Shri Baburao Patel & Ors.

Vs

Dr. Zakir Husain & Ors.

Election Petition No. 1 of 1967

(CJI K. N. Wanchoo, K. S. Hegde, R. S. Bachawat, G. K. Mitter, V. Ramaswami-I JJ)

07.11.1967

JUDGMENT

WANCHOO, C. J. -

The presidential election in India was held in May 1967. In that election, 17 candidates were nominated. The result of the election was declared on May 9, 1967, and Dr. Zakir Husain was declared elected. The present petition is against the election of Dr. Zakir Husain as President and has been filed under Art. 71 of the Constitution read with the Presidential and Vice-Presidential Elections Act, No. 31, 1952 (hereinafter referred to as the Act) by 13 members of Parliament. The attack on the validity of the election of Dr. Zakir Husain has been made on two grounds. The first ground is that no oath was taken by Dr. Zakir Husain before his nomination as required by Art. 84 read with Art. 58 of the Constitution. In consequence he was not eligible for election as President and his election is liable to be set aside. Curiously enough, however, the petitioners pray for a declaration that Sri Subba Rao, who received the second highest number of votes should be declared elected, though he (like Dr. Zakir Husain) also did not take the oath before his nomination.

The second ground on which the election of Dr. Zakir Husain is challenged is that the result of the election has been materially affected by reason of undue influence, thereat and in this connection reliance is placed on four matters to which reference will be made later.

The petition has been opposed on behalf of Dr. Zakir Husain. It has been urged in reply that no oath was necessary under Art. 84 read with Art. 58 of the Constitution, and as such he was eligible to stand. It has also been said on behalf of Dr. Zakir Husain that in case his nomination is invalid on that ground, Sri Subba Rao's nomination is equally invalid as he also did not take the oath. As to undue influence it is urged that no undue influence was exercised, nor was the result of the election materially affected by any exercise of undue influence. Of the four matters urged in support of the attack on the ground of undue influence, the truth of one of them was not accepted. But it is urged in the alternative that even accepting all that has been said by the petitioners in support of their case of undue influence, the allegations made by the petitioners do not in law amount to undue influence and therefore there could be no question of the result of the election being materially affected by the exercise of any undue influence.

On the pleading of the parties, the following issues were framed :-

> 1. Whether the acceptance of the nomination papers of respondents Nos. 1 to 17 by the Returning Officer was illegal and contrary to law for the reason that Respondents Nos. 1 to 17 did not subscribe to the oath required under Article 84(a) of the

Constitution read with Article 58 (1)(c) thereof;

2. Whether the result of the election has been materially affected;

3. Whether the acts and conduct alleged in para 12 of the petition and set out under heads A, B, C and D thereof amount to undue influence within the meaning of s. 18(1)(b) of the Act.

4. Whether the allegations made under heads A, B, C, and D in para 12 of the petition in so far as they are not admitted are true;

5. Whether the petition is entitled to any relief, and if so, to what relief.

It will be seen that issues Nos. 1 and 3 raise pure questions of law. We made it clear to learned counsel that we would try this petition in two parts. We shall first deal with the two issues of law, and then, if necessary, set the petition down for further hearing on evidence. We also indicated that if issue No. 1 is decided in favour of the petitioners, the election would have to be set aside and then there would be no question of any further hearing on evidence. We further indicated that if issue No. 3 is decided in favour of the petitioners, the petition would have to be set down for further hearing on evidence on matters of fact which were in dispute. Lastly, we indicated that if both these issues were decided against the petitioners, the petition would fail and it would not be necessary then to set it down for further hearing on evidence. We propose now to consider the two issues of law.

Issue No. 1.

In order to decide this issue, we have to see what the Constitution provided, before the Constitution (Sixteenth Amendment) Act, 1963 (hereinafter referred to as the Amendment Act). This Act was passed on October 5, 1963. Before that amendment Art. 58(1) with which we are concerned in the present petition was in these terms :-

"(1) No person shall be eligible for election as President, unless he -

(a) is a citizen of India,

(b) has completed the age of thirty-five years, and

(c) is qualified for election as a member of the House of the People."

Article 84, which is also relevant read thus -

"A person shall not be qualified to be chosen to fill a seat in Parliament unless he -

(a) is a citizen of India;

(b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of the House of the People, not less than twenty-five years of age;

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament."

The Representation of the People Act, No. 43 of 1951 provided some qualifications for membership

of the House of the People, by s. 4. Besides that Art. 102 of the Constitution provided for certain disqualifications for membership of either House of Parliament and thus indirectly provided for qualifications necessary for being a member of either House of Parliament, and these were - (1) that the person should not hold any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holders; (2) the person should not be of unsound mind and should not have been so declared by a competent court; (3) the person should not be an undischarged insolvent; (4) the person should not have voluntarily acquired the citizenship of a foreign State, or be under any acknowledgment of allegiance or adherence to a foreign State; and (5) the person should not be disqualified by or under any law made by Parliament.

A perusal of these provisions show that there was no requirement of taking an oath at the time of nomination by the presidential candidate in Art. 58. Nor was there any requirement of taking any oath at the time of nomination by a candidate for election to the House of the People under Art. 84. There were however provisions in the Constitution for taking an oath after election. The oath of the President and its form was provided in Art. 60 while the oath for a member of the House of the People after election was provided in Schedule III to the Constitution, which a member of Parliament had to take before taking his seat in the House of the People or the Council of States, as the case may be. It is not disputed on behalf of the petitioners that this was the undoubted position in law before the Amendment Act.

Then came the Amendment Act, which came into force from October 5, 1963. By that amendment, no change was made in Art. 58, which stood as it was; a change was however made in cl. (a) of Art. 84, which after the Amendment Act read thus :

> "84. Qualification for membership of Parliament - A person shall not be qualified to be chosen to fill a seat in Parliament unless he -
>
> (a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for purposes in the Third Schedule;"
>
> The Third Schedule was also amended and provided the following form of oath to be taken by a member of Parliament who stands for election to Parliament, namely -
>
> "I, A. B., having been nominated as a candidate to
>
> #fill a seat in the Council of States ---------- do House of the Peopleswear in the name of God---------- that I will bear truesolemnly affirm##
>
> faith and allegiance to the Constitution of India as by law established and that I will uphold the sovereignty and integrity of India."

At the same time amendment was made in the form of oath to be taken after election, the change being that the words "I will uphold the sovereignty and integrity of India" were added to the already existing oath to be taken by a member of Parliament after his election before he took his seat in the House of the People or the Council of States.

The contention on behalf of the petitioners is that because of this change in cl. (a) of Art. 84 by which it became necessary to take oath for a person standing for election to either House of

Parliament in the form prescribed in the Third Schedule, a person standing for election as President had also to take a similar oath because Art. 58(1)(c) requires that a person to be eligible for election as President must be qualified for election as a member of the House of the People. It is urged that no one is qualified, after the amendment of cl. (a) of Art. 84, for election as a member of the House of the People unless he makes and subscribes an oath in the form set out for the purpose in the Third Schedule, and therefore this provision applied to a person standing for election as President, for without such oath he would not be qualified to stand for election to the House of the People.

The argument looks attractive prima facie but must in our opinion be rejected. The qualifications for eligibility to stand for election as President are to be found in Art. 58(1). The main reliance on behalf of the petitioners is placed on cl. (c) of Art. 58(1), which lays down that a candidate standing for election as President has to be qualified for election as member of the House of the People. A comparison however of Art. 58 with Art. 84 as it stood before amendment shows that cl. (a) of Art. 84 corresponded to cl. (a) of Art. 58(1), as both provided that the respective candidates should be citizens of India. It was therefore not necessary to go to cl. (a) of Art. 84 for the purpose of finding out whether a person was eligible for election as President for the purpose of citizenship for that part of cl. (a) of Art. 84 was specifically provided for in cl. (a) of Art. 58 (i). Similarly, cl. (b) of Art. 84 corresponded to cl. (b) of Art. 58(1), with this difference that it provided a special qualification as to age and therefore one would not have to go to cl. (b) of Art. 84 for the purpose of finding out the qualification as to age. Cl. (c) of Art. 38(1) clearly corresponded to cl. (c) of Art. 84 and reading them together it would follow that a person standing for election as President would require such qualifications as may be prescribed in that behalf by or under any law made by Parliament. Further as cl. (c) of Art. 58(1) lays down that a person standing for presidential election has to be qualified for membership of the House of the People, Art. 102 (which lays down disqualifications for members of Parliament) would also be attracted except in so far as there is a special provision contained in Art. 58(2). Thus cl. (c) of Art. 58(1) would bring in such qualifications for members of the House of the People as may be prescribed by law by Parliament, as required by Art. 84(c). It will by its own force bring in Art. 102 of the Constitution, for that Article lays down certain disqualifications which a presidential candidate must not have for he has to be eligible for election as a member of the House of the People. But it is clear to us that what is provided in clause (a) and (b) of Art. 58(1) must be taken from there and we need not travel to cls. (a) and (b) of Art. 84 in the matter of citizenship and of age of the presidential candidate. Clauses (a) and (b) of Art. 58(1) having made a specific provision in that behalf in our opinion exclude cls. (a) and (b) of Art. 84. This exclusion was there before the Amendment Act and we are of opinion that there is nothing in the Amendment Act which makes any difference to that position.

The Sixteenth Amendment was introduced on the recommendation of the Committee on National Integration and Regionalism, which was greatly concerned over the preservation and maintenance of the integrity and sovereignty of the Union. It therefore recommended that every candidate for the membership of a State legislature or Parliament, should pledge himself to uphold the Constitution and to preserve the integrity and sovereignty of the Union and for that forms of oath in the Third Schedule to the Constitution should be suitably amended. It also recommended that every candidate for the membership of Parliament or State Legislature, Union and State Ministers, Members of Parliament and State Legislatures, Judges of the Supreme Court and High Court and the Comptroller and Auditor General of India should take oath to uphold the sovereignty and integrity of India. In consequence of these recommendations, the sixteenth amendment was made and Art. 84(a) as well as Art. 173 which provides for qualifications for membership of State legislature were suitably amended. Further two new forms were added in the Third Schedule, one relating to oath to be taken by candidates for election to Parliament and the other relating to oath to be taken by

candidates for election to State legislatures. Further other forms of oath in the Third Schedule were also amended by adding therein the words "I will uphold the sovereignty and integrity of India."

Now if the intention of Parliament was that an oath similar in form to the oath to be taken by persons standing for election to Parliament had to be taken by persons standing for election to the office of the President there is no reason why a similar amendment was not made in Art. 58(1)(a). Further if the intention of Parliament was that a presidential candidate should also take an oath before standing for election, the form of oath should also have been prescribed either in the Third Schedule or by amendment of Art. 60, which provides for oath by a person elected as President before he takes his office. But we find that no change was made either in Art. 58(1)(a) or in Art. 60 or in the Third Schedule prescribing the form of oath to be taken by the presidential candidate before he could stand for election. This to out mind is the clearest indication that Parliament did not intend, when making the Amendment Act, that an oath similar to the oath taken by a candidate standing for election to Parliament had to be taken by a candidate standing for election to the office of the President. So there is no reason to import the provision of Art. 84(a) as it stood after the Amendment Act into Art. 58(1)(a), which stood unamended. That is one reason why we are of opinion that so far as the election to the office of the President is concerned, the candidate standing for the same has not to take any oath before becoming eligible for election as President.

Another reason which leads to the same conclusion is this. We have already indicated that no change was made in Art. 60 by introducing the form of oath to be taken by a person standing for election as President; nor was there any change made in the Third Schedule by the introduction of a form of oath to be taken by a person standing for election as President. In the absence of such a from, we fail to see how an oath would be necessary before a person could stand for election as President. It is not as if a person standing for election as a member of Parliament can take any oath that he likes or that may be administered to him. The particular oath which a person standing for election as a member of Parliament has to take has been prescribed in the Third Schedule to the Constitution, and it is only that oath which such a person has to take. However no form of oath is prescribed for a person standing for election as President anywhere in the Constitution and in the absence of such form, it is impossible to hold that taking of oath before standing for election as President is a necessary ingredient of eligibility for such election. Further a comparison of the form of oath under Art. 60 for the President with form III-B of the Third Schedule which prescribes the oath for a member of Parliament before he takes his seat shows that even after election the President is not required to swear that he will uphold the sovereignty and integrity of India. The oath he takes is to preserve, protect and defend the Constitution and that he will devote himself to the service and well being of the people of India. Clearly therefore the form of oath introduced by the sixteenth amendment for persons standing for election to Parliament and even after election was not considered suitable for a person standing for election as President or elected as President and that is why we find no form prescribed by Parliament.

It has been urged on behalf of the petitioners that, though no form of oath may be prescribed it was open to the Election Commission to prescribe an oath by making changes mutatis mutandis in form III-A of the Third Schedule relating to candidates for election to Parliament, and that it was the duty of the Election Commission to appoint somebody to administer the oath in the form to be evolved by him by changing form III-A in the Third Schedule mutatis mutandis. Reliance in this connection has been placed on Art. 324 of the Constitution. We are of opinion that there is no force in this contention. Article 324 inter alia provides for "the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President". These

words do not in our opinion give any power to the Election Commission to introduce a form of oath to be taken by a candidate for election whether it be for election as President or as a member of Parliament or of a State legislature. If an oath has to be taken by any such person it has to be provided by law and the form thereof has also to be prescribed by law - (we are using the word "law" in its broadest sense, including, constitutional provisions) and that is what was done by the Sixteenth Amendment so far as election to Parliament and State legislatures was concerned. But as already observed, Parliament did not think it fit when it brought in the Amendment Act to make any change in Art. 58(1)(a) or to introduce a form in Art. 60 or in the Third Schedule to the Constitution with reference to candidates standing for election as President. If Parliament did not choose to do so, the Election Commission cannot do so under the power it has been given under Art. 324 to superintendent, direct and control the preparation of the electoral rolls and the conduct of all elections. That power is very different from the power to prescribe an oath before a candidate can stand for election. Such prescription can only be by law as indicated above. The Amendment Act having not made any such provision with respect to those standing for election to the office of the President, it cannot be open to the Election Commission to prescribe a form of oath for such persons by changing form III-A mutatis mutandis. Such power cannot be spelt out of Art. 324 on which reliance has been placed on behalf of the petitioners. It follows therefore that no form whatsoever having been prescribed by Parliament when it made the sixteenth amendment for taking an oath by a presidential candidate, Art. 84(a) when it prescribed for taking an oath for candidates for election to the House of the People has no application to candidates standing for election to Presidentship. So far as these candidates are concerned we must look to Art. 58(1)(a) only and need not go to Art. 84(a).

Another reason for coming to the same conclusion is that when Art. 58(1)(c) lays down that a person standing for election as President has to be qualified for election as a member of the House of the People it only brings in qualifications other than those which are specifically mentioned in Art. 58(1) itself. Now specific qualifications provided on Art. 58(1) are that a candidate for presidential election has to be a citizen of India and he must have completed the age of 35 years. So far as these qualifications are concerned, we need not go anywhere else in order to search for eligibility to contest election as President. For example, the specific qualification in cl. (b) of Art. 58(1) is that the person concerned should have completed the age of 35 years. On the other hand, cl. (b) of Art. 84 lays down the age of 25 years for membership of the House of the People. Therefore when one has to look for the qualification of age one must only go to Art. 58(1)(b) for the purpose of presidential election and need not look elsewhere. What is specifically provided for by Art. 58(1) must be accepted as it stands and no addition can be made to that provision and no subtraction can be made therefrom. It will be seen therefore that though there may be some qualifications which may be necessary for election to the House of the People, they need not necessarily apply to the election for the office of the President, where there is a specific provision in Art. 58(1) itself. We are therefore clearly of opinion that in view of the specific provision in Art. 58(a) and (b) we cannot and should not apply clauses (a) and (b) of Art. 84, to persons standing for election as President. This conclusion is reinforced if we look at Art. 58(2) and compare it with Art. 102(1)(a). It is clear that when there is a specific provision with respect to an office of profit in Art. 58(2), it is that provision which will apply and not Art. 102(1)(a). We therefore hold that the acceptance of the nomination papers of respondents 1 to 17 by the Returning Officer was neither illegal nor contrary to law on the ground that these respondents did not subscribe to an oath under Art. 84(a) read with Art. 58(1)(c). The issue is decided against the petitioners.

Issue No. 3.

The petitioners rely on four allegations on the question of undue influence. Before we deal with those allegations it is necessary to understand what undue influence is in the context of the Act. Section 18(1)(b) lays down that if the result of the election has been materially affected by reason of undue influence at the election committed by any person other than the returned candidate or a person acting in connivance with the returned candidate, the election will be liable to be declared void. Sub-section (2) of s. 18 lays down that undue influence would have the same meaning as in Chapter IX - A of the Indian Penal Code. Section 171-C of the Indian Penal Code defines what "undue influence" is in these terms :-

> "(1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.
>
> (2) Without prejudice to the generality of the provisions of sub-section (1), whoever -
>
> (a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or
>
> (b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).
>
> (3) A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section."

It will be seen from the above definition that the gist of undue influence at an election consists in voluntary interference or attempt at interference with the free exercise of any electoral right. Any voluntary action which interferes with or attempts to interfere with such free exercise of electoral right would amount to undue influence. But even though the definition in sub-s. (1) of s. 171-C is wide in terms it cannot take in mere canvassing in favour of a candidate at an election. If that were so, it would be impossible to run democratic elections. Further sub-s. (2) of s. 171-C shows what the nature of undue influence is though of course it does not cut down the generality of the provisions contained in sub-section (1). Where any threat is held out to any candidate or voter or any person in whom a candidate or voter is interested and the threat is of injury of any kind, that would amount to voluntary interference or attempt at interference with the free exercise of electoral right and would be undue influence. Again where a person induces or attempts to induce a candidate, or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure, that would also amount to voluntary interference with the free exercise of the electoral right and would be undue influence. What is contained in sub-s. (2) of s. 171-C is merely illustrative. It is difficult to lay down in general terms where mere canvassing ends and interference or attempt at interference with the free exercise of any electoral right begins. That is a matter to be determined in each case; but there can be no doubt that if what is done is merely canvassing it would not be undue influence. A sub-section (3) of s. 171-C shows, the mere exercise of a legal right without intent to interfere with an electoral right would not be undue influence.

We may in this connection refer to s. 123(2) of the Representation of the People Act 1951 which

also defines "undue influence". The definition there is more or less in the same language as in s. 171-C of the Indian Penal Code except that the words "direct or indirect" have been added to indicate the nature of interference. It will be seen that if anything, the definition of "undue influence" in the Representation of the People Act may be wider. It will therefore be useful to refer to cases under the election law to see how election tribunals have looked at the matter while considering the scope of the words "undue influence".

The earliest case to which reference may be made is R. B. Surendra Narayan Sinha v. Amulyadhone Roy & 43 Others. [1940-Indian Election Cases by Sen and Poddar, Case No. XXX at p. 188]. There the question raised before the Election Tribunal was whether by issuing a whip on the day of election requesting members to cast their preferences in a particular order, the leader of a Party, who was also the Chief Minister, could be said to have exercised undue influence. The Election Tribunal held that the leader of the party was entitled to use his influence as a leader and he could not be deprived of that right because he happened to be a minister. The issue of a whip of that kind was thus held to be no more than canvassing in favour of the candidates of the party to which the leader or the Chief Minister belonged.

In Linge Gowda v. Shivananjappa [(1953) VI E.L.R. 288], the Election Tribunal held that a leader of a political party was entitled to declare to the public the policy of the party and ask the electorate to vote for his party without interfering with any electoral right and such declarations on his part would not amount to undue influence under the Representation of the People Act. The fact that such a leader happened to be a Minister or Chief Minister of the State would make no difference. It was further observed in that case that "the law cannot strike at the root of due influence and under the law of election, only undue influence is forbidden, and the leaders of a party will be deemed to exercise their due influence if they ask the electorate to vote for their party candidate, even if they happen to be Ministers."

In Amirchand v. Surendra Lal Jha [(1954) X E.L.R. 57] it was held by the Election Tribunal that Ministers were prominent members of their party and in that capacity they were entitled to address meetings and to tell people what their party had done and what its programme was and to ask them to vote for the candidate set up by their party, and such action of the Ministers could not be held to amount to exercising undue influence. It merely amounted to canvassing by the Ministers in favour of candidates belonging to their party.

In Mast Ram v. S. Iqbal Singh [(1955) XII E.L.R. 34] it was held by the Election Tribunal that the legitimate exercise of influence by a political party or an association should not be confused with "undue influence". It was further held that "Ministers in their capacity as members of their party are entitled to address meetings and to tell people what their party had done and what its programme was and to ask them to vote for the candidate set up by their party. Such action of the Ministers cannot be held to amount to 'exercising undue influence'". It was further held that "if a political party passes a resolution of support to a candidate and asks its members to vote for him, it will be only a legitimate exercise of influence".

In Radhakrishna Shukla v. Tara Chand Maheshwar, [(1956) XII E.L.R. 378] the Election Tribunal held that even where Ministers conducting an electioneering campaign promised people, who put their grievances before them during the campaign, generally to redress their grievances, it could not be held that there was exercise of undue influence and their promise merely amounted to a promise of public action, which would not be for the benefit of merely those who voted for candidates of their party but for the public as a whole.

The next case to which reference may be made is N. Sankara Reddi v. Yashoda Reddi [(1957) XIII E.L.R. 34]. In that case the Election Tribunal held that "a political party is entitled to issue a manifesto to the voters requesting them to vote only for the candidate set up by the party. The fact that the leader of the Congress Legislature Party who was also the Chief Minister of the State had written letters to the members of the Congress Party to support the candidates set up by the party would not amount to undue influence within s. 123(2) of the Representation of the People Act." It was added that it was only where a Minister abused his position for furthering the prospects of the candidate belonging to his party that undue influence might arise; but where a leader merely used his influence in the form of canvassing for candidates of his party there would be no question of undue influence.

In Dr. Y. S. Parmar v. Hira Singh Pal [(1958) 16 E.L.R. 45], the Judicial Commissioner of Himachal Pradesh held that "a leader of a political party is entitled to declare to the public the policy of the party, and ask the electorate to vote for his party without interfering with any electoral right and such declaration on his part would not amount to undue influence under s. 123(2) of the Representation of the People Act."

In Triloki Singh v. Shivrajwati Nehru [(1958) XVI. E.L.R. 234] it was held by the Election Tribunal that "the right to canvass must be conceded to Ministers as leaders of a political party..... Just as they have a right to vote and to stand as a candidate, they also have a right to canvass for themselves and for the other candidates set up by their party." It was further held that though a Minister occupied a high position and commanded great influence, if he only solicited votes and tried to persuade the electors to vote for a candidate of his party and asked them not to vote for any other candidate or to remain neutral and did nothing more, he could not be said to interefere with the free exercise of the electoral right of the voters.

The last case to which reference may be made is Jayalakshmi Devamma v. Janardhan Reddi [(1959) XVII E.L.R. 302]. In that case the Andhra Pradesh High Court held that in a democratic set up where candidates contested elections on the basis of their affiliation to a particular political party, there was nothing intrinsically wrong in Ministers canvassing support for their party candidates. It was further held that a Minister merely by reason of his office did not suffer from any disability in this behalf and had the same rights and obligations as any other citizen in the matter of canvassing. It was also held that in their capacity as leaders of their party, they had to explain to the electors the policies and programmes which they sought to enforce and one way of doing that was to ask the electors to vote for those who were pledged to support them and their policies.

It will be seen from the above review of the cases relating to undue influence that it has been consistently held in this country that it is open to Ministers to canvass for candidates of their party standing for election. Such canvassing does not amount to undue influence but is proper use of the Minister's right to ask the public to support candidates belonging to the Minister's party. It is only where a Minister abuses his position as such and goes beyond merely asking for support for candidates belonging to his party that a question of undue influence may arise. But so long as the Minister only asks the electors to vote for a particular candidate belonging to his party and puts forward before the public the merits of his candidate it cannot be said that by merely making such request to the electorate the Minister exercises undue influence. The fact that the Minister's request was addressed in the form of what is called a whip is also immaterial so long as it is clear that there is no compulsion on the electorate to vote in the manner indicated. It is in the light of these principles that we have to see whether the four allegations made in this case, assuming them to be correct, make out a case of undue influence.

The first allegation is that Shrimati Indira Gandhi, the Prime Minister, addressed a letter to all the electors in which she commended Dr. Zakir Husain and requested the electors to vote for him. A copy of that letter has been produced, and we have been taken through it. In our opinion there is nothing in that letter which may even remotely amount to undue influence. Most of the letter is concerned with commending the qualities of Dr. Zakir Husain and it ends by saying that Dr. Zakir Husain's long and meritorious service in the cause of national freedom and national re-construction after Independence makes him a candidate richly deserving universal support. It has been urged that the Prime Minister is a person of great influence and therefore Shrimati Indira Gandhi should not have written this letter because she was Prime Minister and the mere fact that she wrote this letter commending Dr. Zakir Husain's election amounted to undue influence i.e. interference with the free exercise of the electoral right. We cannot agree with this contention. Shrimati Indira Gandhi is certainly the Prime Minister, but she is also one of the leaders of the party to which Dr. Zakir Husain belonged. As a leader of the party she was entitled to ask the electors to vote for Dr. Zakir Husain and the fact that she is the Prime Minister makes no difference to her right to make an appeal of this nature. It is said that the office of the President is a no-party office and therefore an appeal of this nature should not have been made and must amount to undue influence. It is true that the office of the President is not a party office meaning thereby that after his election the President is no longer a party man. But that cannot take away the fact that in a democratic system, like ours, persons who stand for election are candidates sponsored by parties for without such support no one would have a chance of being elected, for the electors are mostly members of one party or other. We have given our earnest consideration to the letter written by Shrimati Indira Gandhi and have come to the conclusion that there is nothing in that letter which can be said to be improper or which can even remotely amount to intereference with the free exercise of the electoral rights. It cannot therefore be said that Shrimati Indira Gandhi even though she is the Prime Minister exercised any undue influence in this presidential election.

The next allegation is based on two letters written by Sri Ram Subhag Singh. In these letters Sri Ram Subhag Singh signed himself as Chief Whip and they were addressed to all members of the Congress Party in Parliament. The fact that he signed the letters as Chief Whip is in our opinion of no consequence; even if he had not done so all members of the congress party in Parliament must be knowing that he was the Chief Whip. Just as a Minister has a right to canvass for support so has in our opinion the Chief Whip. In the first letter he pointed out that the Presidential and Vice-Presidential elections were to be held on May 6, 1967. He also pointed out that members of Parliament could vote for the presidential election at New Delhi or at State capitals but they had to come to Delhi in connection with the election of the Vice-President. He therefore added that as the two elections were to be held on the same day and voting for the Vice-Presidential election could only be at Delhi, every member of the party must be present in Delhi to participate in the elections. He finally requested the members of his party to reach New Delhi by May 4, 1967 and contact him on reaching New Delhi. This letter merely explains to members of his party the situation with respect to the two elections which were to be held simultaneously and requested the members to come to Delhi, as otherwise they could not vote in the Vice-Presidential election. The fact that he asked the members to contact him after reaching Delhi could only be to know who had come and who had not and cannot give rise to any inference of undue influence from that fact alone.

In the second letter, Sri Ram Subhag Singh pointed out that the election to the office of the President would be in accordance with the system of proportional representation by means of single transferable vote. He also invited the attention of the members of the Congress Party in Parliament to r. 19 of the Election Rules. He then went on to say that it was their desire, i.e., of the congress party, that Dr. Zakir Husain should be returned with a thumping majority. He therefore requested the

members to place figure '1' opposite the name of Dr. Zakir Husain. He also advised them not to mark the second or any other preference in favour of any other candidate. As we read this letter we only find in it a request to members of the party to vote for Dr. Zakir Husain. There is nothing in that letter to show that undue influence was being exercised thereby. The two letters read together merely show that Sri Ram Subhag Singh who happened to be the Chief Whip of the congress party was canvassing in favour of Dr. Zakir Husain. It is however urged that his advice to the members not to mark their second or any other preference in favour of any other candidate amounted to interference with the free exercise of their electoral right. We cannot agree with this contention. Sri Ram Subhag Singh asked the members of his party to give the first preference to Dr. Zakir Husain. He also asked them not to mark their second or any other preference, and that is a method to ensure that the candidate to whom the first preference is given should be in a strong position in case there is not a majority in the first counting. In the present election there was apparently a majority in the first counting and therefore the marking of the second or any other preference was immaterial. Apart from it, we see nothing improper in members of the party being told in the course of canvassing that it would be better if they only marked their first preference and no other preference in a system where voting is by single transferable vote. Such a request or advice does not in our opinion interfere with the free exercise of their electoral right for the electors still would be free to do what they desired in spite of the advice. We cannot agree after going through the two letters written by Sri Ram Subhag Singh that there was any interference with the exercise of the electoral right by the electors.

The third allegation is that the Prime Minister had deputed certain senior members of her cabinet to the various States to make doubly certain that Dr. Zakir Husain was elected. In consequence, Shri Fakhruddin Ali Ahmed was sent to Assam, Shri Y. B. Chavan to Bombay, Sri Jagjivan Ram to Bihar, Sri I. K. Gujral to Calcutta and Sri Dinesh Singh to Uttar Pradesh. It is further urged that sending of the Ministers to various States was to influence the members of the electoral college there to vote for Dr. Zakir Husain or attempt to do so. Such action it is urged, would amount to undue influence. We cannot agree with this contention. Assuming that these Ministers were asked to go to various State it was obviously to canvass support for Dr. Zakir Husain so that he may be certain to be elected. Even assuming that these Ministers canvassed support for Dr. Zakir Husain in various State capitals, their action cannot be said to amount to undue influence, for all that they can be said to have done was to canvass support for Dr. Zakir Husain and mere canvassing cannot possibly be held to be undue influence. There is nothing in the allegation in para 12-C of the petition to show that there was any interference with the free exercise of electoral right by the electors, even if these Minister were sent to the various State capitals to canvass support for Dr. Zakir Husain and did so. Mere canvassing of support for a candidate can never amount to undue influence, and all that para 12C shows is that there was mere canvassing in favour of Dr. Zakir Husain. No case of undue influence can be made out on the basis of the allegations contained in para 12C of the petition.

The last allegation in support of the case of undue influence is that the Chief Minister of Maharashtra had briefed members of the Legislative Assembly on May 5, 1967 on how to vote and whom to vote for. It is urged that even if the leader of the party in the Maharashtra legislature could indicate the manner of voting to the members of his party, he could not indicate to them whom they were to vote for, as that interfered with the free exercise of their electoral right. It is said that such a request amounted to a command from a person in authority, like the Chief Minister, and would be exercise of undue influence. We are of opinion that there is no substance in this contention either. There can possibly be no objection if the leader of the party indicates to the members of his party how to vote in order to ensure that votes may not become invalid for want of knowledge of the

procedure of voting. Further if the leader of the party indicates to members of his party for whom to vote he is merely canvassing with his own party-men to support the candidate of the party. The mere fact that the person who canvasses is a Chief Minister does not mean that he is exercising undue influence in the sense of interfering with the free exercise of the electoral right. Once canvassing is permissible, and we have no doubt that in a democratic set up where parties put up candidates for election it is not only permissible but necessary, it follows that if a leader of the party asks members of his party for whom to vote he is merely canvassing. The voting is after all secret and every elector is free to vote for whomsoever he likes, even though he may have been asked by the leader to vote for a particular candidate. There is nothing in para 12 (D) of the petition to suggest that anything improper was done by the Chief Minister of Maharashtra, which could give rise to an inference that the free exercise of the electoral right was being interfered with.

On a careful consideration of paragraphs 12(A) to 12(D) of the petition we have come to the conclusion that there is nothing in those paragraphs which even remotely suggests that there was any undue influence exercised by anybody in connection with the Presidential election of May 6, 1967. Our finding on the issue in question is that the acts and conduct alleged in paragraph 12 of the petition and set out in sub-paras A to D thereof do not amount to undue influence within the meaning of s. 18(1)(b) of the Act. The issue is decided against the petitioners.

As we have indicated already if both these issues of law are decided against the petitioners as we do decide them - the petition must fail and it is unnecessary to set it down for hearing on evidence with respect to other issues.

The petition is hereby dismissed but in the circumstances of the case we pass no order as to costs.

Petition dismissed.

</html