to carry the translation of the farman of the Emperor Babar. The advice

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A8246  
80

given in this farman by Emperor Babar to his son was that he should refrain from cow slaughter, so that he could capture the love and respect of the Hindu population of the country. Again, it was a lesson in politics that was given by Emperor Babar through this farman. That certainly does not prove that cow is God.

Reference was also made by learned counsel for the petitioner during his arguments to a Book "Hindu Pantheon" by Edward Moor (pages 78 and 79). On page 78 it is stated that images of cow and of her calf are worshipped in India. In paragraph 3 on page 78 it is said: "A cow, the reader will perceive, is no unimportant mythological personage, nor is the bull: the latter has been spoken of, in another place, as the nandi of Mahadeva, and the symbol of divine justice." In the third paragraph on page 79 it is said: "A cow suckling a calf is a very favourite subject of Hindu artists, in paint, ivory, brass, mortar etc." It is not stated either on page 78 or on page 79 of this Book that cow is held to be a God in the Hindu religion.

Learned counsel for the petitioner then referred me to Encyclopaedia Britannica, 1962 Edition, Vol. II, wherein describing Hinduism, it is stated: -

"Many animas, plants and natural objects are sacred in varying degrees, the most noteworthy being the cow. The bull is specially sacred because of his connection

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with God Shiva. But the cow is divine in her own right and is generally revered as the representative of mother earth."

In the Webster's New International Dictionary the word 'divine' has been assigned the meaning of "God or pertaining to God; proceeding from God; appropriated to God; pertaining to or proceeding from a deity; God like and heavenly." Now, everything that pertains to God or proceeds from God or is appropriated to God or is God like or heavenly is not necessarily itself a God. While saying that the cow is divine in her own right, the sense conveyed is that though bulls and other animals are held sacred because of their association with some God, cow is held sacred without any such association. Reliance was also placed by learned counsel for the petitioner on some observations made by the Supreme Court in the case Mohammad Hanif Qureshi and others v. State of Bihar (A.I.R. 1958 Supreme Court 731, at pp. 744 & 755 para 22). Learned counsel particularly invited my attention to the sentence occurring on page 75, which states that cow was gradually raised to the status of divinity. That sentence is, however, to be read in the context in which it is mentioned and not removed from it. In the opening part of paragraph 22 it is stated that in the Vedic times animal flesh formed the staple food of the people, and that goats, sheep, cows, buffaloes and even horses were slaughtered for food and for religious sacrifice and that their flesh used to be

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offered to the Gods. Thereafter reference has been made to some authorities of Hindu mythology and it is stated:

" Though the custom of slaughtering of cows and bulls prevailed during the Vedic period, nevertheless, even in the Rigveda times there seems to have grown up a revulsion of feeling against the custom. The cow gradually came to acquire a special sanctity and was called 'Aghnya' (not to be slain). There was a school of thinkers amongst the Risis, who set their face against the custom of killing such useful animals as the cow and the bull. High praise was bestowed on the cows as will appear from the following verses from Rg. Veda, Book VI, Hymn XXVIII (Cows) attributed to the worship of sage Bhardvaja ..."

A reading of para 20 as a whole thus makes it appear that in the early Vedic times cow and bull were slaughtered for food as well as for religious sacrifice. Gradually the Aryans realised the usefulness of the cow and the bull which led to the cow and bull being praised in the Hindu mythology in high terms. It appears that in order to prevent the slaughter of the bull and cow, particularly in realisation of the great utility of the cow, this course was adopted in the

A 8126  
83

(83)

Hindu scriptures. I do not agree that anything said by the Supreme Court in the decision M.H.Qurreshi v. State of Bihar (supra) and contained in para 22 of the report thereof, amounts to saying that cow <sup>is</sup> ~~was~~ treated to be a God in the Hindu religion.

Whether the cow and calf is a religious symbol, should in fact be understood in the sense common man understands it. The common man in our country does not delve deep into the Vedas, Purans and Smritis in order to know the identity and status of deities in the Hindu mythology. No-one can deny that cow, like other cattle, are bought and sold all over the world since times immemorial. It also cannot be denied that cows are so often shabbily treated by an ordinary man. It is beyond the understanding of a common man professing Hindu religion that the Hindu Gods and deities should be so humble and weak and any person may buy and sell them at his pleasure and any person can maltreat them. Again, if cow is a deity, the entire race thereof in this universe should be held deities which ~~again~~ is not very much understandable. The rational view, therefore, is that, in view of her high utility, cow is treated with great reverence. It cannot, however, be equated with God or deity.

Another aspect of the matter is that section 123(3) makes the use of a religious symbol to be a corrupt practice. According to learned counsel

for the petitioner, cow is a deity and the picture of the cow should, therefore, be a religious symbol. The question, however, is what is the meaning of the word 'symbol'? According to Webster's New International Dictionary 'symbol' can signify in common, a visible thing that stands for or suggests something invisible or intangible; it can apply to anything that serves as an outward sign of something else. According to Corpus Juris Secundum, 'symbol' means an object chosen to typify or represent some idea or quality in something else because of a resemblance in one or more of their characteristics or association.

In view of the aforesaid meaning of the word 'symbol' the picture of cow and calf cannot be held to be the symbol of cow. On this reasoning also it cannot be held to be a religious symbol.

The point whether the cow and calf is a religious symbol or not came up for consideration directly in the cases Bhanwar Lal v. Ram Sahai Pandey and others (A.I.R. 1972 Madhya Pradesh 176 at p. 179), Election Petition No. 2 of 1971 (Shital Prasad Misra v. Nitiraj Singh Chaudhary), decided by the High Court of Madhya Pradesh on 21st July 1971 and published in Madhya Pradesh Gazette, dated 23rd June 1971, Pt. I, p. 809 paras 18 to 23 and Sri Prasanna Das Damodar Das Palwar v. Indu Lal Kanhaiya Lal Jainik, decided by the High Court of Gujarat on 27th August 1971, published in

A 826  
85

Gujarat Gazette dated 20th July 1972, Pt IV C, p. 1342 at page 1355 to 1362. It was uniformly held in all the three cases that the cow and calf is not a religious symbol. The point whether cow is a religious symbol or not <sup>as</sup> came <sup>up</sup> in for consideration in one context or the other in the cases Shah Jayanthi Lal Amba Lal v. Kasturi Lal Nagin Das Doshi (36 Election Law Reports 189); Bainath Singh Vaidya v. Ravendra Pratap Singh (36 Election Law Reports 327); Bishambhar Dayal v. Raj Rajeshwar and others (39 Election Law Reports 363 at p. 376); Dinesh Dangli v. Daulat Ram (39 Election Law Reports 465 at p. 476); Shyam Lal v. Mausam Din and others (37 Election Law Reports 67 at p. 89); B.P. Maurya v. Prakashvir Shastri (37 Election Law Reports 137 at p. 147); Sahodar Rai v. Ram Singh Aharwar and others (37 Election Law Reports 176 at p. 188); Vishwanath Prasad v. Salamat Ullah and others (27 Election Law Reports 145 at p. 186 bottom) and Lachchi Ram v. Jamuna Prasad Mukhariya and others (9 Election Law Reports 149 at p. 157). It was held in all these cases that cow is not a religious symbol.

It will thus appear that the consensus of authorities overwhelmingly supports the view that the picture of cow and calf is not a religious symbol. Learned counsel for the petitioner could not cite any case in which a contrary view may have been expressed.

I accordingly find that the respondent no. 1 cannot be held guilty of having committed a corrupt

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A 826  
86

(86)

practice under section 123(3) of the Representation of the People Act merely because of the user of the symbol of cow and calf as her election symbol or because of her having said to the electors, during the speeches addressed by her within the constituency, that cow and calf was the symbol of the Congress Party and that they should put the voting mark against that symbol.

Issue no. 6 is, therefore, answered against the petitioner and in favour of respondent no. 1.

ISSUE NO. 9 & WRIT PETITION NO. 3761 of 1975:

In para 13 of the election petition it is alleged that the respondent no. 1 and her election agent incurred an expenditure much beyond the prescribed limit of Rs 35,000/- and thereby committed a corrupt practice under section 123(6) of the Representation of the People Act. The petitioner has also given some items of expenditure alleged to have been incurred by the respondent no. 1 and her election agent but not shown in the return of election expenses. They are as follows: -

- (1) The hiring charges of vehicles specified in para 13(1) ... Over Rs 1,28,700/-
  - (2) Cost of petrol & diesel for the vehicles specified in para 13(1) ... Over Rs 43,230/-
  - (3) Payments made to the drivers of the vehicles specified in para 13(1) ... Over Rs 9,900/-
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(87)

A 826  
-87

- (4) Repairing & servicing charges of the vehicles specified in para 13(1) of the petition ... Over Rs 5,000/-
- (5) Payments made to the workers engaged for the purpose of election propaganda ... Rs 6,600/-
- (6) Expenses on the erection of polling camps near the polling stations on the polling days ... Rs 10,000/-
- (7) Expenses on the erection of rostrums for the public meetings addressed by the respondent no. 1 in the constituency on 1st February and 25th February 1971 ... Rs 1,32,000/-
- (8) Expenses on arrangement of loudspeakers for the various election meetings of respondent no. 1 addressed on 1st of February and 25th of February 1971 ... Over Rs 7,200/-
- (9) Expenses on respondent no. 1's transport by Air Force planes and helicopters for addressing election meetings on 1st of February 1971 and 25th of February 1971 ... Over Rs 1,68,000/-
- (10) Expenses on barricading of the routes to the places of the election meetings addressed by the respondent no. 1 on 1st of February 1971 & 25th Feb. 1971 ... Rs 2,00,000/-
- (11) Expenses on T.A. & D.A. paid to the members of the Police Force posted along the route up the place of election meetings of respondent no. 1 on 1.2.1971 and 25.2.1971 ..... Rs 1,40,000/-
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A826  
80

- (12) Expenses on motor transport for the conveyance of respondent no. 1 and her party to the place of her election meetings on 1st of February 1971 and 25th of February 1971 ..... Over Rs 2,000/-

The reply of the respondent no. 1 to the above allegation is contained in para 17 of her written statement, wherein she denied that any of the alleged expenditure was incurred by her or her election agent. In regard to the item mentioned at serial no. 1 above, she said that some vehicles were used by the District Congress Committee for doing work of the Indian National Congress (R) in the three parliamentary constituencies, and that hiring charges thereof, if any, were also paid by the District Congress Committee, out of its own party funds. The registration nos. of vehicles alleged to have been used by the District Congress Committee are mentioned in para 17(b) of the written statement. In regard to the items of expenditure mentioned at serial nos. 2, 3 and 4 above, the respondent pleaded that the expenditure in that connection, if any, must have been incurred by the District Congress Committee and that, in any case, she or her election agent did not incur any expenditure in that connection. With regard to the item of expenditure mentioned at serial no. 5, the respondent no. 1 pleaded that all the workers who participated in the election were members and office-bearers of the party and that they did the work voluntarily and

not for any remuneration. With regard to the item of expenditure mentioned at serial no. 6, the respondent no. 1 said that the polling camps, wherever they were established, were arranged by the District Congress Committee or the Mandal Congress Committee, and that at most of the places local workers brought daris, lajims etc. to spread them under some shady tree near the polling stations. The respondent added that no expenditure was incurred by her, or by her election agent in that connection and that the expenditure, wherever it was necessary, was incurred by the District Congress Committee. Referring to the item of expenditure mentioned at serial no. 7, she pleaded that the rostrums were constructed under the direction of the State Government and that the bills for the same, in accordance with Government notifications, were either paid or shall be paid by the Pradesh Congress Committee. She added that no expenditure in that connection was incurred by her or by her election agent. Referring to the expenses mentioned at serial no. 8, the respondent no. 1 pleaded that the arrangement of loudspeakers was made by the District Congress Committee of Rae Bareilly and that the bills were paid by them out of their own funds. She denied any amount having been paid by her or by her election agent in that connection. Referring

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to the item of expenditure mentioned at serial no. 9, the respondent no. 1 pleaded that the charges for the air journeys made by her had either been paid or shall be paid by the All India Congress Committee. In regard to the item of expenditure mentioned at serial no. 10, the respondent no. 1 pleaded that the entire arrangements in that connection were made voluntarily by the State Government at their own initiative as a part of their duty and the expenses were also borne by them. It was added that in any event she or her election agent did not incur any expenditure in that connection.

The petitioner did not adduce any evidence in order to prove that any of the expenditures alleged by him in para 13 and its sub-paras were actually incurred by the respondent no. 1 or her election agent. The petitioner's stand was that, on the own admission of respondent no. 1, expenditure on most of the items alleged by him was incurred by the political party to which she belonged, and that those expenses are liable to be added to the election expenses of the respondent no. 1, in view of the decision of the Supreme Court in the case Kanwar Lal Gupta v. Amar Nath Chawla (A.I.R. 1975 Supreme Court 308). After taking into consideration various aspects of the matter, the Supreme Court in the aforesaid case summed up its conclusion thus ( on page 316

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Col. 1): -

" When the political party sponsoring a candidate incurs expenditure in connection with his election, as distinguished from expenditure on general party propaganda, and the candidate not only takes advantage of it or participates in the programme or activity or fails to disavow the expenditure or consents to it or acquiesces in it, it would be reasonable to infer, save in special circumstances, that he impliedly authorised the political party to incur such expenditure and he cannot escape the rigor of the ceiling by saying that he has not incurred the expenditure, but his political party has done so."

Further on (at p. 316, Col 2) it was again said: "

" In the first place, a political party is free to incur any expenditure it likes on its general party propaganda though, of course, in this area also some limitative ceiling is eminently desirable coupled with filing of return of expenses and an independent machinery to investigate and take action. It is only where expenditure is incurred which can be identified with the election of a candidate that it would

(92)

be liable to be added to the expenditure of that candidate as being impliedly authorised by him."

Relying on the above case, learned counsel for the petitioner urged that such items of expenditure as may, in the present case, be found to have been incurred by the Congress (R), either through the D.C.C. or the P.C.C. or the A.I.C.C., must be added to the election expenses of the respondent no. 1 as shown in the return (Exh. 5). Learned counsel further urged that if it is found that the total exceeds the prescribed limit of Rs 35,000/-, the election of the respondent no. 1 should be set aside.

In order to undo the effect of the decision of the Supreme Court in the case Kanwar Lal Gupta v Amar Nath Chawla (supra) the Representation of the People (Amendment) Ordinance, 1974 was promulgated by the President, which was later replaced by the Representation of the People (Amendment) Act, 1974, hereafter to be called the Amending Act. Two Explanations have been added to section 77 of the Representation of the People Act. Explanation I reads as follows: -

" Notwithstanding any judgment, order or decision of any Court to the contrary, any expenditure incurred or authorised in connection with the election of a candidate by a political

party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to be and shall not ever be deemed to have been, expenditure in connection with the election incurred or authorised by the candidate or by his election agent, for the purposes of this sub-section:

Provided that nothing contained in this Explanation shall affect: -

(a) any judgment, order or decision of the Supreme Court whereby the election of a candidate to the House of the People or to the Legislative Assembly of a State has been declared void or set aside before the commencement of the Representation of the People (Amendment) Ordinance, 1974 (13 of 1974).

(b) any judgment, order or decision of a High Court whereby the election of any such candidate has been declared void or set aside before the commencement of the said Ordinance if no appeal has been preferred to the Supreme Court against such judgment, order or decision of the High Court before such commencement and the period of limitation for filing such appeal has expired before such commencement."

The petitioner felt that the Amending Act was constitutionally void. Entertaining some doubt on the point whether the constitutionality of the Amending Act could be challenged in the ~~same~~ proceedings under the election petition, the petitioner filed Writ Petition No. 3761 of 1975, impleading the Union of India and Smt. Indira Nehru Gandhi (respondent no. 1 of the election petition) as the respondents. In the writ petition the petitioner first reproduced para 13 of the election petition which contained allegations regarding the undisclosed expenditure incurred by the respondent no. 1. The petitioner then reproduced para 17 of the written statement of the respondent no. 1 in extenso, which contained a reply to the allegations contained in para 13 of the election petition. The petitioner then proceeded to give a brief resume of the proceedings in the election petition and then said in para 16 that from the admissions made by the respondent no. 1 (of the election petition) and the documentary evidence it was apparent that the respondent no. 1, the State Government and the ruling Congress Party together incurred an expenditure well beyond the permissible limit of Rs 35,000/- and that the entire expenditure was incurred in connection with the election of respondent no. 1. Reference has thereafter been made to the decision of the Supreme Court in the case of Kanwar Lal Gupta v. Amar Nath Chawla (supra),

the Amending Ordinance and the Amending Act. The relevant provision of the Amending Act has been reproduced in the petition. Thereafter the petitioner has alleged the grounds on which he challenged the constitutional validity of the Amending Act and prayed for the following reliefs: -

- (i) That the Representation of the People (Amending) Ordinance, 1974 (no. 13 of 1974) and the Representation of the People (Amending) Act, 1974 (no. 58 of 1974) be declared unconstitutional and void.
- (ii) That a writ, direction or order be issued restraining the respondent no. 12 from placing any reliance on the alleged Ordinance and the Act aforesaid.

Counteraffidavits have been filed on behalf of both the respondents in the writ petition maintaining <sup>that</sup> the Amendment Act was constitutionally valid. The learned Attorney General appeared on behalf of the Union of India to support the constitutional validity thereof.

In case State of Bihar v. Hardutta Mills (A.I.R. 1960 Supreme Court 378) it was observed: -

" In cases where the vires of the statutory provisions are challenged on

constitutional grounds, it is essential that the material facts should first be clarified and ascertained with a view to determine whether the impugned provisions are attracted; if they are, the constitutional challenge to its validity must be examined and decided.

If, however, the facts admitted or proved do not attract the impugned provisions, there is no occasion to decide the issue about the vires of the said provisions. Any decisions on the said question would in such a case be purely academic. Courts are and should be reluctant to decide constitutional points merely as matters of academic importance."

In the case Parsi Municipality v. Lokmanya Mills (A.I.R. 1973 Supreme Court 1021) the Supreme Court observed: -

" It is a wise tradition with courts not to decide a constitutional question if the case can be disposed of on other grounds."

In the above view of the matter, it will be desirable first to consider the petitioner's case on the point of expenses, assuming that the Amendment

A 828  
97

(97)

Act does not exist and accepting the interpretation of section 77 of the Representation of the People Act as made by the Supreme Court in the case of Kanwar Lal Gupta v. Amar Nath Chawla (supra). In case it is found, after examining the petitioner's case in that manner, that the expenses incurred by the Congress (R) in connection with the election of the respondent no. 1, together with the expenses shown by the respondent no. 1 in her return (Exh. 5), exceed the prescribed limit of Rs 35,000/-, it will be further necessary to examine the contentions raised on either side about the constitutional validity of the Amending Act. The point whether the expenditure incurred by the State Government, independently of the respondent and the Congress (R), should or should not be added to the expenses of the candidate shall also have to be considered at the same time. If it is found that the expenditure incurred by the Congress Party in connection with the election of the respondent no. 1, together with the election expenses shown by her in the return (Exh. 5) do not exceed the prescribed limit, there will be no occasion to consider the constitutional validity of the Amending Act. // Before I proceed to examine each item of expenditure alleged by the petitioner, it will be necessary to take notice of the legal position regarding the burden of proof. It has been consistently held that a charge of corrupt practice is substantially akin to a criminal charge and the standard of proof therefore is the same as in a

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A828  
98

(98)

criminal trial. A grave and heavy onus, therefore, rests on the accuser to establish each and every ingredient of the charge by clear, unequivocal and unimpeachable evidence beyond reasonable doubt. A charge of corrupt practice cannot be established by a mere balance of probabilities and, if, after giving due consideration to the totality of the evidence and circumstances of the case, the mind of the Court suffers with reasonable doubt, it must be held that the charge is not proved. See Razik Ram v. J.S. Chauhan (A.I.R. 1975 Supreme Court 667, paras 15 and 16), Rahim Khan v. Khurshid Ahmad (A.I.R. 1975 Supreme Court 290), Maghrai Patodia v. R.K. Birla (A.I.R. 1971 Supreme Court 1295), Mohan Singh v. Dhanwari Lal (A.I.R. 1964 Supreme Court 1366, para 12) and Jagdish Singh v. Pratap Singh (A.I.R. 1965 Supreme Court 183).

Having thus noticed the legal position about the burden of proof, I now proceed to consider each item of expenditure, which according to the stand now taken by the petitioner was incurred either by Congress Party or the Government in connection with election of respondent no. 1.

1. Hiring Charges of Vehicles.

According to the petitioner, 32 vehicles, registration nos. whereof have been specified, had been hired and used for the purpose of election propaganda

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A828  
99

(99)

for the respondent no. 1 and an expenditure of over Rs 1,28,700/- was incurred in that connection. As already stated earlier, the respondent no. 1 denied this allegation but added that 23 vehicles (registration nos. whereof are specified in para 17(b) of the written statement) were so used by the District Congress Committee, Rae Bareilly, for election work of the Indian National Congress (R) in the three parliamentary constituencies viz. Rae Bareilly, Amethi (situate in district Sultanpur and partly in district Rae Bareilly) and Ram Sanehi Ghat (situate in district Barabanki and partly in the district of Rae Bareilly). It was further pleaded by the respondent no. 1 that the hiring charges of those vehicles, if any, <sup>were</sup> paid by the District Congress Committee <sup>out of</sup> its own party <sup>fund</sup> ~~work~~ as they were engaged for the party work by the District Congress Committee.

The petitioner did not lead any evidence to prove that the 32 vehicles specified in the election petition were either hired or engaged by or on behalf of the respondent no. 1 for election work. The petitioner has relied on the admission made by the respondent no. 1 in the written statement and it was urged on his behalf that the expenses incurred over hiring the 23 vehicles mentioned in the written statement of the respondent no. 1 are liable to be added to the election expenses of the respondent no. 1. Before, however, it is done the petitioner must prove

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A828  
100

two things: -

- (i) That the 23 vehicles referred to in para 17(b) of the written statement had been taken on hire;
- and
- (ii) That those 23 vehicles had been used in connection with the election of the respondent no. 1 and not for the general party propaganda.

Taking up point no. (i) above, it cannot be ignored that in view of the position held by the respondent no. 1, there <sup>could</sup> ~~can~~ be no dearth of people who could offer their vehicles, without charging anything, for election work within the constituency of respondent no. 1. It has not been admitted by the respondent no. 1 in the written statement that the 23 vehicles referred to by her had been obtained by the District Congress Committee on hire. All that has been pleaded is that they had been engaged or used by the District Congress Committee for the purposes of the election. While referring to the hire charges, the respondent no. 1 <sup>qualified</sup> ~~clarified~~ her statement in the written statement by saying that such charges, if any, were paid by the District Congress Committee. There is thus nothing in the written statement of the respondent no. 1 on which the petitioner may rely in order to contend that all the 23 vehicles referred to in the written statement had been obtained on hire, and that no vehicle was obtained gratis. The respondent no. 1 had disclosed the registration numbers of the vehicles

A 828  
101

(101)

in the written statement and, consequently, it cannot be successfully contended that it was impossible for him to adduce any evidence on the point whether the vehicles were obtained on hire or they, or any of them, were obtained gratis. Once the petitioner was in possession of the registration numbers of the vehicles, he could find out the names of the owners thereof from the Regional Transport Office concerned and he could examine at least some of them in order to prove whether the vehicles had been obtained on hire or gratis. The petitioner has not done so nor has he offered any explanation for that omission.

The petitioner had also to prove as to what was the rate of the hire charges for which the vehicles had been obtained and for what period they had been obtained. The petitioner could conveniently prove that fact also by examining the owners of the vehicles referred to by the respondent no. 1 in her written statement. The petitioner could even examine some other persons before whom the settlement between the owners of the vehicles and the representative of the District Congress Committee may have been reached regarding the rate of hire and the period for which the vehicles were obtained. Needless to say that no evidence has been adduced by the petitioner to prove the aforesaid fact.

Taking up the second point, it has been observed

A828  
102

(102)

in the case of Kanwar Lal Gupta v. Amar Nath Chawla (supra) that expenditure incurred by the political party sponsoring a candidate shall be liable to be added to the expenses of the candidate only if it is incurred in connection with the election of the candidate as distinguished from the expenditure on general party propaganda. It was clearly stated that a political party is free to incur any expenditure it likes on its general party propaganda. It was, therefore, necessary for the petitioner to prove that the 23 vehicles referred to in para 17 (b) of the written statement were used in connection with the election of the respondent and not on general party propaganda. It is admitted on both hands that part of Amethi constituency and part of Ram Sanahi Ghat constituency also fall within the district of Rae Bareilly. It is, therefore, not impossible that the vehicles were used for the general party propaganda for the benefit of the three candidates, without the propaganda being connected with the respondent no. 1. Obviously, a number of persons within the constituency would have seen the vehicles operating during the period of election. It was, therefore, not impossible for the petitioner to examine a couple of witnesses to indicate to the Court as to whether the vehicles were used only for party propaganda or they, or any of them, were used in connection with the election of the respondent no. 1. The petitioner, however, did not examine any witness to

particularly

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A826  
103

(103)

throw any light on that point, nor has he offered any explanation in that connection.

Learned counsel for the petitioner referred me to the documents (Exhs. A-10, A-42 and A-43) in order to contend on the basis thereof that the 23 vehicles referred by the respondent no. 1 in her written statement were actually engaged and used in connection with her election. Exh. A-10 is the copy of the letter dated 23rd February 1971 sent by Dal Bahadur Singh, President, District Congress Committee, Rae Bareilly, to the District Election Officer, Rae Bareilly, intimating that the 23 vehicles specified in that letter had been engaged by the District Congress Committee for election work in Rae Bareilly, Amethi and Ram Samahi Ghat constituencies. It was prayed that the vehicles may be derequisitioned. It appears that this letter failed to achieve its purpose. Sri Dal Bahadur Singh, therefore, scribbled out a note for Sri Yashpal Kapur (R.W. 32), on the original letter. This <sup>note</sup> ~~document~~ is Exh. A-43. Through this <sup>note</sup> ~~endorsement~~, Sri Dal Bahadur Singh requested Sri Yashpal Kapur to send a letter to the District Election Officer on the lines of his letter (Exh. A-10), requesting him that, since the vehicles specified in his letter had been engaged by the District Congress Committee, the same may be derequisitioned. It was also mentioned in this note that Sri Dal Bahadur Singh had tried to contact the candidates from the other two constituencies, namely

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A 826  
104

(104)

Amethi and Ram Sanchi Ghat, but they were not available. Exh. A-42 is the letter sent by Sri Yashpal Kapur to the District Election Officer, repeating the prayer that was contained in the letter dated 23rd February 1971 (Exh. A-10) sent by Sri Dal Bahadur Singh. The registration numbers of the vehicles <sup>was</sup> specified in the letter and it was urged that since the vehicles had been engaged by the District Congress Committee for election work in Rae Bareilly, Amethi and Ram Sanchi Ghat constituencies, they may be derequisitioned. Learned counsel then referred me to section 160 of the Representation of the People Act. Clause (b) of sub-sec. (1) thereof confers power on the State Government to requisition any vehicle, vessel etc. needed in the election for the purposes specified therein. The proviso appended to sub-sec. (1) states that no vehicle, vessel or animal which is being lawfully used by a candidate or his agent for any purpose connected with the election of such candidate shall be requisitioned under this sub-section until the completion of the poll at such election. Learned counsel for the petitioner stressed that in view of the provision contained in section 160 of the Representation of the People Act vehicles derequisitioned by the Government under sub-section (1) of section 160 could be released only on the ground that they were engaged and were being used by a particular candidate. It was urged that since Sri Yashpal Kapur, election agent of respondent no. 1, moved the

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A826  
105

(105)

District Election Officer for the release of the vehicles, it should be inferred that the vehicles were engaged and were being used in connection with the election of respondent no. 1. The argument, <sup>superficially looking</sup> appears to be quite attractive, but it does not bear out a careful scrutiny. As already stated, Sri Dal Bahadur Singh first wrote a letter to the District Election Officer for the release of the vehicles. It was expressly stated in that letter that the vehicles had been engaged by the District Congress Committee for the election work in the three parliamentary constituencies falling within the district of Rae Bareilly and consequently they may be released. The implied mandate in section 160, however, was that the vehicles requisitioned by the State Government under sub-section (1) thereof could not be de-requisitioned unless it was shown that they had been engaged or were being used by any candidate. Sri Dal Bahadur Singh had, therefore, no option but to request Sri Yashpal Kapur to send a letter to the District Election Officer in his name for the release of the vehicles. It cannot be lost sight of that even in his note (Exh. A-43) to Sri Yashpal Kapur Sri Dal Bahadur Singh expressly stated that the vehicles had been engaged by the District Congress Committee. Towards the end of the letter it is mentioned:

" Aap se nivedan hai ki zila nirvachan  
adhikari ko ukta patra avashya likh dewen

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taaki teeno Lok Sabha kshettra ka karya  
chunao jo ki zila congress committee ki  
ore se chal raha hai thap na ho jave."

As to why this request was made to Sri Yashpal Kapur only is also explained by the note (Exh. A-43), for, it states that efforts had been made to contact the candidates of the other two constituencies but it could not be possible and hence the request was made to Sri Yashpal Kapur. A perusal of the letter (Exh. A-42) sent by Sri Yashpal Kapur to the District Election Officer would reveal that it was explicitly stated in that letter as well that the 23 vehicles mentioned in that letter had been engaged by the District Congress Committee for election work in Rae Bareilly, Amethi and Ram Samahi Ghat constituencies. It was not mentioned even by implication that the vehicles had been engaged in connection with the election of the respondent no. 1. Sri Yashpal Kapur (R.W. 32) was <sup>cross</sup> ~~cross~~-examined on this point and he said that the vehicles specified in the list accompanying Exh. A-42 were used in the three parliamentary constituencies by the District Congress Committee. He was not confronted by the provision contained in section 160 of the Representation of the People Act and was not questioned specifically as to why did he write a letter to the District Election Officer for release of vehicles if they had not been engaged and were not being used in connection

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A028  
107

(107)

with the election work of the respondent no. 1. I do not think the documents Exhs. A-10, A-42 and A-43 can constitute a safe basis for concluding that the 23 vehicles had been engaged or used in connection with the election of the respondent no. 1. I concede that the letter Exh. A-42, sent by Sri Yashpal Kapur to the District Election Officer for release of vehicles, raises a suspicion that those vehicles or most of them were possibly used in connection with the election of the respondent no. 1. This is all the more so because according to Sri Yashpal Kapur, he had only one vehicle for his exclusive use. No other vehicle, according to him, was exclusively used in connection with the election of respondent no. 1. It indeed does not appear very credible that, for a candidate like the respondent no. 1, only one vehicle would have been used exclusively for her election work. All the same the fact remains that suspicion, howsoever strong it may be, cannot take the place of proof. I accordingly refuse to infer on the basis of the aforesaid three documents that the 23 vehicles mentioned in the letters (Exh. A-10 and Exh. A-42) were used in connection with the election work of the respondent no. 1.

Learned counsel for the petitioner next urged that the best way for the petitioner to prove as to how many vehicles were hired by the District Congress Committee in connection with the election work and for what amount, was to summon the election expenses of the District Congress Committee. Learned counsel pointed out

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A826  
108

that, with that end in view, the petitioner summoned Mohan Lal Tripathi (P.W. 59) along with the election expenses and Sri-Tripathi has filed a register (marked as no. 1) containing a statement of expenses. Learned counsel for the petitioner urged that help can be obtained from the entries contained in that register about the amount spent by the District Congress Committee over the vehicles used for election work. It will, therefore, be necessary to refer to the evidence of Sri Mohan Lal Tripathi (P.W. 59):

Sri Mohan Lal Tripathi (P.W. 59) is the existing General Secretary of the District Congress Committee, Rae Bareilly. He filed two registers and, for the sake of easy reference only, they were marked as Register No. 1 and Register No. 2. The Register No. 1, according to Sri Mohan Lal Tripathi, contains entries relating to the expenditure incurred in connection with the election in all the three parliamentary constituencies within the district of Rae Bareilly. Sri Mohan Lal Tripathi, however, further on showed a negative attitude in the witness-box in order to prevent the entries contained in the register being proved according to law. He said that since the register was five years' old, he could not say who had made the entries. It was then put to him whether the entries were in the hand of Sri Gaya Prasad Shukla and he said that even though he had seen Gaya Prasad Shukla writing, he could not say whether the

entries in the register were in his hand. The Register No. 1 contains initials of some person at two different places in lieu of the entries having been checked. The witness was, therefore, asked whether he could identify those initials and he said that he could not. Sri Mohan Lal Tripathi thus neither himself proved the entries in the register nor did he provide any information to enable the petitioner or the Court <sup>summon</sup> to some other person for proving those entries.

At the time of argument, learned counsel for the respondent no. 1 moved an application admitting four of the credit entries in the Register No. 1 and for getting them marked as exhibits. Learned counsel for the petitioner urged that since four of the entries have already been admitted by the respondent no. 1, it should be assumed that the respondent no. 1 has accepted the correctness of the entries and, consequently, there should be no hurdle in the way of the entire entries being taken into consideration. I am unable to accept this argument. Register no. 1, technically speaking, is not the document of respondent no. 1. It was produced in Court at the instance of the petitioner as petitioner's document. It was open to the respondent no. 1 to admit it in part, and that is what the respondent no. 1 has done by getting four of the entries therein exhibited. On that account it cannot be said that all the entries in the register <sup>stand</sup> ~~can be~~ proved.

Since the register containing the four entries admitted by the respondent no. 1 is not proved, no help can be taken by the petitioner from that register in order to prove the expenditure incurred by the District Congress Committee on the hiring of vehicles in question.

Learned counsel for the petitioner so urged that the respondent no. 1 did not file in Court the original account of election expenses. It was further urged that on the own admission of Sri Yashpal Kapur the account was maintained by Sri Gaya Prasad Shukla, and Sri Dal Bahadur Singh was overall in charge of election work, but the respondent no. 1 withheld those witnesses, even though they had been summoned to give evidence. According to learned counsel for the petitioner, this circumstance should lead to an inference being drawn against the respondent no. 1, and the inference would be that the vehicles specified in para 17(b) of the written statement, as also in the letters Exh. A-10 and A-42, had been obtained on hire in connection with the election work and were used in connection with the election of the respondent no. 1. I am afraid I cannot agree with this contention. It was necessary for the petitioner first to discharge the primary burden that lay on him. He should have adduced evidence by examining the owners or the drivers of some of the vehicles alleged to have been obtained on hire and should have further adduced evidence to show that the vehicles were used in

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A826  
111

(111)

in connection with the election of the respondent no. 1 and not for party propaganda. Without discharging that initial burden of proof, the petitioner cannot ask the Court to draw an inference against the respondent no. 1 on the ground that the expenses as contained in register no. 1 were not admitted by her and that Gaya Prasad Shukla and Dal Bahadur Singh, who played prominent role in the election, were summoned and yet not examined.

I, therefore, conclude that the petitioner has failed to prove that any expenditure was incurred either by the respondent no. 1 or by the District Congress Committee in obtaining any vehicles for doing work in connection with the respondent no. 1's election.

**2. COST OF PETROL AND DIESEL USED BY  
THE VEHICLES SPECIFIED IN PARA 13(1)  
OF THE PETITION.**

According to the petition, petrol and diesel costing Rs 43,230/- was used by those vehicles. I have, however, already held that the petitioner has failed to prove that the vehicles in question were used in connection with the election of the respondent no. 1 and that the possibility of the vehicles having been used only for party propaganda in <sup>all</sup> the three constituencies cannot be excluded.

According to the observations made by the Supreme Court in the case of Kanwar Lal Gupta v. Amar Nath Chawla (A.I.R. 1977 Supreme Court 308), on which reliance is placed by the petitioner, a political party can incur any expenditure on the party work and that expenditure cannot be added to the election expenses of the candidate sponsored by that party, unless it is shown that the expenditure had been incurred in connection with the election of the candidate inasmuch as the candidate took advantage of it or participated therein. As also stated earlier, not an iota of evidence has been led by the petitioner in order to show what propaganda was being done from those vehicles or for what purpose those vehicles were used. The respondent no. 1 of course did not visit the constituency except twice. It is not even suggested that the respondent no. 1 personally participated in the propaganda that was being done from those vehicles or that the respondent no. 1 utilised those vehicles in any other manner. Sri Yashpal Kapur was the election agent of the respondent no. 1 and there is no evidence even to show that Sri Yashpal Kapur in any manner participated in the propaganda that was being done from those vehicles or <sup>that he</sup> made use of any of those vehicles in any other manner for the purposes of the election. The election campaign continued for a fairly long time and people must have seen how and in what manner those

A 826  
113

(113)

vehicing were being used. Even if it was not possible for the petitioner to give evidence in regard to each of the 23 vehicles, evidence could be given at least in regard to some of them. This has not been done. Nor is there any explanation for that omission. There can be no presumption in the circumstances of the case to the effect that the vehicles were actually used in connection with the election of the respondent no. 1. Consequently any expenditure incurred over purchase of petrol for those vehicles cannot be added to the election expenses of the respondent no. 1.

3. PAYMENTS MADE TO THE DRIVERS OF THE  
VEHICLES SPECIFIED IN PARA 13(1)  
OF THE PETITION.

As already stated earlier, the petitioner alleged in the election petition that 32 vehicles had been hired and engaged by the respondent no. 1 but he adduced no evidence to prove it. The stand taken by him was that the expenditure incurred by the District Congress Committee on the vehicles hired by it should be added to the election expenses of the respondent no. 1. According to the respondent no. 1, only 23 vehicles had been hired by the District Congress Committee and, according to the stand taken by the petitioner at the time of arguments, the expenditure incurred in ~~providing~~ <sup>making</sup> ~~payments to the~~ <sup>payments to the</sup> drivers of the said 23 vehicles is in any case liable to be added to the election expenses of the respondent no. 1.

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While considering the first item of expenditure, I have already held that it is not proved that the said vehicles were in any manner used in connection with the election of the respondent no. 1 and that the possibility of those vehicles having been used solely for party work during the election cannot be excluded. In that view of the matter, any expenditure incurred in ~~making payments to the drivers of~~ those vehicles can by no means be added to the election expenses of the respondent no. 1.

4. Repairing and Servicing charges of the vehicles referred to above.

In view of my conclusion earlier that there is no evidence to prove that the said vehicles were used in connection with the election of the respondent no. 1, any amount spent over the repairing and servicing of those vehicles cannot be added to the election expenses of the respondent no. 1. It is needless to dilate any further on this point.

5. PAYMENTS MADE TO THE WORKERS ENGAGED FOR THE PURPOSE OF ELECTION PROPAGANDA.

According to the allegations contained in the petition, a sum of Rs 6,600/- was spent in making payments to the workers engaged for the purpose of election prppaganda. The allegation is of a bald nature. It does not disclose as to what was the

AD 96  
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approximate number of workers engaged and at what rate they had been engaged. If the petitioner knew that a large number of persons were engaged by the respondent no. 1 or his election agent on payment for doing election work, it should not have been impossible for the petitioner to disclose a few names out of those workers or to give some idea about the number of workers. This has not been done. When Sri Yashpal Kapur (R.W. 32) was cross-examined on this point, he denied that any workers had been engaged on payment for doing election work. According to him, people worked voluntarily for the respondent no. 1. There being no evidence to the contrary, the statement made by Sri Yashpal Kapur cannot reasonably be discarded.

I accordingly find that the petitioner has failed to prove this item of expenditure as well.

6. EXPENSES OF THE ERECTION OF  
RESPONDENT NO. 1'S POLLING  
CAMPS NEAR THE POLLING STATIONS  
ON THE POLLING DAYS.

According to the allegations in the petition, a sum of Rs 10,000/- had been spent in erection of polling camps. It is, however, not alleged in the petition as to what polling stations the respondent no. 1 had erected polling camps of the nature which could cost any substantial expenditure. The allegation is, therefore, of a wholly bald nature. The

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workers of the petitioner must have been present at all the polling stations and there appears no reason why the petitioner could not furnish some evidence to indicate as to what was the nature of the polling camps erected on behalf of the respondent no. 1 at those polling stations so that the Court could make any assessment of the expenditure incurred in that connection, if at all. Sri Yashpal Kapur, cross-examined on that point, said that he took round of quite a large number of polling stations on the polling days and at many of the polling stations there were no shamiyanas or kanats but daris and jajims alone had been spread, which had been brought by the local people. He further said that at some polling stations shamiyanas and kanats were there, but they too were arranged by the local people. Questioned further, he said that he could not say if the District Congress Committee arranged for the shamiyanas and kanats in the city, but so far as rural area was concerned, the arrangement was made by the local people only.

The result, therefore, is that on the evidence, as it exists on record, it is impossible to cull out as to what was the nature of the polling camps erected on behalf of the respondent no. 1 at the various polling stations. If shamiyanas and kanats had actually been used in erecting the polling camps at any polling station, at how many of the polling stations such arrangement was done. Assuming for a

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(117)

A 826  
117

moment that even if the District Congress Committee spent any money over the erection of polling camps, that expenditure is liable to be added to the election expenses of the respondent no. 1, <sup>being in a way</sup> if connected with her election, there should be some evidence to show the nature thereof and further the fact as to at how many polling stations it was done. Unless this <sup>information</sup> ~~allegation~~ is provided it would be pure speculation to form any idea about the number of the polling camps, the nature thereof and the expenditure incurred on the erection thereof. Such speculation to my mind is not permissible. I accordingly hold that the petitioner has failed to prove the expenditure alleged to have been incurred over erection of polling camps.

7. EXPENSES OF THE ERECTION OF  
ROSTRUMS FOR THE PUBLIC MEETINGS  
OF THE RESPONDENT NO. 1 WITHIN THE  
CONSTITUENCY ON 1st of February 1971  
and 25th of February 1971.

According to the allegation in the petition, a sum of Rs 1,32,000/- was spent on this head. Learned counsel for the petitioner urged that since barricading in the meeting forms part of the rostrum, as deposed to by Sri Mohinder Singh (R.W. 36), the cost of barricading has also been included under this head.

Now, so far as the barricading constructed at the place of the meeting is concerned, it is done by the State Government for the purposes of maintenance of law and order, apart from the purpose of security. It is the first duty of any Government established by law to maintain law and order. It is a matter of common knowledge that a very large number of people collect in order to see and hear the speeches of their Prime Minister, whoever he or she may be. If proper arrangements for controlling of the crowds at such meetings are not made, there can be stampeding in the event of any disturbance, and this can lead to greater trouble. It is, therefore, for controlling of the crowds that the Government breaks up the place of the meetings into segments by putting up barricades. Setting up of barricades does not facilitate in the Prime Minister delivering a speech. The Prime Minister can do so even without it.

It is thus apparent that the barricades had been set up by the Government at its own expense in discharge of its normal duty. Consequently that expenditure cannot be added to the election expenses of the respondent no. 1.

This takes me to the expenditure over construction of rostrums. It cannot be denied that the rostrums had been constructed by the Government for the use of the respondent so that she could deliver speeches to the audiences in her meetings from a commanding

position and in an effective manner. The question, however, is whether the expenditure incurred by the State Government would fall under section 77, even according to the interpretation put on that section in the case of Kanwar Lal Gupta v. Amar Nath Chawla (supra). After the decision in that case, there is no doubt that expenditure incurred by a political party in connection with the election of a candidate sponsored by it, as well as the expenditure incurred by friends and admirers of that candidate should be added to the election expenses of that candidate. This is so in order that a candidate may not circumvent the ceiling imposed by section 77 of the Act, by asking his political party or his friends and admirers to do what he himself cannot do. The Government seldom incurs any expenditure in connection with the election of any candidate. It does not, therefore, appear that the Legislature, while enacting section 77 of the Act, intended to include therein expenses incurred by the Government as well. Assuming, however, that the expenditure incurred by the State Government in connection with the construction of rostrums is liable to be added to the expenses of the respondent no. 1, in view of the fact that the rostrums were constructed as a result of the tour programmes sent from the office of the respondent no. 1 and she latter made use of those rostrums and did not disavow them, the total expenditure incurred by the State Government in that connection comes to Rs. 16,000/-. It may be appropriate to clarify the position further

in this connection. The respondent no. 1 attended 5 meetings on the occasion of her visit on 1st of February 1971. One of those meetings was addressed at Bachchrawan, which does not fall within the constituency of Rae Bareilly. Thus only four meetings at which rostrums were constructed were addressed by the respondent no. 1 in her constituency on 1st of February 1971. According to letter (Exh. 158) a sum of Rs 1600/- was spent on construction of each of those rostrums. The total costs of the four rostrums thus comes to Rs 6400/-. According to letter Exh. 201, rostrums had been constructed for 6 meetings addressed by the respondent no. 1 on 25th of February 1971. According to letter Exh. 190, <sup>v. a</sup> total amount of 9,600/- was spent on the construction of those rostrums. The total amount spent on the 10 rostrums comes to Rs 16,000/-. This amount will include the money paid by the District Congress Committee as their share of the cost of rostrums.

I, therefore, conclude that at best a sum of Rs 16,000/- can be added to the election expenses of the respondent no. 1 as expenditure incurred on the construction of rostrums.

8. EXPENSES OF LOUDSPEAKER ARRANGEMENTS.

According to the election petition, a sum of Rs 7,200/- was spent on the expenses of loudspeakers in the meeting addressed by the respondent no. 1 on the

A8226  
12-1

(121)

1st of February 1971 and 25th of February 1971. The letter (Exh. 177) sent by the Superintendent of Police, Rae Bareilly to Sri Gaya Prasad Shukla shows that arrangements for loudspeakers for the meetings addressed by the respondent no. 1 on 1st of February 1971 was done by him. Presumably, he did so <sup>on behalf of</sup> ~~for~~ the District Congress Committee. The letter (Exh. 193) shows that on the occasion of the visit of the respondent no. 1 to Rae Bareilly on 25th of February 1971 as well no expenditure had been incurred by the Government. Learned counsel for the petitioner, however, urged that even though the expenditure on arrangement of loudspeakers had been done by the District Congress Committee, or by Sri Gaya Prasad Shukla personally, the fact remains that the expenditure was directly connected with the election of respondent no. 1 and the latter participated therein by making use of those loudspeakers. Learned counsel stressed that the expenditure incurred over arrangement of loudspeakers should therefore be added to the election expenses of the respondent no. 1. There can be no denying the fact that the loudspeakers had been installed for the use of the respondent no. 1 and, consequently, I agree that, even though the expenditure was incurred in that connection by the District Congress Committee, it must be added to the expenses of the respondent no. 1. The petitioner has not led any evidence to show as to what was the number of

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A 826  
122

(122)

loudspeakers used at every meeting. On 1st of February 1971 the respondent no. 1 addressed meetings in the rural part of the constituency except one which appears to have been addressed by her in Rae Bareilly city (vide tour programmes Exhs. 26 and 42). In view of the fact that a large number of people should have gathered in the meetings of the respondent no. 1, because she happened to be the Prime Minister of the country, It should be presumed that at least 8 loudspeakers should have been used at each of the meetings. It would therefore follow that at the four meetings addressed on 1st of February 1971 the total number of loudspeakers installed would have been approximately 32. According to exhibit 193, loudspeakers were hired for the police lines at the rate of Rs 10/- per loudspeaker per day on the aforesaid occasions. Expenditure over installation of loudspeakers in the meetings of the respondent no. 1 can also be calculated on the same rate, and, thus calculated, the total cost of 32 loudspeakers would come to Rs 320/-. On 25th of February 1971 the respondent no. 1 addressed 6 meetings within the constituency. If 8 loudspeakers were installed at each of these meetings, the total number of loudspeakers for all the six meetings would come to 48. Calculating the expenditure incurred thereon at the rate of Rs 10/- per loudspeaker the total comes to Rs 480/-.

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Therefore, the total amount incurred on installation of loudspeakers in the meetings addressed by the respondent no. 1 on 1st of February 1971 and 25th of February 1971 comes to Rs 800/-.

Apart from it, electricity had also been provided for functioning of the loudspeakers at some meetings, as is apparent from the letter (Exh. 147). Through this letter the Superintendent of Police, Rae Bareilly asked the President of the Pradesh Congress Committee to pay a sum of Rs 1151/- as cost of energy supplied for the functioning of the loudspeakers. From the letter (Exh. 146) it appears that this amount was remitted by the Pradesh Congress Committee. This amount should be treated as amount spent in the installation of the loudspeakers.

Adding the amount of Rs 1151/- to the aforesaid amount of Rs 800/-, the total comes to Rs 1951/-.

Learned counsel for the petitioner also urged that some poles had been erected to carry the line to the place of the meetings and the expenditure incurred in that connection should also be added. It is, however, a matter of common knowledge that in the matter of temporary connections the poles etc. that are utilised for providing the temporary connection are taken away by the department after the energy is disconnected. In that view of the matter,

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(124)

A 826  
124

the amount spent over putting any poles for carrying the line to the places of the meetings cannot be held to be expenditure within the meaning of that word.

In the result, therefore, a sum of Rs 1951/- only<sup>1</sup> should be added to the election expenses of the respondent no. 1, being the expenditure incurred in connection with the arrangement of loudspeakers in the meetings addressed by the respondent no. 1.

9. EXPENSES OF RESPONDENT NO. 1'S  
TRANSPORT BY AIR FORCE PLANES  
ON 1st of February 1971 and  
25th of February 1971.

According to the allegations in the petition, a sum of Rs 1,68,000/- was spent in this connection. In answer to issue no. 2, however, I have held that none of the two flights were made by the respondent no. 1 in connection with her election and that, on the contrary, the flights on both occasions were parts of the general election tour of the country made by the respondent no. 1. For the same reasons<sup>2</sup> I find that any expenditure incurred in the flights made by the respondent no. 1 on 1st of February 1971 and 25th of February 1971 should not be added to the election expenses of the respondent no. 1.

10. EXPENSES OF BARRICADING OF THE ROUTES  
TO THE PLACES OF THE ELECTION MEETINGS  
on 1st of February 1971 and 25th of  
February 1971.

While answering Issue no. 3, I have held that

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A 82-6  
105

barricading along the routes had been done by the State Government as part of its own duty for controlling the crowd and maintaining law and order. That expenditure cannot in any way be held to be connected with the election of the respondent no. 1. The expenditure incurred by the State Government in setting up barricades along the routes by which the Prime Minister travelled on 1st of February 1971 and 25th of February 1971 cannot therefore be added to her election expenses.

11. EXPENSES ON T.A. & D.A. PAID TO THE MEMBERS OF THE POLICE FORCE LINING THE ROUTES ON 1st of February 1971 and 25th of February 1971.

Once I have concluded that barricading along the routes was done by the Government in discharge of its own duties to control the crowd and to maintain law and order, it is obvious that the members of the Police Force were also posted along the routes for the same purpose. Any amount paid to the members of the Police Force for lining the routes on the aforesaid dates cannot be held to be expenditure incurred in connection with the election of the respondent no. 1.

Consequently, any amount spent by the State Government in paying T.A. and D.A. to the members of the Police Force for their remaining on duty on 1st of February 1971 and 25th of February 1971 cannot be added to the election expenses of the respondent no. 1.

A826  
726

12. EXPENSES OF MOTOR TRANSPORT FOR THE CONVEYANCE OF RESPONDENT NO. 1 TO THE PLACES OF HER ELECTION MEETINGS on 1st of February 1971 and 25th of February 1971.

According to the allegation in the petition, a sum of Rs 2,000/- was spent under that head. According to the letter (Exh. 136), the charge payable for the car journey made by the respondent no. 1 was 75 paise per Kilometer. Learned counsel for the respondent no. 1 worked out the distances covered by the respondent no. 1 on 1st of February 1971 and 25th of February 1971 within her constituency and, calculating the charges payable at the rate 75 paise per kilometer, the figure arrived at by him comes to Rs 232=50 paise only. So Rs 232=50 p. was payable in that connection. A copy of the chart prepared by learned counsel for the respondent no. 1 was handed over by him to the learned counsel for the petitioner and the latter has not refuted the correctness thereof.

It should, therefore be accepted that only the expenditure of Rs 232=50 p. <sup>only</sup> was incurred in providing transport to the respondent no. 1 on 1st of February 1971 and 25th of February 1971.

Learned counsel for the petitioner urged that from the evidence on record it transpires that expenditure was also incurred on the telephone connection and telephone charges; on the meetings addressed by Sri Yashpal.

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Kapur within the constituency during the period of election; on the election material viz. pamphlets, posters etc.; and on the lighting arrangements made for some meetings addressed by the respondent no. 1. According to learned counsel, these expenses are also liable to be added to the election expenses of the respondent no. 1. None of these expenses were, however, pleaded in the petition. In fact, till the commencement of the arguments in the case the respondent no. 1 could not even anticipate that the petitioner shall rely on these expenses for the purposes of his case. It will, therefore, be prejudicial to the interest of the respondent no. 1 if the aforesaid expenses are taken into consideration. The submission made by learned counsel for the petitioner is accordingly negatived.

To sum up, the only <sup>possibly</sup> other expenses that can be added to the election expenses of the respondent no. 1 are: -

- |  |                 |
|--|-----------------|
| 1. Cost of construction of Rostrums                        | Rs 16,000/-     |
| 2. Cost incurred in installation of loudspeakers           | Rs 1,951/-      |
| 3. Cost in providing car transport to the respondent no. 1 | Rs 232=50       |
|  | <hr/>           |
|  | Rs 18,183= 50 p |

According to the return of election expenses of the respondent no. 1 (Exh. 5), an amount of Rs 12,892/97 p was incurred over her election expenses. Adding the

(128)

A-826  
128

aforesaid amount of Rs 18,183 = 50 to this figure of Rs 12,892 = 97 the total comes to Rs 31,075 = 47 p, i.e. sufficiently below the prescribed limit of Rs 35,000/-.

My conclusion, therefore, on Issue No. 9 is that the total amount of expenditure incurred or authorised by the respondent no. 1 or her election agent, together with the amount proved to have been incurred by the party or by the State Government in connection with her election, does not exceed the prescribed limit, and, therefore, the respondent no. 1 has not committed any corrupt practice under section 123(6) of the Act.

Coming to the writ petition, since the petitioner has failed to prove that the expenses incurred by the respondent no. 1 or her election agent, together with the expenses found to have been incurred by the political party viz. Congress (R) or the State Government, in connection with her election exceed the prescribed limit, no ground is made out for inquiring into the vires of the Amending Act and the Writ Petition should accordingly fail.

A826  
128ISSUE NO. 2 OF THE ADDITIONAL ISSUES:

In para 2 of the petition it is alleged that the respondent no. 1 held herself out as a prospective candidate from 22 Rae Bareilly parliamentary constituency, with the election in prospect, immediately after the dissolution of the Lok Sabha on 27th December 1970, and as such she was a candidate from the said constituency on and from 27th December 1970. The plea of the respondent on that point is contained in para 1 and para 1(a) of the additional written statement. She denied therein that she held herself out as a candidate from Rae Bareilly parliamentary constituency and was a candidate from that constituency from 27th December 1970 onwards. It was further pleaded by her that she held herself out as a candidate on filing her nomination paper in Rae Bareilly on 1st of February 1971.

The question for consideration, therefore, is as to whether the respondent no. 1 held herself out as a candidate only <sup>on</sup> 1st of February 1971, or she had held herself out as a candidate on any date earlier than that. If so, from what date?

The plea of the respondent no. 1 that she held herself out as a candidate from 22 Rae Bareilly parliamentary constituency on 1st of February 1971, on filing her nomination paper at Rae Bareilly, has no

legs to stand. There is overwhelming documentary evidence which points to the conclusion that the respondent no. 1 had positively held herself out as a candidate before that day.

Exh. 26 is the copy of a radiogram dated 25th of January 1971 sent by the Private Secretary of the respondent no. 1 to the Chief Secretary, U.P. Government Lucknow, apprising him of the tour programme of respondent no. 1. According to this tour programme, the respondent no. 1 had to file her nomination at Rae Bareilly on 1st of February 1971 at 12 o'clock noon. Exh. 27 is a letter dated 27th January 1971 sent by the Assistant Secretary, U.P. Government to the various authorities, enclosing therewith a copy of this tour programme. According to that copy as well, the respondent no. 1 was to file her nomination paper at Rae Bareilly at 12.15 o'clock noon. Exh. 188 is copy of a letter sent by the Superintendent of Police, Rae Bareilly to the Superintendent of Police, Training and Security Branch, Intelligence Department, U.P., dated 25th January 1971, enclosing therewith a copy of the d.o. letter of the same date sent by him to D.I.G. Police, Lucknow, asking for police force. In the copy of that d.o. letter it is stated that the Congress Office at Rae Bareilly had indicated to him (Superintendent of Police, Rae Bareilly) the tour programme of the respondent no. 1 as specified therein. According to that tour programme, the respondent no. 1 was to file her nomination paper

A 8226  
131

(131)

at Collectorate, Rae Bareli between 12 and 12.15 o'clock noon. Raj Kumar Singh (P.W. 56) is Secretary, Parliamentary Affairs of All India Congress Committee. According to him, the tour programme of the Prime Minister as leader of the party is prepared in the office of the All India Congress Committee. It is then sent to the Prime Minister's secretariat and it is only after the tour programme is approved by the respondent no. 1 that it is issued from there. The respondent no. 1 also, during her cross-examination, conceded that the tour programme concerning the political work is sent by the All India Congress Committee and that they are finalised after her approval is obtained. She further conceded that the tour programme (Exh. 26) must have been issued after she had approved of it.

Since a tour programme was received from the office of the respondent no. 1 by the State Government at Lucknow on 25th of January 1971, and since a tour programme was also received in the Congress Office at Rae Bareli on the same day, as is apparent from Exhibit 188, and further since it was explicitly stated in those tour programmes that the respondent no. 1 would file her nomination paper at Rae Bareli on 1st of February 1971 at or about 12 o'clock noon, there appears no escape from the conclusion that the respondent no. 1 had held herself out as a candidate from Rae Bareli constituency at least some time before

A 826  
132

(132)

25th of January 1971.

A reference may also be made at this stage to the statement on oath made by Smt. Gandhi, respondent no. 1 (R.W. 37). She deposed that a final decision for contesting election to the Lok Sabha from the Rae Bareilly parliamentary constituency was taken by her on 1st of February 1971 and that she did not make any announcement or declaration before 1st of February 1971 in that regard. Learned counsel for the respondent no. 1 stressed that the statement made by the respondent no. 1 could not be disbelieved. In fact he even suggested that while assessing the weight of the evidence of the respondent no. 1, the fact of the high office held by her should not be ignored. It should be conceded that when a person appears in Court as a witness and his evidence appears to be natural and probable, the status and respectability attaching to him is also taken into consideration to lend further assurance to his testimony. The status and respectability of the witness alone cannot, however, induce the Court to accept his/her testimony, more so when he or she is himself/herself a party to the proceedings and interested in the result of the case. In such cases the evidence of that person has to be assessed without in any manner being obsessed by the high office that he or she may hold. The evidence of the respondent no. 1 should therefore be assessed according

A026  
133

(133)

to the established principles, like the evidence of any other witness without in any manner being influenced by her high office.

The respondent no. 1 stated in cross-examination that she took decision to contest election from Rae Bareli after her arrival there, and after she had talked to the President of the P.C.C. and the workers of the area. Her attention was then invited to the tour programme (Exh. 26) dated 25th of January 1971, which, inter alia, mentioned that the respondent no. 1 was to file her nomination paper at Rae Bareli on 1st of February 1971. She then said that the words "file nomination" appeared to have been added in ink and, consequently, she could not say whether those words existed originally or not. Her attention was then invited to the tour programme (Exh. 43) and she then conceded that she could recollect that the tour programme approved by her included the filing of nomination paper by her at Rae Bareli at 11.50 a.m. She, however, still asserted that no decision had been taken by her on or about 25th of January 1971 to file the nomination paper for contesting election from Rae Bareli constituency. She said that it was tentatively mentioned in the tour programme, so that if she decided to contest election from Rae Bareli the nomination paper could be filed there on 1st of February 1971 at 11.50 a.m. Now, this statement-argument does not appear to me to be natural or probable.

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A026  
134

(134)

If no such decision had really been taken, there is no reason why it should have been explicitly mentioned in the tour programme that she would file her nomination paper at Rae Bareilly on 1st of February 1971. If she were eventually to take a decision on her arrival at Rae Bareilly on 1st of February 1971, she could file the nomination paper there without that fact ~~even~~ <sup>even</sup> being tentatively mentioned in the tour programme, which was <sup>officially</sup> ~~finally~~ communicated to the State Government. It is also worthy of notice that this fact was also mentioned in the copy of the tour programme received in the Congress Office at Rae Bareilly. It can safely be inferred from the letter (Exh. 188) that the tour programme was received in the Congress Office at Rae Bareilly on or <sup>before</sup> ~~about~~ 25th of January 1971. If the respondent no. 1 had not decided till 25th January 1971 to contest election from Rae Bareilly, why it was so mentioned in the tour programmes sent to the State Government and to the Congress Office at Rae Bareilly that the respondent no. 1 shall file her nomination paper there on 1st of February 1971.

The respondent no. 1 said that she had several places in her mind and it was for this reason that she did not take a decision in the matter till 1st of February 1971, on which date she went to Rae Bareilly and had a talk with the Congress workers there. It was, therefore, put to her whether in the tour

(135)

programme relating to any other district or place, issued from her office, there was a mention of her filing the nomination paper from there, and she had to concede that no tour programme was issued from her office indicating that she would file her nomination paper from any place other than Rae Bareli. The nomination paper could be filed only between 1st of February and 3rd of February 1971. If it were true that the respondent no. 1 had other places in her mind till 1st of February 1971, from where she contemplated to contest election, the tour programmes covering those places would also normally have been issued, and it should have been tentatively mentioned in those tour programmes as well, as was mentioned in the tour programme (Exh. 26), that she would file her nomination paper there. The fact that in the tour programme (Exh. 26), issued from the office of respondent no. 1, it was mentioned that the respondent no. 1 was to file her nomination paper at Rae Bareli, together with the fact that no tour programme was issued indicating that she would file her nomination paper from any place other than Rae Bareli, leaves no room for doubt that the respondent no. 1 had decided before 25th of January 1971 to contest election from Rae Bareli. The fact that a copy of the tour programme indicating that fact was also received in the Congress Office at Rae Bareli on or about 25th January 1971, further shows that the respondent no. 1 not only had formed a decision to

(136)

A-028  
736

contest election from Rae Bareilly, but ~~further~~ that she had also conveyed that decision to the constituency. In fact even the tour programme (Exh. 26) received by the State Government was not to be kept secret. It was conveyed to the relevant authorities and a <sup>copy</sup> copy of that tour programme (Exh. 43) <sup>were</sup> ~~was~~, inter alia, forwarded to the President, District Congress Committee and Sri Gaya Prasad Shukla of the Kendriya Congress Karyalaya, Rae Bareilly. The explanation given by the respondent no. 1 in regard to the mention in the tour programme (Exh. 26) about her filing nomination paper <sup>was</sup> does not bear any scrutiny.

It may not be out of place to add that the statement made by the respondent no. 1 that she had decided to contest election from Rae Bareilly only after her arrival there on 1st of February 1971 and after her having talked to the President of the P.C.C. and local Congress workers is also inconsistent with her own pleadings. Para 1(a) of her additional written statement reads as follows: -

" That in fact there were offers, from other parliamentary constituencies in India, requesting this respondent to stand as a candidate for the Lok Sabha from those constituencies and a final decision in regard to the constituency was announced by the All India Congress Committee only on January 29, 1971, and

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(137)

A828  
137

she only held herself out as a candidate on filing her nomination at Rae Bareilly on 1st of February 1971 (underlining is by me)."

The contents of para 1(a) from beginning up to the words 'only on January 29, 1971' were verified by the respondent no. 1 to be true on information received from Sri K.N.Joshi, Parliamentary Secretary of the All India Congress Committee, New Delhi. Further, a final decision about the candidature of respondent no. 1 to contest election from Rae Bareilly parliamentary constituency could not have been taken by the All India Congress Committee without the respondent no. 1 herself arriving at a decision in that regard. The respondent no. 1 was, therefore, questioned on that point in cross-examination. She first said that the Congress Party did not take any decision about the constituency from which she was to contest the election. Her attention was <sup>then</sup> invited to para 1(a) of the Additional Written Statement and she said: -

" There appears to be some mistake in the averment contained in this paragraph of the Additional Written Statement. As I know, the All India Congress Committee did not take any decision or make any announcement regarding my candidature on January 29, 1971. Sri K.N.Joshi, Parliamentary Secretary of the All India Congress

A896  
138

Committee did not, within my knowledge, make any announcement regarding my candidature on 29th of January 1971."

She was then asked whether she received any information from Sri K.N. Joshi, Parliamentary Secretary of the All India Congress Committee, New Delhi, to the effect that the final decision in regard to her constituency was announced by the All India Congress Committee on January 29, 1971. After going through the Additional Written Statement the respondent no. 1 replied that even though it was so stated therein, she did not recollect about it. She was then asked whether she could say with certainty that no announcement was made by the All India Congress Committee on January 29, 1971 about her constituency and she only replied that she did not know whether any such announcement was or was not made. Pressed further, she said that she had read the Additional Written Statement before signing it and that, to the best of her ability, she took care that whatever was contained in the Additional Written Statement was true. She, however, added that the language contained in the Additional Written Statement was legal language which she found difficult to clearly understand. All that I would say is that the statement made by the respondent no. 1 fails to satisfactorily explain the inconsistency.

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Learned counsel for the respondent no. 1, in a bid to explain the inconsistency, urged at the time of argument that the pleadings contained in para 1(a) of the Additional Written Statement only meant that the final decision taken by the All India Congress Committee was to leave the matter to the respondent no. 1 for a decision being taken by her. The argument is stated only to be rejected. If all that the All India Congress Committee had done was to have left the matter to be decided by the respondent no. 1, it could not be said that the All India Congress Committee had taken any decision, much less a final decision, about the constituency. The explanation offered by learned counsel for the respondent no. 1 can also, therefore, be not accepted.

Reference may also be made here to interrogatory no. 5 of the second set of interrogatories and the answer thereto given by Sri Jagpat Dubey, the Attorney of the respondent. Interrogatory no. 5 reads as follows: -

" Whether the All India Congress Committee decided your candidature without having your approval? (If the answer is in the negative , on what date did you give your approval for being a candidate from 22 Rae Bareli Parliamentary Constituency)."

H328  
140

The answer to this interrogatory is as follows: -

" The decision of the All India Congress Committee was a tentative one. It was open to respondent no. 1 to stand from any constituency, whether it was 22 Rae Bareilly Parliamentary Constituency or any other, and the All India Congress Committee would not have objected to any decision by her. The question, therefore, of respondent no. 1 giving any formal approval to any decision did not arise."

From the above it would appear that, till the stage of filing reply to the interrogatories, the respondent no. 1 did not deny that a decision had been taken by the All India Congress Committee about her candidature. All that she said was that the decision was tentative and could be changed by her. When the respondent no. 1, however, entered the witness-box she took a different stand and said that so far as she knew no decision about her candidature was taken by the All India Congress Committee. When the attention of the respondent no. 1 was invited to the aforesaid reply given on her behalf, she again said that she had no knowledge if the All India Congress Committee took even a tentative decision about her constituency. Now, if she had no knowledge about any such decision, how and under what circumstances it was admitted in reply to the interrogatories served on her, remains to be explained.

In view of the pleadings contained in para 1(a) of the Additional Written Statement and in view of the reply to interrogatory no. 5, I have no doubt that the All India Congress Committee did take a formal decision about the candidature of respondent no. 1, namely that she would contest election from Rae Bareli.

The respondent no. 1 was the unquestioned leader of the Congress (R). The A.I.C.C. could not, therefore, have taken a decision about the constituency of respondent no. 1 without the respondent no. 1 having given out her own mind. This circumstance, together with the fact that the tour programme issued from the office of the respondent no. 1 on 25th January 1971, copies whereof had been sent not only to the Government but also to the Congress Office at Rae Bareli, intimating that the respondent no. 1 shall file her nomination paper at Rae Bareli on 1st of February 1971, leaves no room for doubt that the respondent no. 1 held herself out as a candidate <sup>before</sup> ~~on or about~~ 25th of January 1971. The plea of the respondent no. 1 that she held herself out as a candidate for the first time on the 1st of February 1971 is not established to be true.

Reference was also made by learned counsel for respondent no. 1 in this connection to the statement on oath made by Sri Yashpal Kapur (R.W.32).

(142)

A 826  
142

I shall deal with the evidence of Sri Yashpal Kapur exhaustively when I record my finding on Issue No. 1 (first set) and on Additional Issue no. 1. It should be sufficient at this stage to consider only that part of the testimony of Sri Yashpal Kapur which relates to the point under consideration. Sri Yashpal Kapur stated that on the arrival of the respondent no. 1 at Rae Bareilly Inspection House, the members of the District Congress Committee, Rae Bareilly, had an interview with her in which they requested her to contest election to the Lok Sabha from Rae Bareilly. He further said that after having heard the members of the District Congress Committee, the respondent no. 1 took Sri Kamalapati Tripathi aside and talked to him. He further said that the respondent no. 1 also talked to him, after having talked to Sri Kamalapati Tripathi, and it was thereafter that she announced that she had decided to contest election to the Lok Sabha. <sup>from Rae-Bareilly</sup> The statement appears to be too artificial to carry credence. In the first instance, in view of the fact that the tour programme had already been sent by the respondent no. 1 to the State Government as well as to the Congress Office at Rae Bareilly, intimating that she would file her nomination paper at Rae Bareilly on 1st of February 1971, it is not understandable why the members of the District Congress Committee should have waited upon the respondent no. 1 in order to request her to contest election from Rae Bareilly. Again, on the own admission

(143)

A826  
T43

of Sri Yashpal Kapur, Sri Kamlapati Tripathi and respondent no. 1 had travelled together in the same plane from Delhi to Amausi. It is not disputed to the respondent no. 1 that Rae Bareilly ~~at least~~ was one of those places from where she intended to contest election. Sri Kamlapati Tripathi was the President of the U.P. Congress Committee. Therefore, if respondent no. 1 had to talk to Sri Kamlapati Tripathi about the propriety of her contesting election from Rae Bareilly, or anything connected with it, she could conveniently talk to him in the plane during the journey between Delhi and Amausi. Further, it was also admitted by Sri Yashpal Kapur that the respondent no. 1 and Sri Kamlapati Tripathi travelled in the same car from Lucknow to Rae Bareilly. Therefore, even if the respondent no. 1 had not talked to Sri Kamlapati Tripathi about any matter connected with her election when she travelled in the plane with him, she could have done so when she travelled with Sri Tripathi from Lucknow to Rae Bareilly in the same car. In the face of these circumstances, it is not at all understandable why it should have become necessary for the respondent no. 1 to take ~~aside~~ Sri Kamlapati Tripathi <sup>and talk to him</sup> aside, after she had talked to the members of the District Congress Committee at the Inspection House, Rae Bareilly, before announcing her decision to contest the election from Rae Bareilly. I have no doubt in my mind that Sri Yashpal Kapur made the aforesaid statement only

(144)

A026-  
144

to fortify the plea set up by the respondent no. 1 that she had decided to contest election from Rae Bareli only on 1st of February 1971 and not earlier than that.

Sri Yashpal Kapur was also confronted with the tour programmes (Exh. 26 and Exh. 43), wherein it was explicitly stated that the respondent no. 1 was to file her nomination paper at Rae Bareli on 1st of February 1971. He, however, said that he still maintained that the respondent no. 1 had not taken any decision before 1st of February 1971 to contest election from Rae Bareli. He was then questioned as to what was the basis of that statement made by him, and to that the witness replied: -

" My reply that the respondent no. 1 had taken a decision to contest election from Rae Bareli constituency on 1st of February 1971 is based on what happened in the Inspection House that day within my view."

I have, however, already said that the statement made by Sri Yashpal Kapur about what happened at the Inspection House, Rae Bareli, on 1st of February 1971 is not at all probable.

Sri Yashpal Kapur was also confronted with the news item (Exh. 84 A) published in the issue of 'Navjeevan' dated 15th of January 1971, wherein, quoting

(145)

A826  
145

the decision of the Congress Parliamentary Board, it was said that the respondent no. 1 would contest election from Rae Bareilly and that sitting members of Parliament in U.P. shall contest election from the same constituency from which they had been elected to the dissolved Parliament. The witness replied that he was not aware whether any such decision had been taken by the Central Congress Parliamentary Board, nor could he vouch whether the news item had been rightly published. Sri Yashpal Kapur was examined as a witness in the case long after the election was over and it does not appear probable that, till the date of his examination, he did not even know whether the Congress Parliamentary Board had or had not taken any decision of the nature reported in the news item (Exh. 84-A). It is also worthy of notice in this connection that, on his own admission, the respondent no. 1 was <sup>N. at</sup> Delhi between 21st January 1971 and 26th January 1971. He was not a stranger to the respondent no. 1. He had worked for quite a long time in the respondent no. 1's secretariat and, on his own admission, the respondent no. 1 had such confidence in him that when he resigned <sup>in 1967</sup> in 1971, the respondent no. 1 insisted on his rejoining her secretariat. In the context of that association between him and the respondent no. 1, the natural course of conduct on his part was to have apprised the respondent no. 1, when he met her at Delhi during the period between 21st January and

(146)

A 896  
146

and 26th January 1971, of the alleged decision of the Congress Parliamentary Board published in the 'Navjeevan' dated 15th of January 1971, and to have inquired from her whether it was true. Sri Yashpal Kapur conceded that during the period between 21st January and 26th January 1971 he met respondent no. 1 twice but did not ask her anything about it. On the contrary, he stated that the respondent no. 1 told him that leaders of several other States had asked her to contest election from their States. The witness said that even then he did not inquire from the respondent no. 1 as to what had been decided by her. Now, it is not <sup>at</sup> all probable that having come across the next item (Exh. 84 A) at Rae Bareilly and despite having met the respondent no. 1 at Delhi twice thereafter, he would neither have apprised the respondent no. 1 about the news item nor would have cared to know from her whether it was true or not.

For all the aforesaid reasons, no reliance can be placed on the statement of Sri Yashpal Kapur to conclude that the respondent no. 1 held herself out as a candidate from Rae Bareilly constituency for the first time on 1st of February 1971.

The result, therefore, is that the plea set up by the respondent no. 1 that she held herself out as a candidate for the first time on 1st of February 1971 as a candidate from Rae Bareilly Parliamentary Constituency has to be discarded.

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(147)

A 828  
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It is then to be considered as to when did the respondent no. 1 <sup>really</sup> hold herself out as a candidate.

The expression 'candidate' has been defined in section 79(b) of the Act as follows: -

" 'candidate' means a person who has been or claims to have been duly nominated as a candidate at any election, and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate."

(Underlining by me)

The question as to when a person becomes a candidate within the meaning of section 79(b) of the Representation of the People Act came in for consideration in the case S. Khader Sheriff appellant v. Munnugwami (A.I.R. 1955 Supreme Court 775 at p. 777), and it was observed: -

" When, therefore, a question arises under section 79(b) whether a person had become a candidate by a given point of time, what has to be seen is whether at that time he had clearly and unambiguously declared his intention to stand as a candidate, so that it could be said of him that he had held himself out as a prospective candidate. That he has merely formed an

intention to stand for an election is not sufficient to make him a prospective candidate. That can only be if he communicates that intention to the outside world by declaration or conduct from which it could be inferred that he intends to stand as a candidate."

The petitioner summoned from the All India Radio the tapes (Exhs. 129 to 131) of the Press Conference addressed by the respondent no. 1 on 29th December 1970. Sri P. Mathur (P.W. 60), Station Director, All India Radio, Lucknow, produced the tapes before this Court. He also filed the transcript (Exh. 132) of the Press Conference which he claimed to have prepared with the assistance of the tape recorded in his presence. The tape was, however, played in Court in the presence of counsel for the parties, when Sri P. Mathur was still in the witness-box, to check whether the relevant portion of the transcript (sidelined by me) tallied with the tape, and it was found to tally. Sri P. Mathur (P.W. 60) also stated in cross-examination that he identified the voice on the tape to be that of the respondent no. 1. The sidelined portion of the transcript of the tape record (Exh. 132) was read over to the respondent no. 1 when she entered the witness-box and she too admitted it to be correct. The relevant question put to the respondent no. 1 and the answer given by her <sup>in the press conference</sup> according to the transcript,

(Exh. 132) are as follows: -

" Q. A short while ago there was a meeting of the opposition leaders and there they said that the Prime Minister is changing her constituency from Rae Bareilly to Gurgaon?

R.M. No, I am not."

It is worthy of notice that in December 1970 a Government formed by the opposition parties, popularly known as S.V.D. Government, was in the saddle in U.P. It was in that context that question was put to the respondent no. 1 that the opposition leaders were saying that she would not contest election from Rae Bareilly and that she would change her constituency to Gurgaon. The answer made by the respondent no. 1 to my mind, therefore, did not mean anything except that she was not going to change her constituency and that she would contest the election from Rae Bareilly.

When the respondent no. 1 entered the witness-box and the aforesaid question and answer were put to her by her own counsel in the examination-in-chief with a view to bring on record her explanation to it, she stated that her reply did not 'necessarily' mean that she would not change her constituency and that she only meant that she would not contest from Gurgaon constituency. She was again questioned on that point

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A 826  
150

(150)

in cross-examination and she then stated:

"It is wrong to assume that while giving the reply marked B in the transcript (Exh. 132) I conveyed that I was not changing my constituency from Rae Bareilly at all and emphatically held out that I would contest election again from Rae Bareilly. In my opinion there is no basis for this assumption."

I have given my very careful and dispassionate consideration to the aforesaid reply given by respondent no. 1 during her cross-examination and I regret my inability to accept it. As I have already stated earlier, the question was put to the respondent no. 1 in a particular setting, namely that the opposition Government was in power in the State of U.P. and the leaders of that Government were saying, <sup>that</sup> presumably <sup>because of</sup> ~~on~~ their being in power in U.P., the respondent no. 1 was changing her constituency from Rae Bareilly. It was a sort of challenge and was conveyed to the respondent no. 1 in the Press Conference in the same form by a question put by some press correspondent. The emphatic manner in which the respondent no. 1 replied to that question, saying 'No, I am not' cannot under the circumstances be interpreted to mean anything except that she conveyed <sup>that</sup> whatever the <sup>opposition</sup> leaders were saying was not correct and that she was not changing her constituency. It also

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A 826  
151

(151)

deserves consideration in this connection that at the press conference mention was made only of two places viz. Rae Bareli (the original constituency) and Gurgaon (as prospective constituency). No other constituency was either named or suggested. In that context the answer given by the respondent no. 1 could mean and convey nothing except that she is not changing her constituency and that she would contest election from Rae Bareli. If there was a mention of some other constituency as well besides Gurgaon, there could be some substance in the explanation sought to be given by the respondent no. 1 in the Court that, while saying "No, I am not", she only meant to convey that she would not change her constituency from Rae Bareli to Gurgaon and that she could yet change her constituency to some other place.

To my mind, therefore, by making the aforesaid statement at the Press Conference on 29th December 1970 the respondent no. 1 clearly and unambiguously indicated to the outside world her declaration to contest election from Rae Bareli and she should therefore be deemed to have been a candidate from that very date.

It may be appropriate at this stage to dispose of some technical objections raised by learned counsel for the respondent no. 1, before proceeding further with this point. Learned counsel for respondent no. 1

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A028  
152

(152)

urged that the election should be in prospect when any person holds himself/herself out as a prospective candidate, so as to fall within the definition of the word 'candidate' as contained in section 79(b) of the Act. Learned counsel then urged that the expression 'with the election in prospect' occurring in section 79(b) should be construed to mean the commencement of the election, i.e. when a writ is issued in that connection. Reference was made by learned counsel for the respondent no. 1 to several cases in this connection: The Counties of Elgin and Nairn Case (V O' M & H p. 1); The Lichfield Case (V O' M & H p. 27); The Borough of Great Yarmouth Case (V O' M & H p. 176); The Bodmin Division of the County of Cornwall Case (V O' M & H p. 223); The Borough of Walsall Case (IV O' M & H p. 123) and The Berwick-Upon-Tweed Division of the County of Northumberland Case (VII O' M & H p. 1).

In the first instance, it cannot be culled out from these cases that, according to rule laid down therein, the expression 'election in prospect' should be interpreted to mean that the election commences with the issue of a writ. The consensus as expressed in these cases appears to be that election commences when it is reasonably imminent. In the Counties of Elgin and Nairn Case it was observed at page 10: -

" For some reason, good or bad, the

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A828  
153

Legislature has confined the enactment to expenses which can be attributed to the 'conduct and management of the election'; and these words, as it seems to me, at least suggest and contemplate an election, which is not in nubibus, but is reasonably imminent."

And again on page: "

"... the period of election which was to be conducted and managed - was a period not at least much anterior, I will not say to the date of nomination, but to the group or series of events which immediately precede the nomination, and which, as we all know, begin in the case of a general election with the announcement of the Dissolution, and in the case of a bye-election with the announcement of the vacancy."

In the Lichfield Division of the County of Stafford Case, Baron Pollock J. posed the following question:

"The question no doubt turns on when the election may be said to have commenced."

After referring to Elgin's case, he said:

"I will not refer to the facts of it

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A826  
154

because it would only complicate the matter, but I entirely agree with Lord M'Laren when he said that what is meant by 'an election' is a definite election within the knowledge and contemplation of parties."

In the Borough of Great Yarmouth Case, Justice Channell said: at page 188: -

" I quite adopt the view which has been put forward by other Judges that the time when the election is supposed to commence may, for several purposes, be an important matter, and that it certainly is not limited to the commencement of the active part of the election by the occurrence of a vacancy or by the issue of the writ."

In the Bodmin Division of the County of Cornwall case Lawrence J. said at page 228: -

" In view of our findings upon other charges it becomes unnecessary to discuss this point at length, but I wish to say a few words, since, if it had been necessary to determine the point, which it is not, I should have felt bound to come to the conclusion that this election began months before the issue of the writ, and that the expenses of all these meetings ought to have been returned."

In Borough of Walsall case it was said at page 125: -

" I cannot think that the period of candidature or the period of agency is to be limited, either by the date of the issuing of the writ, or by the day of nomination; but I think that when an election is contemplated as probable in the course of a few months and it is well recognised that to secure the election of a particular candidate active steps must be taken and every exertion made at once to secure that object, it cannot be reasonably said that there can be no agency to take such steps, or to make such exertions, until the immediate approach of the election by the issuing of the writ."

In the Berwick-UPON-Tweed Case it was said on page 30: -

" Mr. Philipson was nominated candidate upon the 4th of November. It is unnecessary to decide the exact day upon which the election began, but having regard to the facts and to Mr. Philipson's own admission when he said, 'On October 19th, we knew there was going to be an election' it is sufficient to decide that the election certainly began not later than October 19th, the day after the

A 826  
156

Coalition Party meeting at the Carlton Club  
in London."

Apart from the fact that in <sup>none</sup> ~~one~~ of the aforesaid cases it has been ~~categorically~~ said that election shall ~~always~~ be deemed to commence or be in prospect with the issue of the notification, there is also the fact that the law in this country is not precisely the same as in England. Election Tribunal Vellore, while deciding Munnuswami Gounder v. Khader Sheriff and others (4 E.L.R. 283 at p. 292), said: -

" In this respect the law in this country makes a significant departure and that departure, in our opinion, again emphasises the application of a <sup>vital</sup> democratic principle, in the light of differing conditions. We may here note, briefly, a feature of the political practice in the United Kingdom, which repeatedly colours and influences the English Cases, viz. the fact that there a person is often adopted as a candidate by a political association, without any move on his behalf, until ~~such~~ a particular stage when the adoption is formalised by his consent."

Be it as it may, in the case before us, the election became in prospect immediately after the dissolution of the Lok Sabha on 27th December 1970. I do not think this view is inconsistent either with the observations

made in any of the English decisions cited by learned counsel for the respondent no. 1 or any of the Indian decisions. In the case Krishna Kant v. Barnali (A.I.R. 1968 Orissa 200) a declaration was made by the Home Minister, Government of India on 10th of December 1965 postponing general election of Orissa Legislative Assembly till the general elections to be held early in 1967. On 20th December 1965 the Election Commission communicated the aforesaid decision of the Government of India to the Chief Electoral Officer, Orissa. The life of the Orissa Assembly was thereafter extended till 1st of March 1967. It was observed that the election was in prospect by 18th of June 1967, that is long before the extended term of the Assembly came to an end.

The contention raised by learned counsel for the respondent that the election was not in prospect when the respondent no. 1 made the earlier mentioned statement in her press conference on 29th December 1970 cannot therefore be accepted. As also stated earlier, the statement made by the respondent no. 1 at her press conference on 29th December 1970 by itself constitutes sufficient proof of the fact that she held herself out as a candidate from Rae Bareilly constituency with effect from that date.

It will, however, not be futile to refer to a few more circumstances which fortify this conclusion.

11028  
150

In order to find out what did the respondent no. 1 convey by making the aforesaid statement, it will be of some relevance <sup>to know</sup> as to how that statement was commonly understood. Exh. A-17 is the issue of the 'National Herald' dated 30th December 1970. The news item relating to the press conference addressed by the respondent no. 1 on 29th December 1970 was published in this newspaper with the HEADLINE "Prime Minister not changing her constituency". Further on the news item contains the synopsis of the question put to the respondent no. 1 and the reply given by her. Exh. 81 is the issue of the 'Stagesman' dated December 30, 1970. The Headlined news item in this news paper is "No Change in Constituency". Further on the news item said: -

"The Prime Minister denied at the outset whether she intended to contest the coming election for the Lok Sabha from Gurgaon and not Rae Bareli."

Exh. 85 is the issue of the 'Indian Express' dated 30th December 1970. The headline of the news item in this news paper was: -

"Rae Bareli is constituency."

Exh. 92 is the issue of the 'Hindustan Times' dated December 13, 1970. The headline of this newspaper also was:

"No shifting of seat."

A026  
159

(159)

Thereafter the relevant portion of the news item reads as follows: -

"The Prime Minister denied that she was thinking of shifting her constituency from Rae Bareilly to Gurgaon."

'No, I am not', she said when correspondent asked whether it was true as some opposition leaders were saying that she contemplated a change in her present constituency."

It will thus appear that almost every important newspaper in the country understood the statement made by the respondent no. 1 at her press conference to mean that she was not changing her constituency. It may also not be out of place to add that no contradiction to any of the aforesaid news items was issued either from the secretariat of the Prime Minister or from the A.I.C.C.

There is then the evidence of S. Nijalingappa (P.W. 14), Sri Arjun Singh Bhadoria (P.W. 15), Sri S.P. Malaviya (P.W. 36), Sri Karpoori Thakur (P.W. 37), Ram Saran Das (P.W. 38), Sri Banarsi Das (P.W. 40) and Sri L.K. Advani (P.W. 44). Though they belonged to opposition parties, the fact remains that all of them are <sup>public workers of some</sup> ~~men of~~ outstanding reputation. Each one of them stated on oath that the statement made by the respondent no. 1 at the press conference on 29th December 1970 was construed by them to mean that the respondent no. 1 was not changing her constituency.

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Yet another thing which is worthy of notice is that right after the press conference, held by the respondent no. 1 on 29th December 1970, important leaders of the Congress (R) started pouring into the constituency. Ram Kumar Singh (P.W. 42) stated that Raja Dinesh Singh, then a Minister in the Central Government, visited Rae Bareilly on 5th of January 1971. The fact that Raja Dinesh Singh did visit Rae Bareilly on 5th January 1971, as deposed by Ram Kumar Singh, was not denied on behalf of respondent no. 1, as would appear from the following question put to Ram Kumar Singh in cross-examination: -

Q. I suggest to you that Raja Dinesh Singh was only investigating the possibility whether the respondent no. 1 should or should not fight election."

On 7th January 1971 Sri Gulzari Lal Nanda and Sri Yashpal Kapur came to Rae Bareilly, a fact which is admitted to the respondent no. 1. On 17th of January 1971 Sri Chandra Shekhar, another important leader of Congress (R), visited Rae Bareilly, as deposed by Ram Kumar Singh (P.W. 42). It is worthy of notice that it was not suggested to Ram Kumar Singh in his cross-examination that Chandra Shekhar did not visit Rae Bareilly and that he was making a wrong statement in that connection. On the contrary, the suggestion made to him was that it was wrong that Sri Chandra Shekhar in his speech said anything about the candidature of

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A 826  
161

of respondent no. 1. Ram Kumar Singh denied that suggestion. It was then suggested to him that Chandra Shekhar had only stated that Congress (R) as a party should be successful in the election. It should, therefore be accepted that Chandra Shekhar also visited Rae Bareilly on 17th January 1971. On 18th <sup>and</sup> or 19th January 1971 Professor Sher Singh, another Minister of the Government of India, visited Rae Bareilly. It cannot be accepted that all these leaders of Congress (R) were visiting Rae Bareilly for nothing. To my mind that circumstance, together with the other circumstances already mentioned earlier, is also a pointer to the conclusion that the respondent no. 1 had held herself out as a candidate from Rae Bareilly constituency on 29th December 1970 and the leaders of the Congress (R) were ~~therefore~~ visiting Rae Bareilly as part of the election campaign of the respondent no. 1.

Learned counsel for the petitioner also urged that the fact that the petitioner was set up as a candidate to contest election against the respondent no. 1 in the early part of January 1971; <sup>and</sup> the fact that the respondent no. 1 while delivering a speech at Coimbatore criticised Raj Narain and said that the candidature of Raj Narain had been sponsored for mud-slinging against her, also lend support to the fact that the respondent no. 1 had declared herself as a candidate on 29th of January 1971. In regard to the first circumstance, learned counsel referred me inter alia to the evidence of Ram Saran Das (P.W. 38), Sri Karpoori Thakur (P.W. 37) and Banarsi Das

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(P.W. 40). Ram Saran Dass said that he issued a statement on 10th of January 1971 that the petitioner shall contest election to the parliament from Rae Bareli. He filed the issue of the 'Pioneer' dated 11th January 1971 (Exh. 78) and the issue of the 'National Herald' of the same date (Exh. 80) in which that statement was published. Sri Banarsi Das (P.W. 40) said that the leaders of the opposition parties met at the residence of Sri C.B. Gupta at Lucknow in 1st or 2nd week of January 1971, and a decision was then taken to set up the petitioner as a candidate against the respondent no. 1. Sri Karpoori Thakur (P.W. 37) deposed that in 1970-71 he was Chairman of All India Sanyukta Socialist Party. He further said that on 18th of January 1970, in a meeting attended by several parties, he gave his concurrence to the decision that the petitioner may contest election from Rae Bareli against the respondent no. 1. In regard to the second circumstance, learned counsel referred me to the issue of the 'National Herald' dated 20th January 1971 (Exh. 82). This newspaper was put to the respondent no. 1 during her cross-examination and she admitted that she could have said all the things mentioned in this news item. The news item (Exh. 82) in the 'National Herald' dated January 20, 1971 was thus proved. Learned counsel stressed that unless the <sup>respondent</sup> petitioner had held herself out as a candidate from Rae Bareli constituency there was hardly any occasion for her to have said at Coimbatore (as reported in Exh. 82) that the candidature of Raj Narain from Rae Bareli had been sponsored by the

A 8 26  
163

(163)

front parties for maximum mud-slinging against her. The least that can be said on the basis of the two circumstances is that the respondent no. 1 held herself out as a candidate <sup>something</sup> before 10th January 1971, otherwise there was no occasion for Ram Saran Das ~~or~~ having issued a statement that the petitioner shall contest election from Rae Bareli against the respondent, and for the respondent no. 1 having said at Coimbatore that Raj Narain had been chosen as a candidate from Rae Bareli for mud-slinging against her.

Therefore, without dilating any further, I conclude that it has been proved beyond doubt that the respondent no. 1 held herself out as a candidate from Rae Bareli Parliamentary constituency on 29th December 1970. Issue no. 2 of the additional issues is answered accordingly.

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ISSUE NO. 3 of additional issues:

In para 5 of the petition it is alleged that Sri Yashpal Kapur was a Gazetted Officer in the Government of India holding the post of an Officer on Special Duty; that the respondent no. 1 obtained/procured the assistance of Sri Yashpal Kapur for the furtherance of her election prospects; and that Sri Yashpal Kapur organised the election work of the respondent no. 1 in her constituency during the entire period commencing from 27th December 1970 till the declaration of the result.

In para 5 of the written statement the respondent no. 1 admitted that Sri Yashpal Kapur was a Gazetted Officer in the Government of India holding the post of Officer on Special Duty in the Prime Minister's Secretariat. She, however, pleaded that the said Sri Yashpal Kapur submitted his resignation from the aforesaid post by a letter dated 13th January 1971, that the President was pleased to accept his resignation with effect from 14th January 1971, and that Sri Yashpal Kapur ceased to be in the service of the Government of India from that date. Respondent no. 1 denied that she procured or obtained the assistance of Sri Yashpal Kapur for the furtherance of her election prospects while he was in the service of the Government of India.

A.D. 26  
1/65

(165)

In para 2(a) of the Additional Written Statement the respondent no. 1 further pleaded that Sri P.N.Haksar, the then Secretary to the Prime Minister, who had the authority to relieve Sri Yashpal Kapur, informed him on 13th January 1971, on receipt of the resignation, that the resignation was accepted and that formal orders will issue in due course. According to the plea set up in the Additional Written Statement, the services of Sri Yashpal Kapur stood terminated as a result of his resignation with effect from time and date mentioned in the letter of resignation and that the subsequent notification issued in the name of the President of India was a mere formality.

In view of the aforesaid pleadings, the question formulated for consideration is whether Sri Yashpal Kapur continued to be in the service of the Government of India after 14th of January 1971, and if so, till what date.

Sri Yashpal Kapur (R.W. 32) made a statement on oath that, after having a talk with the respondent no. 1, he submitted his letter of resignation to Sri P.N.Haksar on 13th of January 1971. The respondent no. 1 (R.W. 37) also deposed that in the second week of January 1971 Sri Yashpal Kapur one day expressed a desire to resign from his post and she then asked him to consider over the matter again. She said that on 13th of January 1971 Sri Yashpal Kapur again visited

her and said that he had reconsidered the matter and was clear in his mind that he must resign from the post to which she agreed. She then asked Sri Yashpal Kapur to go to Sri P.N.Haksar in order to complete the formalities. Sri P.N.Haksar (R.W. 1) deposed that on 13th of January 1971 Sri Yashpal Kapur telephoned to him near about 10 or 11 a.m. that he wanted to resign from his post and he then directed Sri Yashpal Kapur to send his letter of resignation in writing to him and also to meet him. Sri Haksar further said that within an hour Sri Yashpal Kapur came to his office with a letter of resignation duly signed by him and submitted the same. Learned counsel for the petitioner urged that no document has been produced by the respondent no. 1, in which the resignation letter submitted by Sri Yashpal Kapur may have been entered, to show that it was actually presented on 13th of January 1971. On this basis learned counsel urged that it should not be accepted that the resignation letter was actually presented on 13th of January 1971. According to him, the resignation was <sup>presumably</sup> prepared and submitted at some later stage and was antedated in order to make it appear that it was presented on 13th January 1971. I do not think that, merely for the reason that no register etc. has been brought on record to indicate that the resignation letter was presented by Sri Yashpal Kapur on 13th January 1971, the statement on oath made by the respondent no. 1 (R.W. 37), the statement of Sri Yashpal

A 826  
567

(167)

Kapur (R.W. 32) and the statement of Sri P.N.Haksar (R.W. 1) can be discarded as untrue. Learned counsel for the petitioner could not point out any infirmity in the evidence of the aforesaid witnesses, so far as it relates to the presentation of the resignation letter on 13th of January 1971. Therefore, relying on the evidence of the respondent no. 1 (R.W. 37), Sri Yashpal Kapur (R.W. 32) and Sri P.N.Haksar, I accept that Sri Yashpal Kapur had submitted his letter of resignation in the office of Sri P.N.Haksar on 13th of January 1971.

The question, however, is when did the resignation submitted by <sup>Sri Yashpal Kapur</sup> the respondent ~~now~~ take effect.

The fact that Sri Yashpal Kapur was a Gazetted Officer in the Government of India holding the post of Officer on Special Duty in the Secretariat of the respondent no. 1 is conceded in the written statement filed by respondent no. 1. Sri N.K.Seshan (P.W. 53), Private Secretary to the Prime Minister, also stated that the designation of Sri Yashpal Kapur, before he tendered his resignation, was 'Officer on Special Duty' and that it was a Gazetted post equivalent in rank to that of an Under Secretary drawing the maximum pay. It was admitted before me on both hands that the Central Civil Services (Temporary Service) Rules, 1949 were applicable to him. Rule 5 of the said Rules, in so far as it is relevant for our purposes, reads

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A026  
168

as follows: -

" 5 (a). The service of a temporary government servant who is not in quasi-permanent service shall be liable to termination at any time by notice in writing given either by the government servant to the appointing authority, or by the appointing authority to the government servant.

(b) The period of such notice shall be one month, unless otherwise agreed to by the Government and by the government servant:

Provided that the service of any such government servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice or as the case may be, for the period by which such notice falls short of one month or any agreed longer period."

Sri S.K. Krishnan (R.W. 5), Director,  
Department of Personnel Administrative Reforms, filed  
O.M. dated 6th May 1958 (Exh. A-25) containing  
instructions regarding resignations and acceptance  
thereof. It is inter alia stated therein that a  
resignation becomes effective when it is accepted  
and the officer is relieved of his duties. H

A 026  
169

It further states that 'where a resignation has not become effective and the officer wishes to withdraw it, it is open to the authority, which accepted the resignation, to accept or to refuse the request for such withdrawal'.

In view of the fact that Sri Yashpal Kapur held ~~the~~<sup>a</sup> Gazetted post in the Government of India; and further in view of the Central Civil Services (Temporary Service) Rules, 1949, and the instructions (Exh. A-25), it is apparent that Sri Yashpal Kapur could not cease to be a Government seryant unless an order had been passed accepting the letter of resignation submitted by him. So far as the statement of the respondent no. 1 (R.W. 37) is concerned, she only deposed that after Sri Yashpal Kapur had expressed a desire to her that he wanted to resign from his post, she directed him to go to Sri P.N. Haksar to complete the formalities. No doubt, she also stated that Sri P.N. Haksar later told her that the resignation of Sri Yashpal Kapur had been accepted. That is, however, evidence in the nature of hearsay which should not be attached much importance. Sri Yashpal Kapur (R.W. 32) did not state that any order was passed in his presence accepting his letter of resignation. The evidence of Sri P.N. Haksar on this point is rather interesting. In the examination-in-chief he stated that when Sri Yashpal Kapur met him in his office on 13th of January 1971, and submitted his resignation, he said to Sri Yashpal Kapur that he

A026  
-70

(170)

was a free man straightaway and that his resignation was accepted. He was then questioned in cross-examination whether it is permissible to appoint a government servant by word of mouth and to dispense with his services by word of mouth, and to that he replied:

"I am not aware of any rule under which it is permissible to make appointments by word of mouth. In my opinion, the services of a temporary Government servant can also be terminated by word of mouth, to be later followed by a an order in writing."

It was then put to him whether it was the practice prevalent in the offices of the Government of India and he replied: -

"I have held charge of large and important offices both inside the country and abroad and this is the practice I have followed and that practice has never been questioned so far."

The aforesaid statement made by Sri P.W.Haksar is not at all understandable to me. Appointment of persons in Government offices, more so to Gazetted posts, as well as termination of their services, is now governed by statutory rules, and the appointing authorities have to act under those rules in order to appoint a Government servant and in order to dispense with the services of a Government servant. It is the implied mandate of the rules that there should be an

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A826  
171

(171)

order in writing terminating his services. In the absence of any rules, . . . appointing and removing of government servants by word of mouth cannot be imagined. Needless to say that Sri Haksar expressed his inability to mention any rule under which it was permissible to appoint people and remove them by word of mouth. The statement appears to have been made only to fortify the plea set up by the respondent no. 1 in the additional written statement regarding oral acceptance of the letter of resignation. It will not be out of place to mention in that connection that the respondent no. 1 filed her written statement on or about 2nd August 1971 (the written statement was verified on 2nd August 1971). The additional written statement was filed on or about 27th August 1972 (it was verified on that day). The plea of oral acceptance of resignation was not set up in the original written statement. It was for the first time set up in the additional written statement which was filed after a lapse of one year from the date on which the original statement was filed. The plea, therefore, appears to be an afterthought.

Since Sri P.N.Haksar stated that verbal orders had to be followed by orders in writing, he was questioned whether any order in writing was passed on the letter of resignation submitted by Sri Yashpal Kapur on 13th January 1971 and he said that he was not aware of it. He was then questioned whether he ever

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sent for the letter of resignation in order to see if any order in writing had been passed thereon or not, and to that he also replied that he did not remember. The point was pressed further in cross-examination as would appear from the following question and answer: -

" Q. You said that a verbal order is always followed by an order in writing. You were the appointing authority of the O.S.D. Did you at any stage, as Secretary and appointing authority of the O.S.D., make sure after 13th of January 1971 that an order in writing had been passed in confirmation of the order that had been passed by you verbally?

A. I do not recollect at the moment whether the letter of resignation was at any stage recalled by me to make sure whether any order in writing had been passed."

Further on Sri P.N.Haksar said:

" I must have passed some order in writing on the letter of resignation of Sri Yashpal Kapur, but I do not today remember as a matter of fact whether I did or did not pass the order." (underlining by me)

A-228  
173

(173)

The aforesaid statement made by Sri P.N. Haksar speaks for itself and hardly calls for any comment. Needless to say that it cannot be held for any moment on the basis of the statement made by Sri P.N. Haksar that any order in writing was passed on the letter of resignation of Sri Yashpal Kapur till the date on which a ~~draft~~ order accepting the resignation was sent for being notified in the Gazette. In other words, the only order on record which can be said to have been passed on the letter of resignation of Sri Yashpal Kapur is that which is contained in the notification (Exh. A-8) dated 25th of January 1971. The letter of resignation of Sri Yashpal Kapur was in the custody of the respondent no. 1, and Sri P.N. Haksar was the best person to know if any order accepting the resignation had been passed prior to 25th of January 1971. Since no evidence, oral or documentary, has been brought on record in order to show that any order in writing had been passed on the letter of resignation of Sri Yashpal Kapur prior to 25th of January 1971, it should be held that an order was passed on the letter of resignation only on 25th of January 1971 accepting the same.

It is true that, according to the Gazette notification (Exh. A-8), the resignation of Sri Yashpal Kapur had been accepted with effect from 14th January 1971. It cannot, however, be ignored that the order accepting the resignation was passed on:

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A826  
174

(174)

25th of January 1971. Till that order was passed the status of Sri Yashpal Kapur continued to remain that of a Government servant despite the fact that when that order was passed it was given retrospective effect so as to be valid from 14th of January 1971.

The question as to when does a resignation take effect has come in for consideration in quite a few cases. In case Ram Murti v. Sumba Sardar & others (2 Election Law Reports 331) one of the respondents was a teacher in a school and therefore held an office of profit. He tendered an unqualified resignation of his office on 19th of October 1951. He was intimated that he could not be relieved until a substitute was available. He then applied for one month's leave on medical certificate on 6th November 1951 and ceased to work. On 10th November 1951 he filed his nomination paper. His resignation was accepted on 14th January 1952. It was held that the respondent did not cease to hold his office by tendering his resignation or by ceasing to work and was unqualified to stand for election on 10th of November 1951. The following observation contained in that case at page 336 appears to be material:

" The point material for consideration now is if the submission of resignation by the respondent even without its acceptance by the authorities tantamounts to cessation of service. Article 310 of the Indian Constitution is that except as

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expressly provided by the Constitution, every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor. If a person is to hold office during the pleasure of the Governor or the Union as the case may be it is impossible to think that the person holding the office shall hold it at his pleasure. The respondent no. 1 as the holder of a post under the State was therefore ~~was therefore~~ not free to cease the service at his pleasure so long as he held the post under the State."

In case Bahori Lal Paliwal v. District Magistrate, Bulandshahr (A.I.R. 1956 Allahabad 511 F.B) qua the Chairman, Town Area Committee v. the same question arose for consideration and it was observed: -

" In certain cases a resignation may be effective as soon as it is delivered to the proper authority. In other cases it may not be effective till it is accepted by that authority. In voluntary organisations like Clubs a person is free to be a member and, unless the contrary is laid down in the rules of the association, he is free to resign at any time he likes."

A826  
176

Thereafter reference was made to Halsbury's Laws of England, Simond's Edition, Vol. V <sup>page 261</sup> and the Court proceeded to say: -

" But in corporation created by Statute for the discharge of public functions a member may not have an absolute right to resign at will, because the law may cast a duty upon the person elected to a public office to act in that office in the public interest."

The Court cited with approval the following observation from the decision of the Supreme Court of the United States in Edwards M. Edwards v. United States (1880) 26 L.E. 314(C):

" In England a person elected to the Municipal office was obliged to accept it and perform its duties and subjected himself to a penalty by refusal. An office was regarded as a burden which the appointee was bound, in the interest of the community and good Government, to bear. And from this it followed of course that, after an office was conferred and assumed, it could not be laid down without the consent of the appointing power.

This was required in order that the public interests might suffer no inconvenience for the want of public servants to execute the

(177)

laws .... To complete a resignation it is necessary that the corporation manifest their acceptance of the offer to resign, which may be done by an entry in the public books, or electing another person to fill the place, treating it as vacant."

It was held in the case that since the Chairman had withdrawn the resignation before its acceptance by the District Magistrate, there was no right left in the District Magistrate to accept the resignation even though it was unconditional.

In the case Raj Kumar v. Union of India (A.I.R. 1969 Supreme Court 180) it was observed: -

" Termination of an employment by order passed by the Government does not become effective until the order is intimated to the employee. But where a public servant has invited by his letter of resignation determination of his employment, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority and, in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Till the resignation is accepted by the appropriate authority in

consonance with the rules governing the acceptance, the public servant concerned has locus paenitentiae but not thereafter."

The view expressed by the Supreme Court in the aforesaid case Raj Kumar v. Union of India was reiterated when the present case went up before the Supreme Court (Raj Narain v. Smt. Indira Nehru Gandhi: A.I.R. 1972 Supreme Court 1302).

On the basis of the declaration of law in the aforesaid decisions it can be said that Sri Yashpal Kapur continued to remain in the service of the Government of India till 25th of January 1971, on which date the order accepting his resignation was passed. According to the dicta laid down in those case, till 25th of January 1971 Sri Yashpal Kapur could even ask for the withdrawal of his resignation. The fact that by the order dated 25th of January 1971, the order accepting resignation was given effect to from 14th of January 1971, cannot lead to the conclusion that Sri Yashpal Kapur ceased to be a Government servant with effect from 14th of January 1971.

Learned counsel for the respondent no. 1<sup>man</sup> referred me to that part of the statement made by the respondent no. 1 (R.W. 37) wherein she stated that on 13th January 1971 Sri Yashpal Kapur visited her and said that he had reconsidered the matter and was clear in his mind that he must resign, whereupon the respondent no. 1 said to

A-826  
179

Sri Yashpal Kapur that he should go to Sri P.N. Haksar to complete the formalities. Learned counsel urged that this virtually amounts to tendering of resignation by Sri Yashpal Kapur orally to respondent no. 1. Learned counsel referred me to the meaning of the expressions 'Mode of resignation' and 'Mode of acceptance' from Corpus Juris Secundum in order to contend that a resignation can be tendered orally and can be accepted orally. I do not think the argument carries any force. While defining 'Mode of resignation' it is also mentioned in the Corpus Juris Secundum: -

" Where no particular mode of resigning an office is provided by constitutional or statutory requirements, no formal method is necessary; it may be by parole or it may be implied. A mode of resignation prescribed by statute generally is exclusive." (Underlining is by me)

Similarly while defining the expression 'Mode of acceptance' it is also mentioned in the Corpus Juris Secundum: -

" Where no particular mode of accepting a resignation is provided by constitution or statute, no formal mode of acceptance is necessary, and it may be by parole, or it may be shown by performance of an official act which could not be legally performed unless the resignation was

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accepted." (Underlining is by me)

I have already pointed out earlier that in the matter of resignation and termination of service, the parties viz. the Government of India and Sri Yashpal Kapur were governed by the Central Civil Services (Temporary Service) Rules, 1949, which were statutory rules. It cannot, therefore, be accepted on the basis of the meaning assigned to the aforesaid expressions in Corpus juris secundum that the resignation <sup>could</sup> ~~can~~ be tendered by Sri Yashpal Kapur orally or <sup>could</sup> ~~can~~ be accepted orally.

Learned counsel then urged that in any case a resignation ~~order~~, in order to be effective, does not call for a formal order of acceptance and that it becomes effective as soon as it is tendered. In support of this contention, learned counsel referred me to Articles 56, 67, 90(b), 101(3)(b), 124(2) Cl. (a) of the proviso, 156, 190(3), 217(1)(a) and 316 cl. (a) of the proviso. I have looked into all these Articles. Option has been given to the persons mentioned in these Articles, to resign from their seat or office by writing under their hand addressed to the relevant authority. Thus, by letter of law, the matter of resignation in regard to the persons specified in the aforesaid Articles of the Constitution has been made an unilateral act. These Articles <sup>could</sup> ~~can~~ have no application to Sri Yashpal Kapur, who was governed by separate set of rules, already mentioned above.

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Learned counsel for the respondent no. 1 then referred me to a few English cases in support of his contention that resignation, in order to be effective, begs no formal order for its acceptance. The cases are: -

- a) In the Matter of The Gloucester, Aberystwith and South Wales Railway Company and of the Joint Stock Companies Winding-up Acts Maitlands' Case (English Reports 43 Chancery 708);
- b) Letchford Premier Cinema, Limited v. Ennion (Chancery Division, Vol. 2 1931);
- c) Morris v. Baron And Company (1918 A.C. 1);
- d) Attorney-General for New South Wales v. Perpetual Trustee Co. (Ltd.) and others (1955 1 All England Law Reports 846); and
- e) Glossop v. Glossop (1907 Vol 2, Chancery Division).

Learned counsel also referred to the Queen's Bench decision in the case:

Inland Revenue Commissioners v. Hambrook  
( 1956 (1) All England Law Reports 807)

as also to the decision of the Court of Appeal in the same case reported in 1956 (3) All England Law Reports 338.

All these cases are clearly distinguishable.

A 826  
182

Maitlands' case relates to the resignation by the director of a company. It does not relate to the resignation by a public servant. It does not appear from the report of the case that the Articles of Association of the Company prescribed any mode for tendering a resignation or accepting it. In the case Latchford Premier Cinema Ltd. v. Ennion again the matter did not relate to the resignation of a public servant but resignation by director of a company. The resignation having been tendered and accepted at the annual general meeting, it was said that it was a case of mutual agreement. Morris v. Baron And Company case relates to a contract of sale of goods and not to any resignation whatsoever. In the case Glossop v. Glossop again the matter in issue was the resignation of a director of a limited liability company. On the basis of the Articles of Association of the Company it was held that the resignation became effective as soon as it was tendered. The remaining three cases only deal with the relations between the Crown and its servants. It cannot, therefore, be accepted on the basis of anything said in the aforesaid cases that the resignation tendered by Sri Yashpal Kapur, who was governed by statutory rules, became effective immediately after it was tendered.

Learned counsel for the respondent no. 1 then referred me to Rodgers on Election, 20th Edition, Vol 2, page 21, mentioning the cases of Abrbrothock and Lanarkshire, in order to support his argument. The

first case is of the year 1748 and the other of the year 1774 and <sup>they</sup> relate to Scotland. It will thus appear that these cases are two centuries old. We do not know what were the rules governing the matter of resignation in Scotland during that time. That apart, both these cases have been considered and distinguished in the case Sudarsana Rao v. Christian Pillai and others (A.I.R. 1924 Madras 306), and again in the case Ram Murti v. Sumba Sadar and others (2 E.L.R. 331 at p. 337). No reliance can consequently be placed on the aforesaid two cases, ~~as~~ mentioned in the Book 'Rodgers on Election'.

Coming to the Indian decisions, learned counsel for the respondent no. 1 first referred me to the case P.R. N. Abdul Haq v. Catpadi Industries Limited (A.I.R. 1960 Madras 482). This case again relates to the director of a company. It does not appear that there was anything ~~relevant~~ in the Articles of Association of the Company relevant on the subject. Therefore, relying on the English cases, it was held that a director, who has resigned, will be deemed to have resigned from the date of his resignation. This case can have no application to the case before me.

Learned counsel next referred me to the case A.H. Rangrez v. M.N. Koul & others (40 Election Law Reports 130). In this case an orderly-peon of Public Health Engineering Department tendered resignation on 3rd August 1966. It kept moving

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between a couple of offices and was accepted on 27th of February 1967 with effect from 3rd August 1966. The orderly-peon had filed his nomination paper some time before 23rd January 1967. The scrutiny of the nomination papers took place on 23rd January 1967. The question arose whether the petitioner, namely the orderly-peon held any office of profit on the date of scrutiny of the nomination papers and was disqualified to be chosen. It was held that since the resignation had been accepted with effect from a date prior to the date of scrutiny it could not be held that the petitioner held any office of profit on that date. There are two things worthy of notice about this case. In the first instance, we do not know what were the rules governing the service conditions of orderly-peons in Jammu & Kashmir (to which place this case relates). Further, there is no discussion in the case on the point as to what was the status of the petitioner between the date on which the resignation was tendered and the date on which the order accepting the resignation was passed. In the present case (Raj Narain v. Smt. Indira Nehru Gandhi) also similar situation had arisen earlier when the case went up before the Supreme Court and <sup>the Supreme Court observed</sup> ~~there~~ (Raj Narain v. Smt. Indira Nehru Gandhi: A.I.R. 1972 S.C. 1302 at p. 1308). ~~it was~~ observed: -

"Yashpal Kapur appears to have tendered his resignation to the office he was holding on January 13, 1971. The certified copy of the notification produced shows that the

President accepted his resignation on the 25th of January 1971 and the same was Gazetted on February 6, 1971. The order of the President shows that he accepted Yashpal Kapur's resignation with effect from January 14, 1971. The learned Trial Judge without examining the true effect of the President's order has abruptly come to the conclusion that Yashpal Kapur's resignation became effective as from January 14, 1971. This conclusion, in our opinion, requires re-examination."

As already stated, there is no detailed examination of that point in the case A.H. Rangrez v. M.N.Kaul and others. It is, therefore, difficult for me to hold on the basis of the aforesaid decision that the resignation of Yashpal Kapur took effect on 14th of January 1971, merely because the order dated 25th of January 1971, by which the resignation was accepted, has been made effective from that date.

Learned counsel then referred me to the case V.P. Gindroniya v. State of Madhya Pradesh and another (A.I.R. 1970 Supreme Court 1494). In this case the appellant gave a notice to the Government on June 6, 1964 terminating his service. The Government, however, issued him a show-cause notice for departmental inquiry. <sup>A</sup> The question arose whether the appellant continued to remain in service after June 6, 1964. The rules governing the service of the appellant in that case were akin to the Central Civil Services (Temporary

Service) Rules. Rule 12 of those rules corresponded to rule 5 of the Central Civil Services (Temporary Service) Rules. After taking those rules into consideration, the Court observed:--

" There is hardly any room for dispute that the notice contemplated by the main clause (a) of rule 12 can be given either by the Government or its temporary servant. The rule in question specifically says so. It is not necessary for us in the present case to decide whether the two provisos to that rule or clause (b) thereof apply to a notice given by a Government servant. The appellant has assumed that those provisions also apply to a notice given under that rule. We shall for the purposes of this case proceed on the basis of that assumption and see whether the appellant has satisfied that part of the rule also."

Thereafter, accepting that the appellant had satisfied that part of the rule, the Court held that the appellant was not in service after he had tendered his resignation on June 6, 1964.

From the above it will appear that the case V.P. Gindroniya v. State of Madhya Pradesh & another (supra) is distinguishable from the case Raj Kumar v. Union of India (supra), inasmuch as in the former

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A-826  
107

case the Court proceeded on the assumption that under the rules the Government servant had a right to terminate his services forthwith by submitting his resignation and by tendering one month's pay in lieu of the period of notice. On the language contained in rule 5 of the Central Civil Services (Temporary Service) Rules, 1949, it does not appear that a Government servant also has the right to terminate his services forthwith by a notice in writing, also tendering therewith one month's pay and the allowances. That apart, it is not the respondent no. 1's plea in this case that, while tendering his resignation, Sri Yashpal Kapur<sup>also v.</sup> tendered or offered to tender one month's pay or emoluments. This case is also therefore of no help to the respondent.

Reference has also been made by learned counsel for respondent no. 1 to an unreported decision of the High Court of Punjab & Haryana, dated April 29, 1975 in Civil Writ No. 2083 of 1975: Smt. Satwant Kaur v. State of Punjab and others. I have carefully gone through this decision and I find that instead of supporting the contention raised by learned counsel for the respondent, it contradicts it. In this case the petitioner was a teacher in the Education Department of the State of Punjab and was on deputation in the Union Territory of Chandigarh with effect from November 1, 1966. On 22nd April 1975 the petitioner submitted her resignation along with one month's salary as she wanted to contest election to the legislative assembly of the State. The last date for filing

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nomination paper was April 30, 1975. Since the acceptance of the petitioner's resignation was being delayed she filed a writ petition asking for a writ of mandamus directing the respondents to accept the resignation and further to declare that the petitioner was no longer in the service of the State of Punjab or the Union territory with effect from the date of her resignation. It was observed: -

" Right to enter into a contract implies a right to get out of it. The petitioner while accepting service in the State of Punjab had obviously entered into a contract of service. Such a contract can be terminated by making an offer to the appointing authority which is to be accepted by it within a reasonable time. What is a reasonable time for the acceptance of an offer of this type depends upon the circumstances of each case. In a situation like this when a public servant tenders resignation in order to contest an election, the resignation tendered by him should be accepted as early as possible and under all circumstances prior to the date on which the nomination papers can be filed for the last time."

With the above observation the Court directed the respondents 'to accept the resignation of

A-826  
789

the petitioner from the post of teacher held by her by today'.

From the above it will appear that the Court considered the acceptance of the resignation to be essential for the termination of the service of the petitioner. Otherwise the Court could very well declare that, since the resignation had been tendered on 22nd April 1975 along with one month's salary, it became effective that very day and the petitioner ceased to be in the employ of the Government from that day. Needless to say that a declaration to that effect had actually been asked for by the petitioner in the writ petition and yet it was not granted. Instead the Court directed the respondents to accept the resignation. Therefore, as already stated, this argument more supports the stand taken by the petitioner than the contention raised on behalf of the respondents.

Learned counsel for the respondent lastly urged that, according to the evidence on record, Sri Yashpal Kapur had ceased to work with effect from the afternoon of 13th of January 1971 and had also <sup>submitted</sup> a charge report on the same date, though it was dated as 14th January 1971. On this basis learned counsel urged that Sri Yashpal Kapur was relieved of his work and consequently it should be held that his resignation became effective from 14th of January 1971.

Now so far as the cessation of the work is concerned, I do not think that by itself it can bring

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(190)

about termination of employment, for, such cessation of work and absence from duty can always be regularised later by applying for leave with or without pay. As for the charge report, it may be mentioned that neither the charge report nor any copy thereof has been got exhibited in the case. The respondent no doubt examined Sri K.P.Sood (R.W. 8), Section Officer of the Office of the Accountant General (Central Revenues), New Delhi, to prove that Sri Yashpal Kapur was paid his salary only for the period ending on 13th of January 1971. Sri Sood, however, conceded in cross-examination that the salary for the period ending on 13th January 1971 was passed for payment as late as 28th August 1972. The evidence of Sri K.P.Sood cannot, therefore, be proof of the fact that a charge report had actually been submitted by Sri Yashpal Kapur on 13th of January 1971. But assuming that a charge report had been submitted by Sri Yashpal Kapur when he submitted his resignation on 13th January 1971, I do not think mere submission of a charge report along with the letter of resignation, in anticipation of the resignation being accepted by the appointing authority, can bring about the termination of the service, regardless of the fact whether the resignation is accepted or not. This argument also therefore fails to convince me.

No other argument having been raised, my finding on Issue No. 3 of the additional issues is that

(191)

A826  
191

Sri Yas hpal Kapur continued to be in the service of the Government of India till 25th of January 1971.

ISSUE NO. 1 (first set)

and

ISSUE NO. 1 ( of the additional issues)

Both these issues are repetition of each other word for word and are therefore being taken up at one place. The question for consideration under this issue is: -

Whether respondent no. 1 obtained and procured the assistance of Sri Yashpal Kapur in furtherance of the prospects of her election while he was still a Gazetted Officer in the service of the Government of India.

(192)

A-826  
192

Learned counsel for both the parties  
argued the matter by splitting the entire period  
from 29th of December 1971 onwards into three sub-periods,  
viz -

(1) the period ending on 13th January  
1971;

(2) the period from 14th to 25th January 1971;  
and

(3) the period from 26th January to 6th  
February 1971.

I would consider the evidence and the arguments  
advanced on either side in the same arrangement.

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ing on  
1971.

The petitioner's case is that the respondent  
no. 1 had held herself out as a candidate from Rae  
Bareilly parliamentary constituency on 29th of December  
1970, when she held the press conference at Delhi,  
and that Sri Yashpal Kapur (R.W. 32) started doing

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1826  
193  
(193)

election work for her with effect from the same date. It is further the petitioner's case that on 7th of January 1971 Sri Yashpal Kapur accompanied Sri Gulzari Lal Nanda to Rae Bareli where they first held a meeting with public representatives at Rae Bareli and then delivered speeches in the Shaheed Mela held in Munshiganj, seeking support for the candidature of respondent no. 1.

The respondent no. 1 denied that she held herself out as a candidate on any date prior to 1st of February 1971. According to her, it was for the first time on 1st of February 1971 at Rae Bareli that she held herself out as a candidate from that constituency. It has also been denied by the respondent no. 1 that Sri Yashpal Kapur did any electioneering work for her till that date.

Now, while recording my finding <sup>on Addl</sup> Issue No. 2 I have already discarded the respondent no. 1's plea that she held herself out as a candidate for the first time on 1st of February 1971. I have further recorded a positive finding that the respondent no. 1 held herself out as a candidate with effect from 29th December 1970. The whole matter has to be considered in that background.

It shall first be necessary to notice a few circumstances which have a material bearing on the point under consideration.

On the own admission of Sri Yashpal Kapur (R.W.32)

(194)

A826  
194

he had been working in the Prime Minister's secretariat since 1951. He further conceded that during the years 1956 and 1964, he was working at the Prime Minister's secretariat at his residence and, since the respondent no. 1 was hostess, she occasionally called for his assistance for certain functions which she had to perform, with the result that the respondent no. 1 had come to know about his work fairly well. He also stated that when the respondent no. 1 was appointed as Minister for Information & Broadcasting, he was transferred to the Ministry of Information & Broadcasting at the instance of the respondent no. 1, and that when the respondent no. 1 became Prime Minister he was again transferred back to the Prime Minister's secretariat and was appointed as Private Secretary to her. In 1967, when the respondent no. 1 was to contest election from Rae Bareilly parliamentary constituency, he resigned his post in the respondent's secretariat and worked for respondent no. 1 in Rae Bareilly constituency. After the 1967 elections were over he rejoined the respondent's secretariat, and according to him, he did so on the insistence of the respondent no. 1 herself. The relevant portion of the statement of Sri Yashpal Kapur in this connection reads as follows: -

" I left public life in 1967 and joined the Prime Minister's secretariat because the respondent no. 1 asked me to

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(195)

A826  
195

help her in the discharge of her duties.

It was thus on her request that I rejoined the Prime Minister's secretariat as Officer on Special Duty. I did not make any formal application while joining the Prime Minister's secretariat in April 1967. If the respondent no. 1 had not requested me I would not have joined the Government service in April 1967. I agreed to join because I found that the Prime Minister was keen on that point."

It will thus appear that, in view of the fact that Sri Yashpal Kapur had been working either with the father of the respondent no. 1 or with the respondent no. 1 herself since quite a long time, Sri Yashpal Kapur had obtained complete confidence of the respondent no. 1, so much so that he even resigned from his post in order to <sup>do</sup> electioneering work for the respondent ~~no. 1~~ when the latter contested election for the Lok Sabha in 1967. After Sri Yashpal Kapur had done that job for the respondent no. 1, he was reappointed in the Prime Minister's secretariat. If the statement made by Sri Yashpal Kapur is correct, the respondent no. 1 almost considered his services indispensable and insisted on him to join her secretariat to assist her in the discharge of her official duties.

In the above background, once it has been accepted that the respondent no. 1 had held herself out

A826  
196

(196)

as a candidate from Rae Bareli constituency from 29th December 1970, the fact that Sri Yashpal Kapur visited Rae Bareli on 7th of January 1971 <sup>could well</sup> be associated with the election work of the respondent no. 1. In this connection it is also worthy of notice that on 5th of January 1971 Raja Dinesh Singh, who was then a Minister in the Government of India, had visited Rae Bareli and, according to the suggestion made to Ram Kumar Singh (P.W. 42), he held a meeting in the Central Election Office at Rae Bareli and told the workers that the respondent no. 1 was to contest election from Rae Bareli. According to Ram Kumar Singh, Raja Dinesh Singh even asked him to help the respondent no. 1. The suggestion made to Ram Kumar Singh itself shows that the visit of Raja Dinesh Singh was connected with the election of the respondent no. 1. It would <sup>so</sup> appear from the following question put to Ram Kumar Singh in cross-examination: -

"I suggest to you that Raja Dinesh Singh was only investigating the possibility whether respondent no. 1 should or should not fight election."

Having thus stated the <sup>Surrounding Circumstances</sup> ~~background~~ of the case, I now proceed to consider the evidence adduced by the parties in support of their respective contentions.

The petitioner examined Nankau (P.W. 28), R.K.

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A 826  
199

(197)

Dixit alias Phakkar (P.W. 31) and Sri Vidya Shankar Yadav (P.W. 43) in order to prove that in the speech delivered by Sri Yashpal Kapur on 7th January 1971 in the Shaheed Mela at Munshiganj he canvassed support for the respondent no. 1. The petitioner also relied on an issue of the newspaper 'Beer Vaishwara' (Exh. 67) for this purpose.

Nankau (P.W. 28) is Pradhan of the Gaon Sabha Jhakrasi. He said that his village was about half a mile away only from Munshiganj, that he attended the Shaheed Mela at Munshiganj and further that Sri Gulzari Lal Nanda, the then Railway Minister, Government of India, said in the meeting that the respondent no. 1 wanted to contest election from Rae Bareilly constituency and that the people should give her their <sup>vote</sup> in order to enable her to win the election. Nankau further said that Sri Yashpal Kapur said the same thing at the meeting.

The fact that Sarvasri Gulzari Lal Nanda and Yashpal Kapur attended the Saheed Mela at Munshiganj on 7th of January 1971 has not been controverted on behalf of the respondent no. 1. The contention raised on behalf of the respondent, however, is two-fold: -

- 1) that the evidence adduced by Nankau, and for that matter by other witnesses, with regard to the alleged speeches delivered in the Shaheed Mela at

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A828  
198

(198)

Munshiganj on 7th January 1971 is not admissible because no such meeting was pleaded by the petitioner;

and

2) that in any case even though Sri Yashpal Kapur, accompanied by Sri Gulzari Lal Nanda, attended the Shaheed Mela at Munshiganj on the aforesaid date and also delivered speeches there, they did not say anything pertaining<sup>to</sup> the candidature of respondent no. 1 in the election but only paid tributes to the martyrs.

Now, so far as the first contention is concerned, it is explicitly alleged in para 5 of the petition that the election work done by Sri Yashpal Kapur, inter alia, included 'making speeches in support of the candidature of respondent no. 1 Smt. Indira Nehru Gandhi on 7th of January 1971 as well as on other dates, canvassing for votes'. It is true that it is not mentioned in the petition that Sri Yashpal Kapur made any speech in the Shaheed Mela at Munshiganj. Since, however, it was clearly alleged that a speech was delivered by Sri Yashpal Kapur canvassing support for respondent no. 1 on 7th of January 1971, the mere fact that the place of the meeting was not alleged cannot be said to be a material omission. It is also worthy of notice that no objection in writing was filed on behalf of the respondent no. 1 urging that

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A826  
199

the aforesaid part of the pleadings contained in para 5 of the petition were vague and that better particulars should be furnished. An oral objection was raised at the time the statement of Nankau was being recorded, namely that it was not alleged in the petition that any meeting was held at Munshiganj on 7th of January 1971. I have, however, already stated that the fact of a meeting having been held on 7th January 1971 and speech having been delivered by Sri Yashpal Kapur in that meeting does find place in the petition. If the respondent felt that it was necessary to know the place of the meeting, an objection could be filed on her behalf in that regard <sup>at the proper stage</sup> and the petitioner could then be called upon to furnish the particulars. The respondent no. 1 had every opportunity to cross-examine Nankau and the other witnesses who deposed about the meeting held at Munshiganj on 7th of January 1971. It was also open to the respondent no. 1 to adduce any amount of evidence in rebuttal. In fact the respondent no. 1 has adduced that evidence. Once the parties have joined issue on that point and have led evidence, the objection raised by learned counsel for the respondent no. 1 cannot be countenanced, more particularly because learned counsel for the respondent no. 1 has failed to show that any prejudice has been caused to the respondent no. 1 for the reason of the place of the meeting not having been disclosed in the petition.

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Coming to the merits of the evidence of P.W. Nankau, learned counsel for the respondent urged that Nankau could not tell the dates on which he had visited his relations; <sup>but</sup> he could ~~also~~ not tell the date on which his marriage took place; <sup>but</sup> he could not tell the date of birth of his first child nor could he tell the date of birth of his youngest child. It was urged that if Nankau could not remember any of the aforesaid dates, it did not appear probable that he could remember about the date of the alleged meeting held at Munshiganj. The argument fails to convince me. It is admitted on both hands that during the non-cooperation movement shooting had taken place at Munshiganj resulting in loss of life of ~~certain~~ <sup>some</sup> people, who were fighting for the freedom of the country. It is again admitted on both hands that in the memory of those persons who lost their lives <sup>in that incident</sup>, a 'Shaheed Mela' is held on 7th of January every year at Munshiganj. The Shaheed Mela has thus a special significance for those residing near about Munshiganj, and since the mela <sup>was</sup> ~~took~~ place every year on the same date, there was absolutely no improbability in Nankau having remembered the date even though he could not recollect the dates of other events in his life.

Learned counsel next contended that, on the own admission of Nankau P.W., Uma Shankar Yadav contested election from Rae Bareilly constituency as a

B.K.D. candidate in the election that took place in 1974 and that he was a worker for Uma Shankar Yadav. On this basis it was stressed that Nankau belongs to a hostile party and it should therefore be inferred that he came forward to give evidence about the alleged speech delivered by Sri Yashpal Kapur on account of his political association with the hostile party. I am afraid, the mere fact that in the year 1974 Nankau worked for a B.K.D. candidate cannot constitute a sufficient ground for discarding his testimony. So many persons, who do not have any association with a political party, sometimes come forward to serve a candidate sponsored by that party, not because of their association with the party but on the ground of their association with the candidate himself in one way or the other. That by itself does not make them unreliable witnesses. In the case Ambika Saran Singh v. Mahant Mahadeo Nand Giri (41 Election Law Reports 183 at p. 193) the Supreme Court said: -

"We do not in the present case have to decide whether a person acting as a polling agent or a counting agent or a person wishing the success of a particular candidate is necessarily an interested witness.

Assuming that he is, his evidence cannot be rejected only for that reason. At the most the Court in such a case should scrutinise his testimony closely and demand corroboration before acting upon it."

It could not be shown in the instant case that the evidence of Nankau is otherwise inconsistent or infirm. I have already stated earlier that looking to the setting in which Sri Yashpal Kapur came to Rae Bareilly on 7th of January 1971, it is not improbable that, while delivering speech in the Shaheed Mela at Munshiganj, he exploited the occasion also to canvass support for the respondent no. 1 in the election. The statement made by Nankau thus is therefore amply supported by the surrounding circumstances.

Some stress was also laid by learned counsel for the respondent no. 1 on the admission made by Nankau in cross-examination that it was for the first time in Court that he made a statement about the meeting held on 7th of January 1971 and that he never told about that meeting to any person prior to it. It was argued that if Nankau did not make a statement about his visit to the Shaheed Mela at Munshiganj to any person, it is not understandable as to how he could be cited as a witness in the case, and this impairs the value of his testimony. I am once again unable to agree. In the first instance, while saying that he did not make a statement about the meeting prior to his being examined in the case, he presumably meant a formal statement. But, even if he did not mention about it to any person even in mutual conversation prior to his being examined in Court, he was after all not the only person to have attended the meeting. There should

A226  
-203

(203)

have been quite a big gathering and any person who would have seen Nankau in the meeting could furnish information to the petitioner to enable him to examine Nankau as a witness in the case.

Learned counsel then said<sup>that</sup> according to the statement made by Nankau in cross-examination two other persons, namely Sarju Prasad and Ram Pal of village Jhakrasi attended the meeting and that all three of them had gone to the meeting together. Sarju Prasad and Ram Pal were examined as R.W. 12 and R.W. 13 respectively. It was stressed by learned counsel for the respondent that, according to the submissions on oath made by Sarju Prasad and Ram Pal R.Ws., they never went to Saheed Mela at Munshiganj and this establishes that the statement made by Nankau is wholly false. In view of this contention raised on behalf of the respondent, it will be appropriate to consider the evidence of Sarju Prasad (R.W. 12) and Ram Pal (R.W.13) at this very stage.

Sarju Prasad (R.W. 12) and Ram Pal (R.W. 13) are residents of village Jhakrasi and both of them said that they did not go to attend the Saheed Mela in January 1971. I do not, however, feel impressed with their evidence. Sarju Prasad was a teacher in a Primary Pathshala during the year 1971. He conceded in cross-examination that Gaya Prasad Shukla was the Adhyksha of the Zila Parishad and that his Pathshala was run by the Zila Parishad. It may be recalled that

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Gaya Prasad Shukla was doing important work in the election. The copies of the tour programmes of the respondent no. 1 used to be issued to him. It was he who issued a general appeal in support of the candidature of the respondent no. 1 (Exh. 24), and it was he who, according to Sri Yashpal Kapur, was maintaining the accounts pertaining to the election of the respondent no. 1. It is quite likely that once Nankau had conceded in cross-examination that Sarju Prasad had accompanied him to the Shaheed Mela, pressure was brought to bear on Sarju Prasad (R.W. 12) by Gaya Prasad Shukla in order to <sup>make him</sup> appear as a witness in the case and give evidence to contradict the testimony of Nankau. It is true that in his <sup>re-</sup>examination Sarju Prasad admitted that on the date on which he was examined as a witness in the case the school was being run by the Government under the control of the District Basic Education Officer. However, the ~~association~~ <sup>association</sup> that Gaya Prasad Shukla had with the Pathshala in his capacity as Adhyaksha, and consequently with Sarju Prasad, who was a teacher in that Pathshala, ~~that association~~ <sup>association</sup> could not have been wiped off overnight merely because the school was taken over by the Government to be run under its own officers. Material was also elicited in the cross-examination of Sarju Prasad to show that he did not exhibit a straightforward conduct while in the witness-box. I have already said earlier that the Shaheed Mela at Munshiganj carried some importance in the locality. Sarju Prasad himself admitted that on

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7th January 1971 the Pathshala was closed because of the Shaheed Mela. It is then not improbable that Sarju Prasad R.W. would also have gone to the Shaheed Mela, which was only one and half miles away from his village, particularly when a leader of all India importance, namely Sri Gulzari Lal Nanda had come to pay tributes to the martyrs. Sarju Prasad, however, stated that he had not even seen that site in Munshiganj on which the Shaheed Mela takes place, and that he has never been to the Shaheed Mela. Now, this is a statement which cannot be accepted for any moment.

Sarju Prasad (R.W. 12) is, therefore, not a reliable witness in my opinion and the evidence of Nankau cannot be discarded on the basis of his evidence.

Ram Pal (R.W. 13) also stated in cross-examination that he had not been to the Shaheed Mela since he had attained discretion. I have already said that Shaheed Mela carried some importance in the locality and, consequently, it cannot be accepted that he would not have gone to the Shaheed Mela during his life time. That alone shows that he was not making a true statement while in the witness-box. He admitted in cross-examination that Sri R.C. Shukla Advocate belongs to his village. This R.C. Shukla was at one stage doing pairvi on behalf of the respondent in this case and a complaint was lodged in the court on behalf of the petitioner that one of his witnesses was taken away by him to prevent the witness from giving evidence in the case. Notice

A826  
206

(206)

for contempt was therefore issued against him, which has since been discharged. The fact that Sri R.C. Shukla was working for the respondent no. 1 during the election, was elicited in the <sup>cross-</sup>~~ex-~~ examination of Sri Yashpal Kapur (R.W. 32). Sri Mohan Lal Tripathi (P.W. 59), General Secretary, District Congress Committee (R), Rae Bareilly, stated that Sri Ramesh Chand Shukla was one of the general secretaries of the District Congress Committee (R) in 1970-1971. Now, since Ramesh Chand Shukla Advocate is a resident of the same village where Ram Pal resided, and since he was an important worker for the respondent no. 1 during the election and was also her peirokar at some stage, the possibility of Ram Pal having been pressurised by Sri Ramesh Chand Shukla cannot be excluded. Together with it there is also the fact that Sri Gaya Prasad Shukla, another important worker of the respondent no. 1, happened to be the Adhyaksha of the Zila Parishad during the period the witness was examined in the case. It is a matter of common knowledge that the Adhyaksha of the Zila Parishad always wields influence in the rural areas. It will not be out of place to add that when it was put to Ram Pal in cross-examination as to which party did Sri Ramesh Chand Shukla belong, he pleaded ignorance about it. It cannot be accepted for any moment that even though Sri Shukla resided in the village in which this witness resided, and even though Sri Shukla was such a prominent worker of the Congress Party, Ram Pal would not have known about it.

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A826  
207

All the above reasons make it abundantly clear that Ram Pal (R.W. 13) <sup>is also</sup> ~~was~~ not a truthful witness. The evidence of Nankau cannot therefore be discarded on the basis of anything stated by him.

No other criticism having been made against the evidence of Nankau (P.W. 8), I find that he is quite a reliable witness and there is no risk in acting on his testimony.

R.K.Dixit alias Phakkar (P.W. 31), during January to March 1971, was Joint Editor of 'Beer Baishwara', a weekly paper printed and published from Rae Bareilly. He deposed that he also served that paper as a reporter, that he had himself attended the meeting that took place at Shaheed Smarak, Munshiganj, on 7th January 1971, and that Sri Gulzari Lal Nanda and Sri Yashpal Kapur, besides others, delivered speeches in that meeting. Referring to the speech said to have been made by Sri Yashpal Kapur, the witness deposed: -

" Sri Yashpal Kapur in his speech said that respondent no. 1 shall contest election to the parliament from Rae Bareilly constituency and, like the previous occasion, we should again make her successful."

The witness then referred to the news item relating to that meeting published in Beer Baishwara dated 9th January 1971 (p. 1 Columns 1 & 2) and said that this report was sent by him. The report has been marked (Exh. 67).

A026  
208

(208)

It was not even suggested to Sri R.K.Dixit alias Phakkar P.W. that he had any affiliation with any political party, or <sup>with</sup> any candidate hostile to the respondent no. It could also not be shown that he had any other reason in order to make a false statement affecting Sri Yashpal Kapur and the respondent no. 1. Learned counsel for the respondent no. 1, however, pointed out that in the news item (Exh. 67) it is not explicitly stated as to what had been said by Sri Yashpal Kapur in the speech delivered by him in the Shaheed Mela. Learned counsel urged that on that ground the statement of Sri R.K.Dixit in Court should not be accepted. It is a matter of common knowledge that it is only the purport of the speeches that is ~~is~~ sometimes published in the papers. In the first part of exhibit 67 it is stated: -

"Pradhan Mantri ke chunao prachar  
abhiyan ka Shri Ganesh dinank 5  
January ko kendriya <sup>Udyog</sup> Mantri dwara  
Congress Karyalaya men karya kartaon  
ke sambodhan se shuru hua jiska vidhivat  
udghatan 7 January ko Munshiganj Shaheed  
Ashthal par kendriya rail Mantri Shri  
Gulzari Lal Nanda dwara aek bhaari jansabha  
ke sambodhan se hua."

In the other part of the issue of 'Beer Baiswara' dated 9th January 1971 (Exh. 67) it is first stated that the Railway Minister Shri Gulzari Lal Nanda and Shri

(209)

A 226  
209

Yashpal Kapur, Private Secretary of the respondent no. 1 reached Rae Bareilly station on 7.1.1971 at 11.0 a.m. It is further stated that in the Shaheed Mela held at Munshiganj, Sri Gulzari Lal Nanda delivered a speech and said that the respondent no. 1 stood for removing poverty, starvation and unemployment from the country and that her hands should be strengthened by making her successful in the election. In the next paragraph it is said that the leaders of the District Congress Committee, including Dal Bahadur Singh, Devi Charan Pandey, Ram Shankar Tripathi, Amresh Advocate, Ramesh Chand Shukla Advocate and Dr. P.N. Mehrotra, also delivered speeches, throwing light on the policies of the respondent no. 1 and doing mud-slinging on the opposition parties. In the paragraph following it, there is mention of the fact that Sri Yashpal Kapur, Sri Madan Mohan Misra, and Sri Shiv Shankar Singh and Sri Parmanand also delivered speeches in that meeting. Since Sri Gulzari Lal Nanda was the leading speaker, his speech was reported at length. Thereafter the names of other speakers were disclosed. Since the substance of their speeches was also the same as that of Sri Gulzari Lal Nanda, it was <sup>presumably considered</sup> futile to repeat it over again. Reading the news item as a whole, it is clear that all those persons who delivered speeches at the Shaheed Mela solicited support for the respondent no. 1 as a candidate seeking election from Rae Bareilly constituency. At one place in the news item, while referring to the

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A-8226  
2/10

(210)

substance of the speech delivered by Sri Gulzari Lal Nanda, it is mentioned: -

"Vashtava men chunao prachar sabha thi."

The contention raised by learned counsel for the respondent is that, while sending report about the speeches delivered at the Shaheed Mela (Munshiganj) on 7.1.1971, Sri R.K. Dixit alias Phakkar did not report the substance of the speech of Sri Yashpal Kapur and, consequently, the statement made by him in Court about the <sup>contents</sup> substance of the speech delivered by Sri Yashpal Kapur at the said Shaheed Mela should not be held to be true, is not justified and cannot be accepted.

In my opinion, therefore, Sri R.K. Dixit alias Phakkar (P.W. 31) is quite an independent and reliable witness and there is no risk in acting on his testimony.

Vidya Shankar Yadav (P.W. 43) is a practising Advocate. He deposed that he had also gone to the Shaheed Mela in order to attend the meeting that took place there. He further on stated that Sarvasri Gulzari Lal Nanda and Yashpal Kapur also delivered speeches in that meeting besides other persons and that Sri Yashpal Kapur, after paying tributes to the martyrs, said in his speech: -

" Respondent no. 1 had successfully contested election earlier from Rae Bareilly constituency and that she would contest election from the

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91228  
211

(211)

same constituency and we should make her successful."

In cross-examination he said that in 1921 firing had taken place at Munshiganj in which a number of persons had lost their lives and that a meeting is held every year there in order to pay tributes to the martyrs. According to him, members of all political parties had attended that meeting and it was for that reason that he had gone to attend it.

It was elicited in the cross-examination of Sarju Prasad (R.W. 12) that a distance of two miles intervened between Munshiganj and Rae Bareilly. Looking to the very small distance that intervenes between Rae Bareilly and Munshiganj, and further looking to the fact that a meeting was to take place at Munshiganj for paying tributes to the martyrs and a leader of all India importance viz. Sri Gulzari Lal Nanda had come for the purpose, there is absolutely no improbability in Sri Vidya Shankar Yadav Advocate having gone to Munshiganj to attend the meeting.

Learned counsel for the respondent no. 1 pointed out that, on his own admission, Sri Vidya Shankar Yadav was polling agent for the petitioner and also looked after his election work. It was also pointed out that, according to the admissions elicited in the cross-examination, he belonged to Bhartiya Kranti Dal and, during the year 1974, he was a proposer

of Uma Shankar Yadav who contested election as a candidate of the Sanyukta Socialist Party. Learned counsel stressed that partly for the reason that this witness had worked for the petitioner in the election and partly for the reason that he belongs to the opposition party, it would be fraught with risk to rely on his testimony. True, Vidya Shankar Yadav frankly admitted that he had worked for the respondent in the election and that he was also a member of opposition party, namely Bhartiya Krianti Dal. The fact, however, remains that he is a practising Advocate and further that his evidence is supported by the evidence of two other witnesses, whom I have already held to be reliable witnesses. // Learned counsel for the respondent no. 1 also urged that Sri Vidya Shankar Yadav was an educated person, being an Advocate, and further he also belonged to an opposition political party. It was stressed that if it were a fact ~~a fact~~ that any electioneering was done at the meeting held at Shaheed Mela (Munshiganj), complaints about it would have been sent by Sri Vidya Shankar Yadav to some authorities. Learned counsel pointed out that, on the own admission of Sri Vidya Shnakar Yadav, he did not send any complaint about it anywhere and, consequently, the statement made by Sri Vidya Shankar Yadav that any electioneering was done by any person in the meeting at Munshiganj should be discarded as untrue. I am once again unable to agree. Sri Vidya Shankar Yadav, on being questioned on that point, clearly stated that he

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had raised a protest at the meeting about its being converted into an election meeting. He, however, said that since there were 3 or 4 persons only who raised the protest, they were not heeded. Further on he said that he did not send any complaint about it because the meeting was organised by the people residing at Rae Bareilly and most of them belonged to Congress (R). There is thus some explanation as to why no complaint was sent by Sri Vidya Shankar Yadav. Together with it there is also the fact that no notification in regard to the election had till then been issued by the Election Commission of India. This could have dissuaded Sri Vidya Shankar Yadav from sending any complaint to the Election Commission, <sup>and</sup> there could be hardly any logic in sending complaints about it to any other authority. As for Sri Vidya Shankar Yadav P.W. not having issued any statement to the press, it could be due to the fact that the matter had already otherwise obtained publicity in Rae Bareilly.

Since Sri Vidya Shankar Yadav is a respectable witness and since his evidence is corroborated by the evidence of two independent persons, I see no risk in relying on his testimony as well.

Lastly, there is the issue of 'Beer Baiswara' dated 9th January 1971. The paper was filed in Court by Sri Ram Dev Trivedi (P.W. 23), Editor thereof. He stated that the news item (Exh. 67) in that paper was based on the information received from Sri R.K. Dixit, who was then the City Reporter for the paper. Sri R.K. Dixit

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A026  
214

(214)

(P.W. 31), as also mentioned earlier, having entered the witness-box, has proved that news item. He has also given direct evidence about the speech delivered by Sri Yashpal Kapur at that meeting. The news item (Exh. 67) published in Beer Baiswara dated 9th January <sup>1971</sup> ~~1967~~ therefore stands proved. A reading of that news item as a whole shows that in the election speech delivered by Sri Yashpal Kapur, ~~there~~ canvassing was done for respondent no. 1. It cannot be accepted that this news item was published on 9th of January 1971 by way of any peshbandi. No foundation could be laid by learned counsel for the respondent no. 1 in order to contend that this issue of 'Beer Baiswara' was got printed some time after the election for the purpose of this petition. I accordingly hold that the news item (Exh. 67) contained in the issue of 'Beer Baiswara' dated 9th January 1971 can also be utilised to corroborate the evidence of Nankau (P.W. 28), R.K. Dixit alias Phakkar (P.W. 31) and Vidya Shankar Yadav (P.W. 33). I must, however, make it clear that even if this issue of Beer Baiswara ~~would not have been~~ <sup>were</sup> there, I would not have felt any hesitation in relying on the evidence of the aforesaid witnesses.

The aforementioned evidence adduced by the petitioner thus does show that Sri Yashpal Kapur delivered a speech in the Shaheed Mela at Munshiganj on 7th January 1971 and in that speech he did canvassing for the candidature of the respondent no. 1.

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A-826  
505

The second item of evidence relied upon by the petitioner for the period ending on 13.1.1971 is the entry at serial no. 1 of the return of election expenses (Exh. 5) filed by the respondent. According to this entry, a sum of Rs 657/90 was paid on 11.1.1971 to the District Election Officer, Rae Bareilly, on account of payment of cost of voters' list. Learned counsel pointed out that the first column in the return is meant to carry the date of expenditure and sixth column thereof is meant to carry the name of the person to whom payment is made. Learned counsel urged that since the entry in the first column shows that the amount was paid on 11.1.1971, and since the entry in the sixth column indicates that it was paid to the District Election Officer, it should be held that on 11.1.1971 Sri Yashpal Kapur purchased voters' list for the respondent and thus rendered assistance to her.

According to Sri Yashpal Kapur, after he had started serving as election agent, he wanted to obtain a list of voters, and, since he came to know that the District Congress Committee had already obtained the voters' list, he obtained the same from the D.C.C. and paid the sum of Rs 657/90 to them.

I am not fully convinced with the statement of Sri Yashpal Kapur, for, if it were the whole truth, the expenditure should have been entered in the return (Exh. 5) in the date in which the money was actually paid by Sri Kapur, and in column six of the return.

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A026  
216

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(216)

there should have been the name of the District Congress Committee instead of the name of the District Election Officer.

All the same, since there is no positive evidence of the fact that Sri Yashpal Kapur was present at Rae Bareilly on 11th of January 1971, it will not be *very safe* to conclude on the basis of the aforesaid entry that Sri Yashpal Kapur himself purchased the voters' list for respondent no. 1 on 11.1.1971. Sri Gaya Prasad Shukla was a prominent worker for the respondent no. 1. According to Sri Yashpal Kapur, he was in charge of maintaining accounts. It is quite likely that, under some instructions, he purchased the voters' list for the respondent no. 1 and hence the entry.

I would, therefore, place no reliance on entry 1 of the return of election expenses (Exh. 5) while considering the services rendered by Sri Yashpal Kapur to the respondent no. 1 during the period ending on 13.1.1971.

The respondent no. 1 examined four witnesses in rebuttal. Out of them, I have considered the evidence of Sarju Prasad (R.W. 12) and Ram Pal (R.W. 13) while assessing the evidence of Nankau (P.W. 28) and have found both of them to be unworthy of reliance. The third witness examined by the respondent is

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A 8028  
217

(217)

Thakur Ambika Singh (R.W. 24). He deposed that he too attended the Shaheed Mela that took place in Munshi Ganj on 7th January 1971, and that, while Sarvasri Gulzari Lal Nanda, Yashpal Kapur and some local leaders paid tributes to the martyrs in that Shaheed Mela, it was not said by any of them that the respondent no. 1 shall contest election to the Lok Sabha from Rae Bareli constituency. It was, however, elicited in his cross-examination that he was a member of the Congress Party since 14 or 15 years and that in the election that took place in 1971 he had worked for the respondent no. 1 as a member of that party. It was also elicited in his cross-examination that about six years ago he was prosecuted on a charge of dacoity. The trial court held him guilty, but he was acquitted in appeal. He is thus in the first instance an interested witness and, further, his antecedents were also not wholly above-board. Material was also elicited in his cross-examination to show that he tried to suppress the facts. He said that it was wrong that Gaya Prasad Shukla was in charge of the election office in 1971. It has, however, already been mentioned earlier that copies of the tour programmes were forwarded, among others, to Sri Gaya Prasad Shukla, and that his address is mentioned therein as 'Kendriya Congress Karyalaya, Rae Bareli' (Exh. 43). Again on 1st of February 1971 he had issued a general appeal in the constituency in support of the candidature of the respondent no. 1, copy whereof is Exhibit 24 on record. Sri Yashpal Kapur

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A026  
218

(218)

conceded in cross-examination that Sri Gaya Prasad Shukla was in charge of maintaining election accounts on behalf of the respondent no. 1. The statement made by Thakur Ambika Singh about Sri Gaya Prasad Shukla is thus not the whole truth.

For all the aforesaid reasons, implicit reliance cannot be placed on testimony of Thakur Ambika Singh.

Lastly, there is the evidence of Sri Yashpal Kapur (R.W. 32). He admitted having attended the meeting in Shaheed Mela at Munshiganj on 7.1.1971 and also having delivered a speech there. He, however, said that he only paid tributes to the martyrs in the brief speech given by him, and that he did not say anything about the candidature of the respondent no. 1 or about the election in that meeting. It will be appropriate here to make an overall estimate of the evidence of Sri Yashpal Kapur in order to find out as to what extent reliance, if any, can be placed on his testimony.

While recording my finding on issue no. 2 of the additional issues, I have already held that the statement made by Sri Yashpal Kapur to the effect that the respondent no. 1 had held herself out as candidate for the first time on 1st of February 1971 after having a talk with Sri Kamalapati Tripathi and the members of the District Congress Committee, Rae Bareilly, was untrue and had been made with a view to fortify the plea that had been set up by the respondent no. 1.

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A826  
249

(219)

Sri Yashpal Kapur also stated that in 1967 he resigned from his post because he wanted to do public service. It is, however, strange that his zeal for public service was very short lived, for, very shortly after the election was over, he again joined service in the secretariat of the respondent no. 1. In that context it should be held that the statement made by Sri Yashpal Kapur that he resigned in 1967 with a view to do public service was untrue, and the fact is that he did so only with a view to work for the respondent no. 1 in the election. Again, he stated that having attended the Shaheed Mela at Munshiganj on 7.1.1971, he returned to <sup>Delhi</sup> ~~Batna~~ next day, and that on 9th or 10th January 1971 he again expressed a desire to the respondent no. 1 to resign so that he could enter public life. Now, it is not understandable as to why, having peacefully worked as Officer on Special Duty in the respondent no. 1's Secretariat till 7th of January 1971, he was again seized of a desire to do public service. The desire was so intense that within a couple of days he took decision, despite the warning said to have been given by the respondent no. 1, and actually tendered his resignation on 13th of January 1971. The fact that he was seized of a desire once again on the eve of parliamentary elections after the respondent no. 1 had expressed her intention to contest election from Rae Bareilly, only shows that it was not the desire to do the public service, but the desire or behest to do election work for the respondent no. 1 that induced him to resign.

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A 226  
220

Testing the statement of Sri Yashpal Kapur regarding the motive of his resignation a little further, we find that having submitted his resignation on 13th of January 1971 he met the same evening Sri Kamlapati Tripathi, the then President of the U.P.C.C., who was camping at Delhi. Sri Yashpal Kapur said that he told Sri Kamlapati Tripathi that he was a free man and could do any work assigned to him, whereupon Sri Kamlapati Tripathi asked him to go to the districts east of Lucknow. Now, it is worthy of notice that general election to the Lok Sabha had ~~be~~ taken place in the country in 1971. Sri Yashpal Kapur claims to have resigned on the eve of those elections. It may be assumed that he did so at that time because there was opportunity to do greater and more hectic service during that period. It is, however, strange that once again he was asked to go in the direction of Rae Bareilly. Proceeding further, Sri Yashpal Kapur said that having reached Lucknow in the morning of 14th January 1971 he obtained a car from the U.P.C.C. and went to Rae Bareilly the same day. Why to Rae Bareilly? According to him, Sri Kamlapati Tripathi had asked him to go to the districts east of Lucknow. Rae Bareilly was not the only district east of Lucknow. Why should he then have gone to Rae Bareilly unless the reason underlying his resignation was to do election work for the respondent no. 1 in the constituency.

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A 826  
221

Sri Yashpal Kapur said that having stayed at Rae Bareilly till the ~~evening~~<sup>evening</sup> of 17th January 1971 he left for Sultanpur and Barabanki. He, however, said in cross-examination that he did not stay at Barabanki for more than one day because Barabanki was very near to Lucknow and staying at Lucknow was more comfortable. About Sultanpur, he said that he stayed only for one day, but he did not remember the place of his stay there. Asked about the work done by him at Sultanpur and Barabanki, he said that he ~~first~~<sup>just</sup> talked to the local people there about the organisational work. This does not appear to be convincing. As I will show a little later, there is evidence on record to indicate that he stayed on at Rae Bareilly till 19th of January 1971. It appears that he made the aforesaid statement to avoid admitting his presence in the meeting that took place at the Clock Tower, Rae Bareilly, on 17th January 1971, and in the meetings and functions of Professor Sher Singh that took place on 18th<sup>and 19th</sup> January 1971.

It was put to Sri Yashpal Kapur that in 1967 he resigned on the eve of election and worked in the constituency of the respondent no. 1; ~~and~~<sup>and</sup> that in the year 1971 he again resigned on the eve of parliamentary election and again worked in the constituency of the respondent no. 1; and whether there was any particular reason behind this coincidence. He replied that he did so because everyone wants to get into the work

A-82-6  
222

which may push him into the Parliament or the Legislature of some State. He conceded that he had that ambition in 1967 as well as in 1971. In fact the respondent no. 1 (R.W. 37) also said during her cross-examination that in 1967 Sri Yashpal Kapur was looking for some opportunities which were not available at that time. That being so, it is obvious that Sri Yashpal Kapur did not resign in 1967, nor in 1971, for the sake of any public service but only to work for the respondent no. 1 in her constituency and thereby obtain her help in the fulfilment of his ambition.

According to Sri Yashpal Kapur, his ambition was fulfilled in 1972 when he was elected to Rajya Sabha from the Uttar Pradesh. The statement made by Sri Yashpal Kapur in that connection also deserves some notice. He conceded that a person who is not a resident of a particular State cannot be elected a member of Rajya Sabha from that State. In the electoral roll of the year 1970 (Exh. 17) he is entered as a resident of House No. 968, Kutchery Road, Rae Bareilly. He, however, conceded that neither in 1968-69 nor in 1970-71 he ever resided in Rae Bareilly. It was obviously so because he was then employed in the Prime Minister's Secretariat at Delhi. It was, therefore, put to him whether his residence as shown in the electoral roll (Exh. 17) was incorrectly mentioned as House No. 968, Kutchery Road, Rae Bareilly. He first said:

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A-826  
223

(223)

"I would not call it wrong. I remember when the revision of the electoral roll was taking place I was at Rae Bareli and I was told that my name has been entered in the electoral roll of Rae Bareli." The question that was next put to the witness and the answer given by him are as follows: -

" Q. The answer given by you does not answer the question that was precisely put to you. You have still to answer as to how the description of your residence in Exh. 17 is correct when you concede that during the year 1970 you were not residing in any town or district in U.P?

A. I am not able to answer the question."

It will thus appear that Sri Yashpal Kapur has not been able to give any explanation whatsoever as to how he was recorded as an elector in the State of Uttar Pradesh during the year 1970. // It was further elicited in his cross-examination that on 14th November 1970 a branch of the Baroda Bank was opened at Rae Bareli, and Sri Jagannath Paharia, the then Deputy Minister, Finance, had inaugurated it. He said that he had then opened a symbolic account of Rs 101/- in the above branch of the Baroda Bank. He was confronted with the letter (Exh. 54) sent by the Agent, Bank of Baroda, Rae Bareli branch to the Deputy Registrar, High Court, which, inter alia, states that the Bank had 'a Savings Bank Account No. 26 in the name of Sri Yashpal Kapur, address:

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A826  
224

Kutchery Road, Rae Bareli'. Sri Yashpal Kapur stated that while opening the account he did not furnish any address for being entered in the record of the Bank of Baroda. He conceded that he was aware of the fact that while opening an account in any bank a person has to furnish his address. He, however, said that he did not furnish any address because he had opened a symbolic account only. Sri Ashok Kumar Dhupar (P.W. 11) an officer of the Bank of Baroda, was examined by the petitioner and he deposed:

"Sri Yashpal Kapur, who opened the account, gave his name as Yashpal Kapur and address as Kutchery Road, Rae Bareli."

He further on said that any person opening an account in the Bank of Baroda has to present himself personally in the Bank for opening the account and his specimen signatures are obtained and kept. In view of the letter (Exh. 54), the aforesaid admission made by Sri Yashpal Kapur and the statement of Sri Ashok Kumar Dhupar (P.W. 11), it is difficult to accept that the address of Sri Yashpal Kapur was recorded in the Bank as Kutchery Road, Rae Bareli, without his telling so. It was ~~then~~ put to him that since he conceded that during the year 1970 he resided at Delhi and went to Rae Bareli occasionally, and since he further conceded that he did not furnish any address while opening the account with the Bank of Baroda, could he tell at whose instance his address was recorded in the Bank papers as is

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contained in the letter (Exh. 54). The witness expressed his inability to say as to at whose instance his address came to be recorded like that in the records of the Baroda Bank.

Learned counsel for the petitioner vehemently argued that Sri Yashpal Kapur manipulated to get his name entered in the electoral roll (Exh. 17) as resident of House No. 968, Kutchery Road, Rae Bareilly, and that he again made a wrong representation in that connection while opening his account in the Bank of Baroda in the year 1970, in order that he could be elected to the parliament as an elector from this State. Since Sri Yashpal Kapur failed to offer any explanation whatsoever as to under what circumstances his name came to be entered in the electoral roll (Exh. 17) and under what circumstances his address was entered in the Bank papers, as Kutchery Road, Rae Bareilly, the contention raised on behalf of the petitioner cannot be rejected as devoid of substance. According to learned counsel for the petitioner, this exposes Sri Yashpal Kapur to the charge that he could make any statement in order to achieve his purpose. The criticism cannot be said to be uncalled for, in view of the own statement of Sri Yashpal Kapur.

Learned counsel for the respondent no. 1 objected that anything pertaining to <sup>the entries in</sup> the electoral roll could not be questioned as there are exhaustive provisions pertaining to that matter in the Representation of the

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A 826  
226

People Act, 1950 and the rules framed thereunder. I agree that the finality of an electoral roll cannot be questioned in an election petition assailing the election of a particular elector. It does not, however, mean that the statement of a witness on the point as to how he came to be recorded as an elector in any State cannot be considered even for assessing the worth of his testimony. <sup>in any other case too</sup> The objection raised by learned counsel for the respondent no. 1 cannot, therefore, be accepted.

The statement made by Sri Yashpal Kapur on the point of expenditure incurred by him on behalf of the respondent no. 1 also appears to be dubious. He said that he did not incur any expenditure on behalf of the respondent before 1st of February 1971. Exh. 22/9 is, however, the copy of the receipt obtained by him for the remuneration paid to Siraj Ahmad driver. This receipt is annexed to the return of election expenses. According to Sri Yashpal Kapur, he obtained the

Jeep after 1st of February 1971 and the driver had been engaged by him. <sup>(This would mean that the driver had been engaged on or after 1st Feb/71)</sup> A perusal of the aforesaid receipt, however, shows that the driver was paid salary for the period from 15th January 1971 to 10th of March 1971. It, therefore, follows that Sri Yashpal Kapur had started incurring election expenses with effect from 15th January 1971. Confronted with the receipt (Exh. 22/9), Sri Yashpal Kapur tried to modify his statement and said that the jeep was already at Rae Bareilly when it was given to him and he was told that Siraj Ahmad was the

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A 076  
207

(227)

driver on the jeep. Now, this statement is inconsistent with his previous statement that the driver had been engaged by him. Further, even that statement made by him fails to explain as to why remuneration for the period prior to 1st of February 1971 was paid by him, if he had obtained the jeep for election work on or after 1st of February 1971. On being specifically questioned with regard to it, Sri Yashpal Kapur said that he paid the salary to the driver for the period <sup>Commencing</sup> from 15th January 1971, because Sri Gaya Prasad Shukla told him that the driver was on the jeep with effect from that date. As already stated, this statement again contradicts his previous statement that the driver had been engaged by him. However, he was questioned that, if he was aware that in the return of election expenses only the amounts spent in connection with the election had to be shown, why that part of the remuneration which related to the period prior to 1st of February 1971 and was not election expenditure, was included by him in the receipt (Exh. 22/9) and in the return of election expenses. To that the witness replied:

"I may have erred but I erred on the right side. There was a big margin available. I, therefore, saw no harm in including the whole amount specified in the receipt (Exh. 22/9) in the election return."

The reply is not at all convincing.

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A026  
228

Again, according to the return of election expenses (Exh. 5), he incurred an expenditure of Rs 657=90 on 11.1.1971 on account of cost of voters' list. The next six entries in the return relate to the expenditure incurred on 28th January 1971. The seventh and eighth entries relate to the expenditure incurred on 29th January 1971 and the entry following it relates to the expenditure incurred on 30th January 1971. If it were true that Sri Yashpal Kapur did not incur any expenditure before 1.2.1971, as stated by him, how do <sup>all</sup> these entries exist in the return (Exh. 5). That apart, vouchers nos. 54, 53, 52, 51 and 50, accompanying the return of election expenses (Exh. 5) show that Nanhey Dhobi, Smt. Rewa Ram Pyari, Smt. Dayya Dulari, Ram Pal and Ram Sagar had been paid wages for the period with effect from 28th January 1971. What is the explanation thereof if the petitioner did not incur any election expenditure before 1st of February 1971. Sri Yashpal Kapur tried to explain the earlier mentioned entries in the return of election expenses by saying that, since the District Congress Committee had put it to him that the aforesaid expenditure had been incurred by them for organising the election of any person who may later hold himself/herself out to be a candidate, he considered it appropriate to repay that amount as well to the D.C.C. This explanation again is not convincing. Needless to say that Sri Yashpal Kapur offered no explanation whatsoever about the vouchers. It is, therefore, difficult

to accept that part of the statement of Sri Yashpal Kapur wherein he said that he incurred no expenditure in connection with the election of the respondent no. 1 prior to 1st of February 1971. It appears that when the return of election expenses was filed, it was not realised that the fact of respondent no. 1 having held herself out as a candidate on 29.12.1970 and the fact of Sri Yashpal Kapur having started doing election work for her ~~immediately~~ <sup>shortly</sup> thereafter could create any complications. It was for this reason that the expenditure was entered in the dates in which it was incurred. When, however, the present petition was filed, it was presumably realised that any admission to the effect that the respondent no. 1 held herself out as a candidate on 29th December 1970 or that Sri Yashpal Kapur started working for her shortly thereafter could create complications. The respondent no. 1, therefore, took the stand that she held herself out as a candidate for the first time on 1st of February 1971, and that she did not ask Sri Yashpal Kapur or any other person to do any work for her till then. Sri Yashpal Kapur tried to make a statement in conformity with the stand taken by the respondent no. 1 and that has given rise to the aforesaid inconsistencies.

Cross-examination was also done with Sri Yashpal Kapur regarding some property, said to have been acquired by him in the name of his wife. He admitted that a property had been purchased by his wife in Gold Link

(230)

A024  
235

area for which she had paid something above Rs four lacs. According to him, he contributed a sum of Rs 50,000/- to his wife for that purpose, a sum of Rs 1,00,000/- was advanced to her by his mother-in-law, a little more than Rs 1,00,000/- was advanced to his wife by Narang Bank and a sum of a little more than Rs 1,00,000/- was given on loan by a family friend. He was, therefore, questioned as to on what conditions the loans were obtained ~~by him~~ or by his wife, and to that he replied that he was not aware as to on what conditions the loans had been taken. He also pleaded ignorance if the building purchased by his wife or part thereof had been mortgaged in favour of any of those persons from whom loans were taken, or if any pronote or bonds had been executed in that connection. He also pleaded ignorance about the covered accommodation in the building purchased by his wife. Now, it cannot be ignored that the building had been purchased by a person no other than the wife of Sri Yashpal Kapur. It is not his case that the relations between him and his wife are strained. On the other hand, on his own admission, he contributed Rs 50,000/- towards the purchase of the building. In that background, it is difficult to accept that Sri Yashpal Kapur did not know whether any bonds, pronotes or mortgage deeds had been executed in respect of the loans taken, and about the covered accommodation in the house. // Again,

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(231)

4006  
231

a perusal of the written statement<sup>and add written statement</sup> filed by the respondent no. 1 shows that a number of the paragraphs thereof have been verified by the respondent no. 1 on the basis of the information received from her election agent, namely Sri Yashpal Kapur. The respondent no. 1 during her deposition also stated that after she had received copy of the election petition she had talked to Sri Yashpal Kapur on the subject. The statement made by Sri Yashpal Kapur on that point is inconsistent with that made by the respondent no. 1, for, he stated that he did not discuss the election petition with the respondent no. 1 any time before appearing in Court to give his evidence. His attention was then invited to the verification clause contained in the written statement and he said: "I still maintain that I did not have any talk with the respondent no. 1 about the election petition."

From the above discussion of the statement made by Sri Yashpal Kapur it would appear that it is not a statement of ~~is~~ straightforward nature and on several points it is an admixture of half truths and untruths. Consequently, no reliance can be placed on that part of his statement wherein he denied to have said anything in his speech on 7th January 1971 pertaining to the candidature of the respondent no. 1. It may also not be out of place to add that since it <sup>is</sup> was Sri Yashpal Kapur himself who was charged with having rendered the assistance to the respondent no. 1 in his capacity as a Gazetted Officer of Government of India, he could not be

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expected to admit it.

Learned counsel for the respondent then urged that even accepting that Sri Yashpal Kapur delivered a speech at Munshiganj on 7th January 1971 and that he canvassed support for the respondent in that speech, he was not an election agent on that date, and there is no evidence of the fact that he had been instructed to do so by the respondent no. 1. Learned counsel stressed that, consequently, it <sup>is shown</sup> cannot be held on that basis that the respondent no. 1 obtained or procured the assistance of Sri Yashpal Kapur for the furtherance of her election prospects.

I have given my careful consideration to this argument as well, but I regret my inability to accept the same. As also stated earlier, Sri Yashpal Kapur was occupying <sup>a</sup> the position of trust and confidence with the respondent no. 1 since quite a long time. During the period in question he was Officer on Special Duty in the respondent no. 1's Secretariat. In 1967 he had resigned from his post for the sake of respondent no. 1 to be able to do her election work in the constituency. After that was done, he was taken back in the respondent's secretariat as Officer on Special Duty. Respondent no. 1 held herself out as a candidate on 29th December 1970. On 5th of January 1971 Raja Dinesh Singh was sent to the constituency. On 7th of January 1971 Sri Yashpal Kapur visited Rae Bareilly and, on the own admission of respondent no. 1, he did so with previous notice to

No. 26  
2023

(233)

the respondent no. 1. The subsequent events also appear to be material, for, according to Sri Yashpal Kapur, immediately on return from Rae Bareli he held a talk with the respondent no. 1 on 9th or 10th of January 1971; on 13th January he again resigned from the post and the same day set out once again for the constituency of the respondent no. 1. It was again he who was ultimately appointed election agent for the respondent no. 1. It may be added that it was not possible to adduce any direct evidence on the point whether the respondent no. 1 instructed Sri Yashpal Kapur to go to Rae Bareli on 7th January 1971 for any election work. That can be inferred only on the basis of the surrounding circumstances. I have already mentioned those circumstances above and to my mind the only inference that can be drawn on the basis of those circumstances is that the respondent no. 1 went to Rae Bareli on the aforesaid date under instructions of the respondent no. 1 for doing preliminary work pertaining to her election.

To sum up, therefore, it is satisfactorily proved that the respondent no. 1, during the period ending on 13th January 1971, obtained/procured the assistance of Sri Yashpal Kapur, a Gazetted Officer in the Government of India for the furtherance of her election prospects, inasmuch as Sri Yashpal Kapur was made to go to Rae Bareli on 7.1.1971 and deliver a speech at Saheed Mela in Munshiganj canvassing support for her candidature.

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(234)

The period  
from 14.1.1971  
to 25.1.1971.

There is no controversy about the fact that Sri Yashpal Kapur tendered his resignation from the post of Officer on Special Duty on 13th of January 1971 and the same day he left for Lucknow. Further, on the own admission of Sri Yashpal Kapur, he reached Rae Bareilly on 14th of January 1971. I have already held earlier that on 7th of January 1971 he had gone to Rae Bareilly in order to start election work for the respondent no. 1 and, while delivering speech in the Shaheed Mela in Munshiganj, he solicited support for the respondent no. 1. He returned to Delhi on 8th January 1971, and on 9th or 10th January 1971 he held talks with the respondent no. 1. In the context of my finding that he had gone to Rae Bareilly on 7th of January 1971 for doing election work, it should be inferred that he <sup>presumably</sup> talked about the same during the conversation that he had with the respondent no. 1 on 9th or 10th of January 1971. The fact that he resigned on 13th of January 1971 with a view to do political work and directly came to Rae Bareilly, in that background, is a strong pointer to the conclusion that he did so with a view to do election work for the respondent no. 1. It is also worthy of notice in this connection that voucher no. 49 accompanying the return of election expenses (Exh. 5) of the respondent, relates to the salary paid to Siraj Ahmad as driver of the jeep that <sup>was admittedly</sup> used by Sri Yashpal Kapur for doing election work for the respondent no. 1. A perusal of this receipt shows that Siraj Ahmad was paid his salary for the period commencing from 15th of January 1971. This voucher also, therefore,

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A-8226  
225

(235)

proves that at least with effect from 15th of January 1971 Sri Yashpal Kapur started doing election work for the respondent no. 1. It may be mentioned at this place that the explanation given by Sri Yashpal Kapur about the aforesaid voucher has already been held by me <sup>earlier</sup> to be unworthy of acceptance.

The statement of Sri Mohan Lal Tripathi (P.W. 59), General Secretary, District Congress Committee (R), Rae Bareilly, also lends support to the fact that during the period commencing from 14th of January 1971 Sri Yashpal Kapur was doing election work at Rae Bareilly. He said that till 1st of February 1971 they were making propaganda for votes being cast in favour of the congress candidate. He, however, added that they were not canvassing for any particular candidate. He further said that Sri Yashpal Kapur also did canvassing in a similar manner.

The fact that Sri Yashpal Kapur did work pertaining to election during his stay at Rae Bareilly with effect from 14th of January 1971 also finds some support from the additional written statement filed by the respondent no. 1. In para 2(b) the respondent no. 1, inter alia, pleaded: -

"The statement in the amended paragraph 5 of the petition that Sri Yashpal Kapur, at the direction of this respondent, organised the electioneering work for her during the entire period commencing from 27th December 1970,

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A826  
236

(236)

is denied, except that, Sri Yashpal Kapur did some work in the constituency, though there was no electioneering work done by him for this respondent till a few days before his appointment as election agent." (Underlining is by me)

By the aforesaid pleading the respondent no. 1 appears to have admitted that Sri Yashpal Kapur did some work in the constituency prior to his being appointed as election agent and that a few days before his appointment as election agent he also did some electioneering work for the respondent. In para 2(c) the respondent no. 1, *inter alia*, pleaded: -

" It is also denied that Sri Yashpal Kapur made any speech on 7.1.1971 in support of her candidature. Though a few days even before his appointment as election agent he did make speeches appealing to the voters for the Indian National Congress but not particularly for any candidate or canvassing for this respondent." (Underlining is by me)

This part of the pleading appears to be inconsistent with the above-quoted pleading contained in para 2(b) of the petition, inasmuch as while the pleading contained in para 2(b) of the additional written statement ~~and~~ conceded that some electioneering work was also done by Sri Yashpal Kapur for the respondent no. 1 a few days before his appointment as election agent, it is denied

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A 826  
73

(237)

in the above-quoted part of the pleading contained in para 2(c) of the additional written statement. A cumulative reading of para 2(b) and para 2(c) of the additional written statement, however, shows a clear concession on the part of the respondent no. 1 that Sri Yashpal Kapur was doing some election work at Rae Bareilly before his appointment as election agent, though that work was not particularly for any candidate. Now, once it is accepted that, during the period before his appointment as election agent, Sri Yashpal Kapur was doing work pertaining to election within the constituency, it should be inferred that the work related to the candidature of the respondent no. 1, in view of my finding recorded earlier that the respondent no. 1 had held herself out as a candidate on 29th of December 1970. <sup>The fact was</sup> ~~Since~~ the respondent no. 1 was a candidate from Rae Bareilly constituency with effect from 29th December 1970 and <sup>in fact that</sup> ~~since~~ Sri Yashpal Kapur had also gone to Rae Bareilly on 7th January 1971 and <sup>then</sup> had delivered a speech in support of her candidature, <sup>rather make</sup> it is obvious that during the period between 14th of January 1971 and 25th of January 1971 also the work done by Sri Yashpal Kapur at Rae Bareilly pertained to the election of the respondent no. 1.

Therefore, the circumstances emanating from the additional written statement of the respondent no. 1, from the statement on oath made by Sri Yashpal Kapur (R.W. 32) and from the statement made by Sri Mohan

A-826  
238

(238)

Lal Tripathi (P.W. 59) towards the end of his cross-examination, it is clearly borne out that during the period between 14th of January 1971 and 25th of January 1971 Sri Yashpal Kapur was doing election work for the respondent no. 1.

✓ Coming to the specific instances,  
It is first alleged that on 14th of January 1971 Sri Yashpal Kapur led a fleet of cars through the town of Rae Bareilly as part of the election propaganda for the respondent no. 1. The oral evidence relied upon by the petitioner in this connection consists of the statements of Uma Shankar Yadav (P.W. 41) and Ram Kumar Singh (P.W. 42).

Sri Uma Shankar Yadav is a practising Advocate. He stated that on 14th of January 1971 a number of vehicles started in procession from the Central Election Office, Rae Bareilly, carrying posters and banners in favour of the candidature of respondent no. 1. He added that loudspeakers were fitted on the vehicles; and the people on the vehicles appealed to the public through the loudspeakers that they should give votes to the respondent no. 1 and should make her successful. He, however, did not claim to have seen Sri Yashpal Kapur in that procession, though he added that he had seen him round about 15th of January 1971 doing election propaganda. Learned counsel for the petitioner urged that Uma Shankar Yadav (P.W. 41), according to an admission elicited in his cross-examination, was a staunch worker of the S.S.P., and that during the

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election of 1971 he worked as counting agent for the petitioner besides working for him in connection with his election campaign. Learned counsel stressed that Uma Shankar Yadav is, therefore, a strongly partisan witness and consequently no reliance can safely be placed on his testimony.

There is more than one reason, however, for which I am unable to accept the criticism levelled by learned counsel for the petitioner. Sri Uma Shankar Yadav is a practising Advocate and therefore a respectable person. It was not put to him in cross-examination that no procession of vehicles was taken out by the Congress Party in Rae Bareilly on 14th of January 1971 and that the statement made by the witness was an outright lie. On the contrary the following question was put to him: -

" Q. Is it not correct that the propaganda that was started on 14th January 1971 by the congress men was for the success of the Congress Party in the election and not for a particular candidate?"

This question contains a clear suggestion to the effect that even though the election propaganda had started on 14th of January 1971, as deposed by this witness, it was for the success of the Congress Party and not for any particular candidate. Further, the statement of this witness is corroborated by the evidence Ram Kumar Singh (P.W. 31). In the context of these

(240)

circumstances, there does not appear any risk in relying on the testimony of Sri Uma Shankar Yadav Advocate, even though he is a partisan witness.

Sri Ram Kumar Singh (P.W. 42) deposed that on 14th of January 1971 a fleet of cars started under the leadership of Sri Yashpal Kapur, that the procession moved throughout the town and publicity was made that respondent no. 1 was contesting election, as she did on the previous occasion, and further that she should be made successful. In cross-examination a suggestion was made to him that there were no banners on the vehicles, showing "Indira Ji ko vote do" and that the only propaganda being made was "Indira Congress Ko Jitao". The relevant portion of the statement reads as follows:-

" It is wrong to say that there was no banner on any of those vehicles, saying 'Indira Ji Ko vote do'. It is also wrong to say that the only propaganda being made was 'Indira Congress ko jitao'."

It will thus appear that in the cross-examination of Ram Kumar Singh as well, it was not put that the statement made by him regarding a fleet of cars having been taken out on 14th of January 1971 was false ab initio. The trend of the cross-examination, on the contrary, was that even though a fleet of cars or jeeps was taken out, the only propaganda done from those cars and jeeps was that 'Indira Congress' should be made successful and not that

(241)

Indira Ji' herself should be made successful. That being the shape of cross-examination, there does not appear any good justification for refusing to accept the statement on oath made by Ram Kumar Singh.

Learned counsel for the respondent no. 1 no doubt urged that Ram Kumar Singh is a member of the Organisation Congress and that he worked for the ~~respondent no. 1~~ <sup>perhaps</sup> in the election. True, it is so. The fact, however, remains that, with the shape of cross-examination done with Ram Kumar Singh, that circumstance is not sufficient to lead to the conclusion that the statement made by Ram Kumar Singh about the fleet of cars having been taken out in the town on 14th of January 1971 under the leadership of Yashpal Kapur is a lie.

The petitioner also relied on the news item published in the issue dated 22.1.1971 of <sup>(429)</sup> ~~'Swantra Bharat'~~ in support of the fact that a fleet of cars had been taken out by Sri Yashpal Kapur on 14th of January 1971. Since, however, the person who reported the relevant news item has not been examined, it may not be very safe to act thereon even as a piece of corroborative evidence. I would accordingly not take that news item into consideration.

On the side of the respondent, there is the sole testimony of Sri Yashpal Kapur (R.W. 32), who said that he did not take out any fleet of cars in the

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142  
(242)

town on the 14th January 1971. I have, however, already discussed the evidence of Sri Yashpal Kapur in detail <sup>earlier</sup> and have concluded that he is not a reliable witness. I accordingly find that the evidence of Sri Yashpal Kapur fails to rebut the evidence of Sri Uma Shankar Yadav (P.W. 41) and Ram Kumar Singh (P.W. 42).

On the evidence of Sri Uma Shankar Yadav (P.W. 41) and Ram Kumar Singh (P.W. 42), it is borne out that a fleet of cars and jeeps was taken out in procession on 14th of January 1971 doing propaganda for the respondent no. 1 ~~and Sri Yashpal Kapur~~ and Sri Yashpal Kapur was associated with it.

It is next alleged that on 17th of January 1971 an election meeting was held at the Clock Tower, Rae Bareilly, in which Sri Chandra Shekhar and Sri Yashpal Kapur (R.W. 32) participated. The oral evidence relied upon by the petitioner in that connection consists of the statements of Sri Ram Kumar Dixit alias Phakkar (P.W. 31) and Ram Kumar Singh (P.W. 42).

Ram Kumar Dixit alias Phakkar (P.W. 31), speaking on the point, deposed that Sri Yashpal Kapur was also present in the meeting, though he did not remember whether he delivered any speech in that meeting or not. The witness further said that some excitement and shouting of slogans took place at the meeting and displeasure was expressed against Sri Yashpal Kapur

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(243)

in the slogans. He proved the news item (Exh. 69) contained in the issue of 'Beer Baiswara' dated 23rd January 1971 pertaining to that meeting. He deposed that as a reporter of 'Beer Baiswara' he had himself sent the report about that news item. In the news item (Exh. 69) it is stated that disturbance was created in the election meeting of the respondent no. 1, held on 17th January 1971 at the crossing of the Clock Tower, Rae Bareilly, which was addressed by Sri Chandra Shekhar, when some young persons made some accusations against Sri Yashpal Kapur and shouted slogans against him. It is further reported in the news item that some counter slogans were also shouted thereafter. I have considered the statement made by Sri Ram Kumar Dixit earlier in connection with the speech delivered by Sri Yashpal Kapur at Munshiganj on 7.1.1971 and have come to the conclusion that he is a reliable witness. Further, the statement made by Sri Ram Kumar Dixit regarding the meeting that took place on 17th January 1971 is supported by the news item (Exh. 69), which was published in 'Beer Baiswara' on 23rd January <sup>1971</sup> ~~1969~~. Indeed, it cannot be said that this issue of 'Beer Baiswara' was prepared later on for the purposes of the election meeting. It may also be added at this place that the factum of an election meeting having taken place as deposed by Sri Ram Kumar Dixit was not seriously challenged on behalf of the respondent, as would appear from the following question that was put to Ram Kumar Dixit

A-1001  
7/11/71

(244)

in cross-examination:

" I put it to you that this meeting was convened for the purpose of making a propaganda in favour of the Congress as a party."

This question contains a clear admission of the fact that a meeting did take place as alleged by the petitioner.

For all these reasons, I see absolutely no justification for refusing to act on the testimony of Ram Kumar Dixit alias Phakkar (P.W. 31).

Coming to the evidence of Ram Kumar Singh (P.W. 42), he deposed that an election meeting was convened at the Clock Tower in Rae Bareilly on 17th of January 1971 and that, when Sri Yashpal Kapur wanted to deliver a speech in that meeting, some disturbance was created by the students, as a result of which he could not do so and the meeting was then controlled by Sri Chandra Shekhar. Referring to the speech of Sri Chandra Shekhar, the witness said that he canvassed support for the respondent no. 1 in his speech. It is true that Ram Kumar Singh is a staunch worker of the Congress <sup>(o)</sup> Party and had also worked for the petitioner in the election that took place in 1971. In view, however, of the fact that the factum of the meeting is not seriously challenged on behalf of the respondent no. 1, as is apparent from the earlier-mentioned question put to

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245

(245)

R.K.Dixit (P.W. 31), and further in view of the fact that the evidence of Ram Kumar Singh is amply supported by the evidence of R.K.Dixit and the news item (Exh. 69) published in the issue of 'Beer Baiswara' dated 23rd January 1971, I see no risk in acting on the evidence of Ram Kumar Singh as well.

The respondent examined Sri Vimal Chand Dwivedi (R.W. 18) and Sri Yashpal Kapur (R.W. 32) in rebuttal. Sri Vimal Chand Dwivedi accepted that a meeting had taken place at the Clock Tower, Rae Bareilly, which was addressed by Sri Chandra Shekhar. He, however, added that Sri Yashpal Kapur was not present in that meeting. A perusal of his cross-examination, however, shows that he is not at all a truthful witness. He said that the meeting addressed by Sri Chandra Shekhar was not an election meeting. I have already shown earlier that the case put to Sri R.K. Dixit (P.W. 31) in cross-examination was that the meeting was an election meeting, though propaganda in that meeting was being done for the Congress as a party and not for any candidate. The statement to the contrary made by Sri Vimal Chand Dwivedi must, therefore, be rejected as incorrect. Again, Sri Dwivedi went to the extent of saying that Sri Yashpal Kapur did not visit Rae Bareilly on 7th January 1971, a fact admitted by Sri Yashpal Kapur himself. It was also elicited in his cross-examination that the brother of this witness is a lecturer in Feroz Gandhi College and Sri Yashpal Kapur is the Vice-President of the Managing Committee of that College. It appears that he gave

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(246)

statement under that influence. The influence was so great that he went to the extent of denying even admitted facts, namely that Sri Yashpal Kapur visited Rae Bareilly on 7th of January 1971 with Sri Gulzari Lal Nanda. Obviously no reliance can be placed on the evidence of such a witness. // As for Sri Yashpal Kapur, I have already considered his evidence elaborately earlier and have not found him to be reliable witness. // There being no other evidence on the side of the respondent, the evidence of Sri R.K. Dixit (P.W. 31) and Ram Kumar Singh (P.W. 42) remains unrebutted. On the basis of that evidence I conclude that an election meeting of the respondent no. 1 was convened on 17th of January 1971 at the Clock Tower, Rae Bareilly, and that Sri Yashpal Kapur participated in that meeting.

It is next alleged that on 19th of January 1971 Professor Sher Singh, a Minister of State in the Government of India, and Sri Yashpal Kapur addressed a meeting in village Nihasta and in those speeches they, inter alia, canvassed support for the candidature of the respondent no. 1. It is true that Raj Kishore Singh belongs to Jan Sangh Party and looked after the election work of the petitioner at Nihasta polling station. It is, however, significant to find that in the cross-examination of Raj <sup>Kishore</sup> ~~Kumar~~ Singh a question was put to him, which is as follows: -

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(247)

A8125  
247

" I suggest to you that Sri Yashpal Kapur only said that we should support the leadership of the respondent no. 1 and the Congress."

The above question implies a clear admission that Sri Yashpal Kapur was not only present with Professor Sher Singh when <sup>he</sup> ~~he~~ <sup>latter</sup> addressed the meeting at Nihasta on 19th January 1971, but further that he also delivered a speech. All that was sought to be contended was that in the speech canvassing was done not for the respondent no. 1 but for the leadership of the respondent no. 1 and for the party. Now, once it is accepted that respondent no. 1 had given herself out as a candidate from Rae Bareilly on 29th December 1970, even seeking support from the electorate for the leadership of the respondent or for the Congress as a party meant nothing except soliciting support for the respondent no. 1 in the constituency. Learned counsel for the respondent no. 1 argued that the above question does not contain any admission to the effect that Sri Yashpal Kapur was present at Nihasta on 19th of January 1971 or that he delivered any speech whatsoever. Learned counsel ~~for the respondent no. 1~~ <sup>above quoted</sup> submitted that the question was put because there was no means to know till that stage whether Sri Yashpal Kapur was actually present in the meeting or not. In other words, it was just a probing question. The explanation offered by learned counsel for the respondent no. 1 is not

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(248)

acceptable to me. Learned counsel for the respondent no. 1 had the advantage of being instructed by more than one pairakar. One of them, namely Sri Jagpat Dubey was always present by the side of the learned counsel. Further, Sri Yashpal Kapur was no other <sup>than</sup> ~~that~~ the election agent of respondent no. 1. In the circumstances, the explanation sought to be given by learned counsel for the respondent appears to be mere afterthought.

The only infirmity in the evidence of Raj Kishore Singh P.W. is that according to him Professor Sher Singh visited village Nihasta on 19th January 1971, while according to the tour programme (Exh. 47) he should have visited that village on 18th January 1971. I cannot, however, ignore the fact that Raj Kishore Singh P.W. was examined as a witness in the case after a lapse of more than three years. Further, Professor Sher Singh was present within the district on both the dates. The mistake about the date in the statement of Raj Kishore Singh P.W. can therefore be due to lapse of time and consequent confusion in his mind. The evidence of Raj Kishore Singh cannot be discarded on that account.

I thus see no justification for refusing to act on the testimony of Raj Kishore Singh (P.W. 26).

In order to rebut the evidence of Raj Kishore Singh, the respondent no. 1 examined Jagannath Prasad (R.W. 16 and Krishna Dutta Pandey (R.W. 17).

Jagannath Prasad (R.W. 16) is a resident of village Nihasta. Krishna Datta Pandey (R.W. 17) was Sub-Postmaster in the Sub Post Office, Nihasta during

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8/12/69  
217

(249).

the year 1971. Both of them deposed that Professor Sher Singh visited village Nihasta on 18th January 1971 to inaugurate the Telephone Exchange Section in the Sub Post Office. It was further stated by them that Sri Yashpal Kapur was not present at the said inaugural function. Their evidence cannot be accepted for the simple reason that it is inconsistent with the respondent no. 1's case, as was clearly put to Raj Kishore Singh (P.W. 26) in cross-examination. It appears that till quite a late stage the respondent no. 1 did not intend to deny the presence of Sri Yashpal Kapur in the function that took place at Nihasta in connection with the inauguration of the Telephone Exchange Section in the Sub Post Office, ~~and~~ <sup>and</sup> ~~xxxxxx~~ that it was only when the respondent entered on her defence that it was decided to deny that fact. Indeed, it is never difficult for any party to find one or two witnesses to bolster up his case, whether it is true or false.

Therefore, placing reliance on the evidence of Raj Kishore Singh in preference to the evidence of Jagannath Prasad (R.W. 16) and Krishna Dutta Pandey (R.W. 17), I hold that Sri Yashpal Kapur was present at Nihasta when Professor Sher Singh inaugurated the Telephone Exchange Section in the Sub Post Office there and that Sri Yashpal Kapur on that occasion delivered

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(250)

a speech, saying that the respondent no. 1 was to contest election from Rae Bareilly and that people should support her.

It is next alleged that on 19th of January 1971 Professor Sher Singh and Sri Yashpal Kapur attended a meeting held in Lalganj and that at the said meeting Sri Yashpal Kapur said that respondent no. 1 would contest election from Rae Bareilly constituency and that people should make her successful. The only evidence adduced by the petitioner in proof of the above fact is that <sup>v. of</sup> Sri Girish Narain Pandey (P.W. 30). Sri Girish Narain Pandey, however, conceded in cross-examination that during the year 1971 he was a worker of the Jan Sangha Party and that during the year he was examined in Court he was a member of the Rashtriya Swayam Sewak. He further conceded that he actively supported the petitioner in the election and had worked for him as a counting agent as well as polling agent. He is, therefore, a partisan witness. There being no evidence to corroborate the evidence of Girish Narain Pandey, it will not be safe to place reliance on his testimony.

The respondent examined Abdul Jabbar (R.W. 25), Fateh Bahadur Singh (R.W. 26), Ishwar Chand (R.W. 27) and Ranjit Singh (R.W. 28) to rebut the evidence of Girish Narain Pandey. In view, however, of the fact that I have not considered it safe to place reliance on the solitary evidence of Girish Narain Pandey, it

(251)

is needless to refer to the evidence of the aforesaid witnesses of the respondent no. 1 in any detail.

I accordingly find that the petitioner failed to prove that Sri Yashpal Kapur delivered any speech of the nature alleged at Lalganj on 19th of January 1971.

It is next alleged that on 19th of January 1971 inaugural function of the Telephone Exchange Section took place at Behta Kalan and in that connection Professor Sher Singh, accompanied by Sri Yashpal Kapur, visited ~~the~~ village Behta Kalan. It is also alleged that on that occasion Sri Yashpal Kapur delivered a speech saying that the respondent no. 1 would contest election from Rae Bareilly and that people should make her successful. The petitioner examined Pandit Sheshank Misra (P.W. 32), who made a statement in support of the above said allegation.

Learned counsel for the respondent no. 1 pointed out that the father of Pt. Sheshank Misra P.W. is a member of the Jan Sangh Working Committee, and that during the year 1971 he himself was polling agent for the petitioner. It is true that Pt. Sheshank Misra himself candidly accepted both the aforesaid facts during his cross-examination. It is, however, once again worthy of notice that in the case that was put to Pt. Sheshank Misra (P.W. 32) it appears to have been clearly conceded that Sri Yashpal Kapur was not only present at the inaugural function that took place at Behta Kalan on 19th January 1971 but that he also delivered some

speech. This is apparent from the following questions put to him: -

" Q. I put it to you that the moment Sri Yashpal Kapur started speaking there was an excitement and uproar as a result of which no person in the meeting could hear what was being said by Sri Yashpal Kapur.

A. It is wrong.

Q. I put it to you that Sri Yashpal Kapur did not say anything regarding the candidature of respondent no. 1.

from Rae Bareilly parliamentary constituency and that he made an appeal only for the help to be given to the Congress in general.

A. This is wrong."

Learned counsel for respondent no. 1 once again offered the same explanation for having put these questions as were given in connection with the suggestion that was made to Raj Kishore Singh (P.W. 26) in cross-examination. I have already said at that stage that the explanation is not at all well founded. I have the same reply to give to the explanation sought to be given by learned counsel for the respondent no. 1 in regard to the above-quoted questions put to Pt. Sheshank Misra. In that view of the matter, it has to be accepted that Sri Yashpal Kapur was present at Behta Kalan on 19th

7026  
253

(253)

of January 1971 when Professor Sher Singh inaugurated the Telephone Exchange Section there, and that he delivered an election speech on that occasion. In view of my finding earlier that by that time the respondent no. 1 had held herself out as a candidate from Rae Bareilly parliamentary constituency, it follows that in the election speech delivered by Sri Yashpal Kapur he should have solicited support for the respondent no. 1 as deposed by Pt. Sheshank Misra.

The respondent no. 1 examined Shitla Bux Singh (R.W. 14) and Raghubans Bahadur Singh (R.W. 15) in order to rebut the evidence of Sheshank Misra.

One of the reasons why the respondent no. 1 chose to examine <sup>these</sup> ~~six~~ persons in his defence, presumably, was that Sheshank Misra P.W. had filed a notice (Exh. 74), said to have been issued <sup>to the public</sup> in regard to the meetings that took place at Behta Kalan on 19th January 1971. This notice, inter alia, mentioned that Sri Yashpal Kapur, Private Secretary of the Prime Minister, shall also be present on the occasion. The notice was issued under the signatures of Shitla Bux Singh and Raghubans Bahadur Singh R.Ws. besides Gupta Singh, M.L.A. Both these witnesses deposed that Professor Sher Singh inaugurated Telephone Exchange at Behta Kalan on 19th January 1971. They, however, denied the presence of Sri Yashpal Kapur on that occasion. In view, however, of the clear case that was put to Sheshank Misra in cross-examination, admitting the presence of Sri Yashpal Kapur in the function that took place at Behta Kalan on 19th January

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(254)

1971, no reliance can be placed on the statement of Shitla Bux Singh and Raghubans Bahadur Singh R.Ws. denying his presence in that function.

I accordingly find that Sri Yashpal Kapur did deliver a speech at Behta Kalan on 19th January 1971 wherein he solicited support for the candidature of the respondent no. 1 in the election.

The last allegation is that on 18th of January 1971 Professor Sher Singh laid <sup>the</sup> foundation stone of the new building of the Post Office at Rae Bareilly and in the function held there Sri Yashpal Kapur delivered a speech canvassing support for the respondent no. 1. The only evidence relied upon by the petitioner in that connection is that of Uma Shankar Yadav (P.W. 41). A perusal of his statement would show that while he deposed about the foundation-stone laying ceremony of the Post Office building at Rae Bareilly by Professor Sher Singh, he did not depose either about the presence of Sri Yashpal Kapur at that function or about any speech having been delivered by him. It will thus follow that there is no evidence on the side of the petitioner in support of that allegation and that allegation is accordingly not proved.

The period from 25th of January to 10th of Febry. 1971.

Learned counsel for the petitioner urged that unless an order accepting the resignation is communicated to the Government servant concerned the resignation does not take effect. Learned counsel further urged that it is not disputed even to the

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55

(255)

respondent that Sri Yashpal Kapur had started doing election work for her with effect from 1st of February 1971. It was urged that the resignation of Sri Yashpal Kapur having been <sup>Gazetted</sup> ~~accepted~~ on 6th of February 1971, it should be inferred that it was communicated to Sri Yashpal Kapur on that date and it was on the same date that it took effect. On this reasoning, learned counsel urged that the act of the respondent no. 1 in obtaining the assistance of Sri Yashpal Kapur between 1st of February 1971 and 6th of February 1971 shall <sup>also</sup> constitute a corrupt practice under section 123(7) of the Representation of the People Act.

I have, however, already held on the basis of the decision of the Supreme Court in case Raj Kumar v. Union of India (A.I.R. 1969 Supreme Court 180) that a resignation takes effect on the date it is accepted and that its formal communication to the Government servant concerned is not necessary. As also stated earlier, the order accepting the resignation of Sri Yashpal Kapur was passed on 25th of January 1971, as is apparent from the Gazette notification. Sri Yashpal Kapur, therefore, ceased to be a Government servant with effect from that date. Consequently, on the basis of anything done by Sri Yashpal Kapur for the respondent no. 1 during the period between 25th of January 1971 and 6th of February 1971, the respondent no. 1 cannot be held guilty of having committed a corrupt practice.

My conclusion, therefore, on Issue No. 1 (first set) read with Issue No. 1 (of the additional issues)

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(256)

is that the respondent no. 1 obtained and procured the assistance of Sri Yashpal Kapur during the period from 7th of January 1971 to 24th of January 1971 in furtherance of her election prospects, when Sri Yashpal Kapur was still a Gazetted Officer in the service of the Government of India holding the post of Officer on Special Duty in the Prime Minister's secretariat; and the respondent no. 1 is thereby guilty of the commission of a corrupt practice under section 123(7) of the Act.

O R D E R.

Election Petition:

In view of my findings on Issue No. 3 (first set), Issue No. 1 (first set) read with additional Issue No. 1, Additional Issue No. 2 and Additional Issue No. 3, this petition is allowed and the election of <sup>by Sm. Indira Nehru Gandhi</sup> ~~the~~ respondent no. 1, to the Lok Sabha is declared void.

The respondent no. 1 has been found guilty of having committed a corrupt practice under section 123(7) of the Representation of the People Act by having obtained the assistance of the Gazetted Officers of the State Government of U.P. viz. the District Magistrate, Rae Bareilly, the Superintendent of Police, Rae Bareilly, the Executive Engineer, P.W.D., Rae Bareilly, Engineer, Hydel Department, Rae Bareilly, in furtherance of

(257)

her election prospects in the manner indicated in my finding on Issue No. 2. She has further been found guilty of having committed another corrupt practice under section 123(7) of the Representation of the People Act by having obtained the assistance of Sri Yashpal Kapur, a Gazetted Officer in the Government of India, holding the post of Officer on Special Duty in the Prime Minister's Secretariat, for the furtherance of her election prospects in the manner indicated in my finding on Issue No. 1 read with Additional Issue no. 1. The respondent no. 1 accordingly stands disqualified for a period of six years from the date of this order, as provided in section 8A of the Representation of the People Act.

The petitioner shall get his costs of the election petition from the respondent no. 1. A table of costs shall be prepared by the office in accordance with rule <sup>13</sup>~~30~~ Chapter XV<sup>1</sup> of the Rules of Court.

Writ Petition:

As already pointed out while recording my finding on Issue No. 9, the petitioner has not been able to lay any foundation on facts to compel an inquiry into the constitutionality of the Representation of the People (Amendment) Ordinance 1974 (No. XIII of 1974) or that of the Representation of the People (Amendment) Act 1974.

(258)

(Act No. 58 of 1974). The writ petition No. 3761 of 1975 is accordingly rejected. The parties shall bear their own costs in the writ petition.

Sd- J. M. L. Sinha, J.

D/- 12.6.75

ML

Compared by:  
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21/6/17

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