Khaji Khanavar Khadirkhan Hussain Khan and Others

Vs

Siddavanballi Nijalingappa and Another

Civil Appeal No. 1621 of 1967

(J.M. Shelat, V. Bhargava, C.A. Vaidialingam JJ)

04.02.1969

JUDGMENT

BHARGAVA, J. -

1. This appeal under Section 116-A of the Representation of the People's Act, 1951 (hereinafter referred to as "the Act") has been filed by two appellants whose election petition for setting aside the election of respondent No. 1 has been dismissed by the High Court of Mysore. Appellant No. 1 was one of the candidates who filed his nomination for election to the Mysore Legislative Assembly from Shiggaon Constituency in the District of Dharwar. Appellant No. 2 was a voter in that Constituency. The notification fixing the time-schedule for the elections was issued on the 13th January, 1967, fixing 20th January, 1967 as the last date for filing nominations, 21st January 1967, as the date of scrutiny, and 23rd January, 1967, as the last date for withdrawal of candidature. According to the appellants, only eight candidates filed their nominations, within time up to 20th January, 1967. One of them was appellant No. 1. Respondent No. 1 was not included amongst the seven other candidates an his nomination paper was subsequently introduced amongst the records of the Returning Officer on behalf of respondent No. 1 with the aid of the Returning Officer. The Returning Officer is respondent No. 2 in the appeal, having been impleaded as respondent No. 2 in the election petition also. It was further pleaded that, even if any nomination paper was filed by respondent No. 1, it was not accompanied by the relevant portion of the electoral roll in which the name of respondent No. 1 appeared as a voter which was necessary, because respondent No. 1 was not a voter in this Constituency but in a different Constituency. No deposit as required by Section 34 of the Act was made in time; and, further still, respondent No. 1 was not qualified to be chosen to fill the seat in the Legislature, because he had not made and subscribed before the person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule to the Constitution as required by Article 173(a). It was alleged that, despite all these defects, respondent No. 1 was declared elected unopposed on the date of scrutiny on the incorrect ground that All other candidates had withdrawn their candidature. The appellants accepted the genuineness and validity of the withdrawals by the seven other candidates, leaving appellant No. 1 as the sole contesting candidate. The further case was that, in order to have respondent No. 1 returned unopposed, corrupt practices were committed to obtain a withdrawal form signed by appellant No. 1 and it was filed illegally before the Returning Officer.

2. The version relating to the commission of corrupt practices and to the filing of the withdrawal forms of appellant No. 1 may now be stated. The appellants allege that the whole manoeuvring was done by one Patil Puttappa, Member of Parliament, who was a staunch supporter of respondent No. 1 and by Mahalinga Shetty, the son-in-law of respondent No. 1. These two persons caught hold of two other persons, Hotti Peerasabnavar Chamensab Ghudusab (hereinafter referred to as "P.W. 3"),

and Nadaf Mohamad Jafar Sahab (hereinafter referred to as "P.W. 4"), and, through them, attempted to induce appellant No. 1 to withdraw his nomination by promising to get him a long-awaited huller licence and also to get him better patronage for his book-selling business and for receiving other aid and support for his material prosperity. The appellants allege that this inducement was offered without disclosing that respondent No. 1's candidature was spurious. For this purpose, on 20th January, 1967, at about 8-30 p.m., while appellant No. 1 was sitting at the shop of one Joshi, a car arrived from which P.W. 4 got down came to appellant No. 1 and told him that Patil Puttappa was calling him and requesting him to go with him. Appellant No. 1 went with P.W. 4 towards the car in which Patil Puttappa was sitting. The later asked appellant No. 1 why he should further trouble himself with election matters when he had enough work in connection with the shop, flour mill and his garden lands. He added that it will be to the advantage of appellant No. 1 to withdraw his nomination, promising that he would assist him in his trade, get him an agency for paper and would help him to secure a licence for his huller which, he said, he had heard he was trying to obtain without success. Appellant No. 1 replied that he had filed his nomination with a view to contest the elections as his candidature had been sponsored by may people and he was not willing to withdraw his nomination. In spite of requests having been made two or three times, appellant No. 1 refused. At a later stage, when he asked why he should withdraw his nomination, Patil Puttappa told him that they desired uncontested return of respondent No. 1, and that was the reason why they were making that request. Appellant No. 1 then objected saying that respondent No. 1 had not filed his nomination, whereupon Patil Puttappa stated that every necessary arrangement would be made to secure the uncontested return of respondent No. 1. At the time of this talk, Mahalinga Shetty was also sitting in the car. When appellant No. 1 continued to be hesitant, Patil Puttappa asked him to go with him in the car and, in this suggestion, P.Ws. 3 and 4 supported him. Appellant No. 1 first declined to do so because he was not prepared to accede to the request for withdrawing his nomination, but, on Patil Puttappa's persistence, he agreed to go along, provided appellant No. 2 also accompanied him. Appellant No. 1 then went to the shop of appellant No. 2 and, thereafter, both of them got into the car and were taken to the house of one Hanumanthagouda Ayyangouda Patil (hereinafter referred to as "R.W. 3"). Patil Puttappa, Mahalinga Shetty and the two appellants as went inside the house of R.W. 3 and sat there when Patil Puttappa once again made a request to appellant No. 1 to withdraw his nomination. Appellant No. 1 refused, while appellant No. 2 also supported him by stating that appellant No. 1 had full support of the Muslims of the locality and that there was every chance of his success, so that there was no point in his withdrawing the nomination. Thereafter, Patil Puttappa changed his tactics and told appellant No. 1 that it would neither be good nor safe for him to continue to refuse his request and threatened him by asking whether he would like to go on with the election or prefer to live in safety. He added that he was a Member of parliament and, therefore, he could do anything to appellant No. 1. He also produced a blank printed form and two black sheets of white paper and asked appellant No. 1 to sign them, giving the threat that he will not be allowed to go, unless he affixed his signatures to them. When appellant No. 1 looked for support to appellant No. 2, the latter was also similarly threatened, whereupon he said that there was no escape and, consequently, appellant No.1 should sign the papers as desired by Patil Puttappa. Against his will and submitted to the pressure of Puttappa, appellant No. 1 signed the papers which were taken away by Puttappa who left asking R.W. 3 not to permit the two appellants to go away, unless Puttappa himself told him to let them go. The two appellants, according to them, were kept confined in the house of R.W. 3 throughout the night of 20th January and again throughout the day and night of 21st January, 1967. They were only allowed to leave the house at about 4-30 a.m. on 22nd January, 1967, when a servant of R.W. 3 woke them up and told them that they could go away. The charge put forward on the basis of these facts was that an attempt was made to bribe appellant No. 1 to withdraw his nomination by offering him help in obtaining the

licence for the huller and in getting him agency for paper, with the further charge that signatures on the withdrawal form were obtained by undue influence. It was further pleaded that that withdrawal form was filed before the Returning Officer by some one other than appellant No. 1 or his election agent. The case put forward in the election petition, thus, was that the withdrawal from candidature of appellant No. 1 was attempted to be obtained by offering inducements and by subjecting him to threats and by exercise of undue influence in which assistance of the Returning Officer was procured. In the commission of these corrupt practices, there was consent of respondent No. 1, so that the election of respondent No. 1 was void. In order to prove the consent of respondent No. 1 to the commission of the corrupt practices, the case put forward was that, subsequent to the alleged withdrawal of candidature by all the other candidates including appellant No. 1, leaving respondent No. 1 as the sole candidate, respondent No. 1 met P.Ws. 3 and 4 and gave them an assurance that the promises which had already been made to assist appellant No. 1 will be honoured.

3. The further version put forward on behalf of the appellants, subsequent to their release from the house of R.W. 3, is that, when they came out of the house towards the Poona-Bangalore Road, they felt ashamed to show their faces in their own town of Shiggaon and, consequently, decided to go to Hubli for a few days. A truck happened to pass there carrying some goods and, since they had some money, they took a lift in the truck and went to Hubli. They went to a canteen for refreshments and on the table they found an issue of a newspaper Samyukta Karnataka in which appeared a news item stating that respondent No. 1 had been returned uncontested at Shiggaon. Appellant No. 1 felt surprised, because he had not withdrawn his nomination. He consulted appellant No. 2 and the two of them, after thinking over, realised that advantage must have been taken against them of the papers which appellant No. 1 had been made to sign at the house of R.W. 3. They, therefore, decided to see a lawyer and selected Sadashiv Shankarappa Settar (hereinafter referred to as "P.W. 2") because, besides being a lawyer, he was also a candidate in the election. They went to his house twice at about 9 a.m. and again at about 12-30 or 1-00 p.m., but he was not at home. They waited on the second occasion until about 2-30 p.m. when he returned and, after taking his meals he ultimately talked to them at 3 p.m. As a result of the consultation P.W. 2 drafted a telegram which was despatched by the appellants at about 4-35 p.m. to the Returning Officer. In the telegram, it was mentioned by appellant No. 1 that he had read in a newspaper that he had withdrawn which was false as he had not withdrawn and the withdrawal form was not presented by him. He added that he did not know who had filled in the contents of the withdrawal form and who had presented it and, consequently, wanted the Returning Officer to treat it as invalid, adding that he was still contesting the election from the Shiggaon Constituency. The Returning Officer received it on the same evening, i.e., on 22nd January, 1967, but noted on it that, since it was a telegram, it could not be acted upon or considered. Thereafter, appellant No. 1 addressed a meeting late at night in a locality called 'Durgada Bailu' in Hubli where election propaganda was going on. After taking further steps next day, the appellants continued to stray in Hubli for 2 or 3 days and they ultimately returned to Shiggaon on the 25th January, 1967. On these pleadings, the case put forward was that appellant No. 1 had never withdrawn his candidature and that, since respondent No. 1 had never field his nomination paper and all other candidates had withdrawn appellant No. 1 was entitled to be declared elected unopposed. In the election petition, therefore, in addition to the relief for declaration of the election of respondent No. 1 as void, appellant No. 1 also claimed a declaration that he was the duly elected candidate from the Shiggaon Constituency.

4. The point that was put in the fore-front by Mr. B. S. Patil, learned counsel for the appellants, and was argued first relates to the challenge of the validity of the election of respondent No. 1 on the ground that he was disqualified for failure to make or subscribe an oath or affirmation in accordance with the provisions of Article 173(a) of the Constitution. In the election petition, it was pleaded that

the oath or affirmation should have preceded the filing of the nomination paper, so that, even if any oath or affirmation was made subsequent to the filing of the nomination paper, it would be invalid and would not avoid the disqualification. On behalf of respondent No. 1, the reply in the written statement was that respondent No. 1 did, in fact, make an affirmation before the Returning Officer of this very constituency of Shiggaon on the date of the scrutiny, viz., 21st January, 1967, before the Returning Officer scrutinised the nomination paper of respondent No. 1. Evidence was also led to show that, on 21st January, 1967, respondent No. 1 did arrive at the office of the Returning Officer just before the scrutiny of his nomination paper was being taken up and he immediately proceeded to make the affirmation. Prior to his arrival, his nomination paper for another Constituency, Kundagol, was rejected by the Returning Officer on the ground that no affirmation had been made and respondent No. 1 was disqualified under Article 137(a). It may be mentioned that this Returning Officer was functioning as such for three different Constituencies, Shiggaon, Kundagol and Shirahatti, though his Headquarters were temporarily located at Shiggaon. Since the affirmation was made before the Returning Officer by respondent No. 1 prior to the scrutiny of his nomination paper for Shiggaon Constituency the Returning Officer held that respondent No. 1 was not disqualified under Article 173(a), and declared his nomination as valid. These facts were accepted by the High Court in this case and the High Court upheld the view of the Returning Officer that the affirmation made prior to the scrutiny of his own nomination paper by respondent No. 1 was full compliance with the requirements of Article 173(a). The High Court repelled the argument advanced on behalf of the appellants that the affirmation should have been made before the filing of the nomination paper. In the course of arguments on this point before us, however, neither party stuck to the position that was taken up by it before the High Court. On behalf of the appellants, the alternative legal position relied upon was that, in any case, the affirmation should have been made before the date of scrutiny, so that, in the present case, it should have been latest by the midnight between 20th and 21st January, 1967. This plea for challenging the validity of the election of respondent No. 1 was not taken either in the pleadings or even at any later stage in the High Court. In fact, it was taken here for the first time on the basis of a decision of this Court in Pashupati Nath Singh v. Harihar Prasad Singh. (AIR 1968 SC 1064) In that case, this court has clearly held that the effect of the provision contained in Section 36(2)(a) of the Act is that the oath or affirmation must be before the date fixed for scrutiny, so that the candidate possesses the qualification under Article 173(a) of the Constitution on the whole of the day on which the scrutiny of nomination has to take place. Even though this ground was not raised in the High Court we consider that we cannot now ignore it and we have to hold that the High Court was incorrect in rejecting the plea of the appellants on the ground that a valid affirmation had been made by respondent No. 1 on 21st January, 1967, just before the scrutiny of his nomination paper.

5. In view of this position taken up on behalf of the appellants, Mr. A. K. Sen, learned counsel for respondent No. 1, put forward the alternative plea that respondent No. 1 was not disqualified under Article 173(a) of the Constitution, because he had validly made affirmations at two other places on the 19th and 20th January, 1967. For this purpose, reliance was placed on the statements made by respondent No. 1 when he was cross-examined on behalf of the appellants. Respondent No. 1 at one stage stated that he filed his nomination at Bagalkot on the 19th January, 1967, between 2and 3-00 p.m. in the afternoon. On further cross-examination came his statement that, at Bagalkot he subscribed to the affirmation on the very day on which he presented his nomination paper and he also confirmed that he was in a position to affirm on personal knowledge that he had filed his nomination at Bagalkot on the 19th January, 1967. Similarly, he also stated that he filed his nomination for the Hoovinahadagali Constituency at Hospet and, though he could not give the exact date on which he filed the nomination paper, he remembered that the subscribed to the affirmation

there on the night of 20th January, 1967. It was surged by Mr. Sen that, having made affirmation once either at Bagalkot or at Hospet in accordance with the requirements of law, respondent No. 1 became qualified under Article 173(a) of the Constitution to be a candidate for the Legislative Assembly and, therefore, it was immaterial that he did not again make an affirmation in time before the Returning Officer of Shiggaon Constituency.

6. This claim was resisted by Mr. Patil on two grounds. The first point urged was that this was a new case being set up on behalf of respondent No. 1 for the first trim in this Court and it should not, therefore, be taken into account. The second was that, in any case, the affirmation at Bagalkot or Hospet could not enure to the benefit of respondent No. 1 for holding him to be qualified under Article 173(a) of the Constitution to stand as a candidate from Shiggaon Constituency. On the first point we consider that, in view of the position noticed by us earlier, respondent No. 1 is fully justified on relying on this alternative case in this Court, even though it was not put forward during the trial in the High Court. While the case was being tried in the High Court, the plea put forward by the appellants themselves was different from the plea on the basis of which the affirmation made by respondent No. 1 at Shiggaon on 21st January, 1967, is being held to be insufficient for compliance with the requirements of Article 173(a). In the High Court, that affirmation was challenged solely on the ground that it should have been made prior to the filing of the nomination paper; and that ground, of course, had no force, because the form of affirmation given in the Third Schedule to the Constitution itself makes it manifest that the affirmation must be made after the nomination paper has been filed. Now that we have permitted the appellants to raise a new ground and rely on the decision given by this Court in Pashupati Nath Singh's case (supra), there is no justification for debarring respondent No. 1 from putting forward the alternative case on the basis of the affirmations made at Bagalkot and Hospet. The fact of affirmations having been made by respondent No. 1 at those two places before the Returning Officers of those Constituencies was elicited by the counsel for the appellants themselves in the cross-examinations. The facts, having come on record, cannot be ignored, so that reliance has rightly been placed on those facts on behalf of respondent No. 1.

7. On the second point the argument has proceeded primarily on the language of the notification issued by the Election Commission in pursuance of clause (a) of Article 173 of the Constitution. Article 173(a) is as follows :

> "173. A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he -
>
> (a) is a citizen of India, and makes and subscribes before some person authorized in that behalf by the Election commission an oath or affirmation according to the form set out for the purpose in the Third Schedule."

8. The notification issued by the Election Commission, which is No. 3/130/65(2), dated 2nd January, 1965, is to the following effect :

> "In pursuance of clause (a) of Article 173 of the Constitution, and in supersession of its notification No. 3/130/63(2), dated the 15th November, 1963, the Election Commission hereby directs (a) that candidate for election to the Legislature of a State by an assembly constituency, or a council constituency, shall make and subscribe the oath or affirmation according to the form set out for the purpose in the Third Schedule to the Constitution, before the Returning Officer or an Assistant Returning Officer for that constituency; and

(b) that a candidate for election to fill a seat or seats in the Legislative Council of a State by the members of the Legislative Assembly of the State, shall make and subscribe the said oath or affirmation before the Returning Officer or the Assistant Returning Officer for that election :

Provided that if any such candidate is at the time confined in a prison or under preventive detention, he may make and subscribe the said oath or affirmation before the Superintendent of the prison or Commandant of the detention camp in which he is so confined or under such detention."

The controversy between the parties has arisen because of the language used by the Election Commission in this notification. The notification requires that a candidate for election to a Legislature of a State by an Assembly Constituency or a Council Constituency must make and subscribe the oath or affirmation before the Returning Officer or an Assistant Returning Officer for that Constituency. Mr. Sen urged that this notification can be interpreted in two ways. The first interpretation sought to be put on it was that, according to this notification, if a person is a candidate for election to the Legislature of a State by an Assembly Constituency, all that it requires is that the affirmation must be made before the Returning Officer of an Assembly Constituency, while, if he is seeking election to a Council Constituency, then the affirmation must be made before the Returning Officer of a Council Constituency. In putting this interpretation, learned counsel wants us to hold that the expression "Returning Officer for that Constituency" refers to any Returning Officer of a Legislative Assembly or a Legislative Council, as the case may be. We do not think that this interpretation can be accepted by us. In using the expression "that Constituency", it is clear that the intention of the Election Commission was that the affirmation must be made before the Returning Officer of that particular constituency from which the candidate is seeking election to the Legislature of the State, whether it be an Assembly Constituency or a Council Constituency. This was the second interpretation which Mr. Sen himself accepted as a possible one. This is also the interpretation which was sought to be put on this notification by Mr. B. S. Patil on behalf of the appellants. We think that this interpretation is correct, so that, in order to get over the disqualification laid down in Article 173(a), a candidate must make an affirmation before the Returning Officer or an Assistant Returning Officer of that particular constituency from which he is a candidate.

9. Mr. Sen's case is that, even on this interpretation, respondent No. 1 had qualified to be a candidate, because, when he made the affirmation before the Returning Officer at Bagalkot, he was already a candidate nominated for election from that constituency. Similarly, when he made the affirmation before the Returning Officer at Hospet, he had already been nominated as a candidate for the Hoovinahadagali Constituency. The argument was that, once respondent No. 1 had made an affirmation, as required by Article 173(a) of the Constitution, before one of the persons authorised by the Election Commission, he had fully complied with the requirements of Article 173(a) and, thereupon, he became qualified to be a candidate for election to the Mysore Legislative Assembly. There was no requirement that that qualification must be acquired separately in respect of each constituency from which respondent No. 1 was seeking election. We are of the view that this submission must be accepted. The purpose of Article 173(a) is to ensure that any person, who wants to be a member of a Legislature of a State, must bear true faith and allegiance to the Constitution of India as by law established and undertake to uphold the sovereignty and integrity of India, and, to ensure this, he must make an oath or affirmation. Once such an oath or affirmation is made before a competent authority in respect of one constituency, he becomes bound by that oath or affirmation even if he gets elected to the Legislature from a different constituency, so that there is no necessity

that he must make oath or affirmation repeatedly on his being nominated from more than one constituency. The language of Article 173(a) also makes this very clear, because all that it requires is one oath or affirmation in accordance with the form set out in the Third Schedule to the Constitution so as to remove the disqualification from being a candidate for election to the Legislature of the State. The article does not mention that the making of oath or affirmation is to be preliminary to the validity of candidature in each constituency, and recognises the fact that, once the necessary qualification is obtained, that qualification removes the bar laid down by that article. In these circumstances, this ground of disqualification for challenging the validity of the election of respondent No. 1 fails and must be rejected.

10. We may next take up the question of the charges of corrupt practices alleged to have been committed with the consent of respondent No. 1 relating to bribery, undue influence and obtaining of assistance from a Government servant, viz., the Returning Officer. In support of these charges, only six witnesses were examined on behalf of the appellants. Two of them, P.W. 5 and P.W. 6, are appellant No. 2 and appellant No. 1 respectively. Two other witness are Chaman Sab, P.W. 3; and Mohammad Jaffar Saheb, P.W. 4; and the fifth witness is Sadashiv Shankarappa Settar, P.W. 2. We have already referred to all these witnesses when giving the version put forward on behalf of the appellants. The only other witness who remains to be mentioned is Hanumanthasa Pawar, P.W. 1, photographer, who came forward to state that he took a photograph in the office of the Returning Officer at about 5 p.m. on the 21st January, 1967, when respondent No. 1 and the Returning Officer were sitting close to each other after the scrutiny of the nomination papers. He was examined primarily to show the close connection between respondent No. 1 and the Returning Officer, respondent No. 2. As against these witnesses examined on behalf of the appellants, respondent No. 1 examined five witnesses. R. W. 1 is respondent No. 1 himself and R. W. 5 is Hanumanthappa Shivabasappa Hosamani, respondent No. 2, who was the Returning Officer. A third witness for the respondents is Gadigeppagouda Channabasanagouda Patil, R. W. 2, who was first put forward as the official candidate by the Congress from this Shiggaon Constituency, but who himself took active part in persuading respondent No. 1 to be a candidate on behalf of the Congress from this Constituency. The next witness examined is Hanumanthagouda Ayyangouda Patil, R. W. 3, who was the proposer of respondent No. 1 in the nomination paper filed in this Constituency and in whose house, the appellants alleged, they were kept confined from the night of 20th January, up to the early hours of the morning of 22nd January, 1967. The fifth witness is Gurupadappa Basappa Mahalinga Shetty, R.W. 4, the son-in-law of respondent No. 1. The High Court, in assessing the value of the evidence given on behalf of the two parties, has expressed the opinion that all the witness examined by either side are persons interested in the two rival candidates, except the Returning Officer, R.W. 5, in whose case the High Court has not accepted the charge of partiality brought by the appellants in the election petition. The High Court, therefore, preferred to rely on the evidence of R.W. 5 and attached very little value to the evidence of the other witness examined by the two sides.

11. We are inclined to agree with the High Court with regard to the assessment of the value of the evidence of the witnesses examined by both sides and, even with regard to the evidence of the Returning Officer, R.W. 5, we have the feeling that his evidence must also be accepted with great caution, because it cannot be said that he was totally disinterested and independent. So far as the witnesses examined on behalf of the appellants are concerned, the two appellants themselves are the election petitioners and, very clearly, their testimony has only the value that can be attached to evidence of contesting parties themselves who are bound to speak in support of their case. Mr. Patil particularly relied on the evidence of P.Ws. 3 and 4 who, according to the part played by them envisaged in the version put forward on behalf of the appellants, were in a position to state to facts

showing that there was offer of bribery to appellant No.1 and undue influence was also exercised against them. These witnesses are also admittedly highly interested. Appellant No. 1 in his statement has come forward with the plea that P.W. 4, Mohammad Jaffar, was one of the persons who was sponsoring his candidature for this election, so that there was a close bond between them. In fact, the appellants' further case itself was that appellant No. 1 was approached by Patil Puttappa through P.W. 4 because of the close relations between them. P.W. 3 also, according to appellant No. 1, was brought in by Patil Puttappa because he was a great friend of P.W. 4 and was excepted to influence him in his attempts to persuade appellant No. 1 to withdraw. Thus in putting forward their own case, the appellants have shown that P.Ws. 3 and 4 are not independent persons. P.W. 2 was the lawyer engaged by the appellants for the purpose putting forward their case that the withdrawal of his candidature by appellant No. 1 was not genuine and had been manoeuvred by persons acting on behalf of respondent No. 1. Being their lawyer, he cannot be held to be beyond the influence of the appellants. So far as P.W. 1, the Photographer, is concerned, the High Court has found that there is material in his own evidence indicating that he is not a very reliable person and we find no reason at all to differ from the view taken by the High Court on this point.

12. Similarly amongst the witnesses examined on behalf of respondent No. 1, R.W. 1 is respondent No. 1 himself and, consequently, the view we have expressed with regard to appellants 1 and 2 will equally apply to him. R.W. 2 was the official Congress candidate. He withdrew his candidature and took an active part in persuading respondent No. 1 to be a candidate in his place. He was, therefore, clearly a person interested in the candidature of respondent No. 1. R.W. 3 was the proposer who nominated respondent No. 1 as a candidate in this Shiggaon Constituency and this manifests his interest in the candidature of respondent No. 1. R.W. 4 is the son-in-law of respondent No. 1 who also took active part in arranging that the official candidate, R.W. 2, withdrew from candidature and respondent No. 1 was made the candidate on behalf of the Congress in this Constituency in his place. None of these four witnesses can, therefore, be said to be independent.

13. So far as the Returning Officer, R.W. 5, is concerned, he was a Government servant and was acting in his official capacity as Returning Officer in this Constituency. In assessing the value of his evidence, however, one facts prominantly brought out is that he was in the service of the Government of the State of Mysore, while respondent No. 1 was the Chief Minister of the State. R.W. 5 himself admitted that, earlier, when he was posted at Bagalkot as Assistant Commissioner in July, 1963, he had collected gold for the National Defence Fund and on the occasion of a visit, Smt. Indira Gandhi and the Chief Minister, respondent No. 1, were weighed against gold collected for the purpose of National Defence Fund. The weighment of the Chief Minister against gold indicates the attempt made by this witness to please the Chief Minister. Then there seems to be some force in the suggestion made that, on the day of scrutiny, the Returning Officer delayed the scrutiny of the nomination paper of respondent No. 1 for the Shiggaon Constituency probably at the suggestion of the workers of respondent No. 1 in order to give as much time as possible to respondent No. 1 to come and make an affirmation as required by Article 173(a), under the impression that such an affirmation made even on that day would be valid and would remove the disqualification under that Article. On that day, scrutiny of nomination papers of all the three Constituencies, for which R.W. 5 was the Returning Officer, was to take place. The scrutiny was begun not at the time fixed for it, but at a later hour and, even in that scrutiny, the nomination papers for Shiggaon Constituency were taken up last of all. It is true that he rejected the nomination paper of respondent No. 1 for the Kundagol Constituency, because respondent No. 1 did not arrive before the scrutiny of his nomination paper for that Constituency in order to make the affirmation; but even that does not show that the Returning Officer was not trying to assist respondent No. 1 as for as possible. Then, there is the circumstances that respondent No. 1 and this witness were photographed together by

P.W. 1. Of course, the photographs produced by P.W. 1 are not of a very reliable character, because the negatives or the original-sized photographs have not been produced by the photographer. The suggestion by Mr. Sen on behalf of respondent No. 1 was that the photographs were actually taken of a number of people who happened to be in the office of the Returning Officer by this photographer, but, for the purpose of urging the argument of close contact between R.W. 5 and respondent No. 1, only a small part of that photograph was enlarged and has been put forward as exhibit in this case. The part of the photograph brought before the Court is confined to that in which respondent No. 1 and the Returning Officer appeared, while others on both sides of them were excluded. The photographer, in order to justify his evidence that his photographs included only these two persons, had per force to give an explanation for non-production of the negatives and the original-sized positives, which might have been prepared by him, because the negatives and those prints would have clearly shown other persons also in the photographs. Despite these facts, we still think that the photographs do give some indication that the Returning Officer was showing special consideration to respondent No. 1 because he was the Chief Minister and at least gave him a seat close to himself inside his office. In all these circumstances, it is not possible to hold that the Returning Officer is a totally independent witness; but, in our opinion, these few circumstances would not justify our rejecting the evidence of this witness in toto. The evidence will have to be scrutinised carefully and must be accepted at least to the extent to which it may be supported by circumstantial evidence.

14. In connection with the examination of witnesses, great emphasis was laid by Mr. Patil on the fact that Patil Puttappa, who, according to the appellants, was the chief architect in manoeuvring the unopposed return of respondent No. 1 from the Shiggaon Constituency, was not examined as a witness. It appears that the appellants themselves first summoned Patil Puttappa to produce certain documents for the purpose of showing that he was under great obligation to respondent No. 1 making it likely that he might have resorted to all kinds of practices in order to ensure uncontested return of respondent No. 1 to the Legislature. Patil Puttappa produced a statement showing the income that he received for advertisements given on behalf of the State Government during the period from 1962-63 to 1966-67. Patil Puttappa was running two papers Viswavani and Prapancha during this period. For the newspaper Viswavani, the total advertisement charges paid to him by the Government in the first year 1962-63 were in the region of Rs. 27,000/-. The amount progressively increased in the next four years; and in the last year 1966-67, it rose to about Rs. 81,000/-. It was urged that this shows that he had been receiving patronage from the Government of Mysore of which, during this period, respondent No. 1 was the Chief Minister. Further, he was elected as a member of the Rajya Sabha and was an active worker of the Congress. The argument was that, in these circumstances, when the charge in the election petition was that Patil Puttappa was the main instrument in the commission of corrupt practices, he should have been examined as a witness. The appellants themselves, no doubt, summoned him to produce the statement of accounts, as mentioned above, but they could not examine him as a witness, because he would have been clearly hostile and, by examining him as their witness, the appellants would have conceded to the counsel for respondent No. 1 the advantage of being legally entitled to cross-examine him. Respondent No. 1 also cited Patil Puttappa as one of the witnesses in the list of witnesses filed, but, later, gave him up and did not examine him as a witness. After this failure on the part of respondent No.1 to examine him, the appellants moved an application to the Court to take his evidence under Order XVI,Rule 14 of the Code of Civil procedure as a Court witness. This application was not accepted by the High court and, after a long discussion as to the motives which had impelled the appellants to move this application, the High Court rejected it. Mr. Patil, in this connection, relied on a decision of the Assam High Court in Nani Gopal Swami v. Abdul Hamid Choudhury and Another (AIR 1959

Assam 200) to urge that, though the burden of proof in the present case in respect of the corrupt practices was initially on the appellants, respondent No. 1 was not altogether absolved from his responsibility to assist the Court by producing the best evidence available after the appellants had tendered their own evidence. It was urged that, on the failure of respondent No. 1 to examine Patil Puttappa, an adverse inference should be drawn against him. Reference was also made to a recent decision of this Court in Dr. M. Chenna Reddy v. V. Ramachandra Rao and Another (Civil Appeal No. 1449 of 1968, decided on 17-12-1968) where the non-examination of the best person who could have come and given evidence in favour of the candidate who was charged with corrupt practice was taken as one of the circumstances justifying the belief of witnesses examined to prove the corrupt practice on behalf of the opposite party. This inference was, however, drawn by this Court on the basis that the Court first found the testimony of witnesses examined against the successful candidate as acceptable, so that the intial burden which lay on the election petitioner was discharged to the satisfaction of the Court. The third case, to which reference was made, is also a recent decision of this Court in R. M. Seshadri v. G. Vasantha Pai (Civil Appeal No, 1519 of 1968, decided on 29-11-1968), where this Court dealt with the question of the exercise of power by the Court trying the election petition to examine a witness as court witness. It was held that the Court has the power to summon a court witness if it thinks that the ends of justice require or that the case before it needs that kind of evidence. It was explained that the policy of election law seems to be that, for the establishment of purity of elections, all allegations of malpractices, including corrupt practices at elections, should by thoroughly investigated. On these principles, the Court held that the trial Judge of the High Court had properly exercised the power of summoning and examining some persons as court witnesses.

15. On the basis of these cases, it was argued that it was the duty of respondent No. 1 to examine Patil Puttappa in this case because he was in the best position to deny the allegations which had been made, in respect of the corrupt practices, by the appellants and that, in any case, the Court should have summoned him as a witness when an application was presented in that behalf by the appellants invoking the power of the Court under Order XVI, Rule 14, C.P.C. It appears that, in this case, respondent No. 1 considered it unnecessary to produce Patil Puttappa as a witness because of the view that the evidence, which had been given on behalf of the appellants to prove the corrupt practices, was of a very unsatisfactory nature and that even circumstantial evidence was available to show that the version put forward could not be true. The High Court also considered it unnecessary to summon Patil Puttappa as a court witness for similar reasons. In this connection, we may cite further remarks made by this Court in the case of R. M. Seshadri (supra) to the following effect :-

> "Although we would say that the trial should be at arms length and the Court should not really enter into the dispute as a third party, but it is not to be understood that the Court never has the power to summon a witness or to call for a document which would throw light upon the matter, particularly of corrupt practice which is alleged and is being sought to be proved. If the Court was satisfied that a corrupt practice had in fact been perpetrated, may be by one side or the other, it was absolutely necessary to find out who was the author of that corrupt practice."

It was on this principle that this Court upheld the course adopted by the High Court by summoning court witnesses in order to satisfy itself that the corrupt practice had in fact been committed. In the present case, as we shall presently show, there was plenty of circumstantial evidence indicating that the version put forward on behalf of the appellants could not be true and the High Court could justifiably take the view that it had not been proved to its satisfaction, so that there was no compelling reason for the High Court to examine Patil Puttappa as a court witness or even to draw

any inference against respondent No. 1 for his failure to examine Patil Puttappa as a witness.

16. We proceed to indicate our reasons for the view that the version relating to the commission of corrupt practice has been rightly rejected by the High Court. The story that has been put forward on behalf of the appellants has already been described by us in detail when giving the facts of the case. The appellants alleged that they were taken to the house of R.W. 3 in the early hours of the night of 20th January 1967 and were kept in confinement till the morning of 22nd January, 1967. According to the appellants, though they were kept at the house of R.W. 3 and were told that they would not be allowed to leave, there was actually no use of force at all against them. In fact, the version given by the two appellants of their confinement in the house of R.W. 3 is that they remained there throughout the night of 20th January and throughout the day hours of 21st January, 1967, without making any attempt to leave the house of R.W. 3. They expect the Court to believe that no such attempt as made by them simply because, at one stage, Patil Puttappa had said that appellant No. 1 had the option of either remaining a candidate for election, or of continuing to live. Apart from this verbal threat, there is no suggestion that any act was committed by any one there which could put the appellants in fear of their life or of being hurt if they tried to leave the house of R.W. 3. According to their version, they quietly stayed in the house without even making a pretence of leaving it simply because Patil Puttappa, when going away, had told R.W. 3 not to let them go until he gave permission. The first attempt, according to them, was made some time late in the night of 21st January and that attempt was foiled because of the barking of a dog. Even, when relating this part of their story, the appellants did not say that the dog was ferocious or tried to bite them, or that any of the servants woke up and came to stop them from going away. In fact, the initial story that like simpletons these two persons, one of whom was a candidate for membership of a Legislature, entered the car of Patil Puttappa and quietly went with him to the residence of R.W. 3 appears to be highly improbable. Their conduct, after their release from the alleged confinement, also seems to be highly improbable. According to them, they did not go back to their village because they were feeling ashamed. Why there should have been any feeling of shame is incomprehensible. If they were kept in confinement under threats of injury, there would have been no shame in going home and disclosing this circumstance. In fact, according to appellant No. 1, his candidature had been sponsored by quite a large number of influential persons of Shiggaon and, consequently, it would have been quite natural for him to go to Shiggaon, as soon as he was released from confinement, and seek their assistance against whatever course might have been adopted in order to defeat his candidature, Having been absent from their houses from the night of 20th January until the early hours of 22nd January, it would have been natural for them to go back to their homes and relieve the anxiety of the members of their families who must have been wondering where they had gone away. According to the appellants, they did not return to their village until the 24th of January and sent no message to their houses that they were safe and were in Hubli. The whole conduct appears to be very improbable.

17. Apart from this, there are admissions made by the witnesses of the appellants themselves and some documentary evidence which show that the appellants could not have been in confinement in the house of R.W. 3 from the night of 20th January up to the morning of 22nd January, 1967. P.W. 3 in his examination-in-chief itself, when relating the incident of 21st January, 1967, stated that on that day respondent No. 1 sent for him and P.W. 4 and told them that whatever promises had been made by Patil Puttappa would be fulfilled and they could give that information to appellant No. 1. Thereafter, they went to the house of appellant No. 1 and passed on this information to him. Thus, P.W. 3 admitted that appellant No. 1 was at his house on the evening of 21st January which completely negatives the case that he and appellant No. 2 were both in confinement at the house of R.W. 3. When this statement was made by this witness, counsel for the appellants intervened and put

a question whether appellant No. 1 was at home and what happened after they went to his house. When answering these questions, the witness realised that he had given a statement negativing the appellants case and, therefore, he changed his statement and said that the mother of appellant No. 1 told him that appellant No. 1 was not in the house. We are inclined to agree with the High Court that this witness, in fact, gave away the truth inadvertently disproving the appellants' case when he stated that he and P. W. 4 had gone to the house of appellant No. 1 on the 21st January, 1967 and informed him of what respondent No. 1 had told them.

18. In this connection, there is the circumstancs that another witness examined by the appellants themselves also supports the version that appellant No. 1 must have been at his house on the evening of 21st January. That witness is P.W. 1, the photographer. He was asked in his cross-examination as to when appellant No. 1 had taken the photos from him, and his answer was that it was on the same day when the photograph was taken. He had earlier stated that the photograph was taken in the office of the Returning Officer at about 5 p.m. on 21st January, 1967. This answer given by this witness also belied the case put forward on behalf of the appellants about their confinement in the house of R. W. 3. At the state of this answer given by the witness, the counsel for the appellants had also intervened and suggested that the witness had been pointing to the Returning Officer who was sitting in Court and not to appellant No. 1. The Court thereupon repeated the question to the witness and the note by the Court shows that the witness was quite clear that the copies which were retained by him in his studio were taken by appellant No. 1 whom he identified by sight in court. It appears that he also got a hint at this stage and, therefore, added that he was not sure of the exact date on which appellant No. 1 took the copies from him. This attempt of the witness to get out of the admission made by him contradicting the case put forward by the appellants has rightly been disregarded by the High Court, and the conclusion follows that P.W. 1 has also given evidence which shows the falsity of the story of confinement put forward by the appellants.

19. Another circumstance that points in the same direction is that the appellants, if they were in fact kept in illegal confinement, made no attempt at all to file any complaints either with the police or before a Magistrate so as to seek redress against this criminal offence committed against them. Even on 22nd January, 1967, when appellant No. 1 addressed the meeting at 'Durgada Bailu' in Hubli, he did not tell the people about his illegal confinement and the corrupt practice committed by the workers of respondent No. 1 in order to obtain his withdrawal. The most telling circumstances, however, which leaves no room for doubt that the version of the appellants about their confinement in the house of R. W. 3 until the early hours of 22nd January, 1967, is false, is that an item appeared in the newspaper Vishal Karnataka in the morning issue of 22nd January, 1967, saying that one only out of the five candidates who had withdrawn their candidature had been made to withdraw his nomination paper by use of force and great threat; and it was learnt that, as against this, a notice had been caused to be given through a Pleader. Appellant No. 1 himself admitted that this newspaper is daily morning paper, so that this particular issue came out on the morning of 22nd January, 1967. According to the version given by appellants 1 and 2, they were kept in confinement at the residence of R. W. 3 until released at about 4. 30 a.m. on 22nd January, whereafter they proceeded to Hubli and, for the first time, gave their version of confinement to their lawyer, P.W. 2 at about 3 p.m. According to them, they did not mention their confinement and use of force or of threats against them to anyone else until they were able to consult P.W. 2 at about 3 p.m. If this evidence was true, it is incomprehensible how the news of obtaining withdrawal of a nomination paper by use of force and great threat could appear in the morning issue of 22nd January, 1967, which came out several hours earlier. Mr. Patil, learned counsel for the appellants, tried to explain away this news by comparing it with another item of news appearing in an issue of the newspaper Prajavani published

from Bangalore on the morning of 22nd January, 1967. The news item in it purports to be dated 20th January, 1967 and is to the effect that the Chief Minister about to bring about the first and the most important success to the Mysore Pradesh Congress by his uncontested election from the Shiggaon Assembly Constituency. It mentions that, as the other contestants had withdrawn their candidature, only the candidature of respondent No. 1 was remaining in Shiggaon constituency and he was going to be declared elected uncontested on the 23rd January, 1967, which was the last date fixed for withdrawal of candidature. From the fact that this news item was published as an item of 20th January, it was argued that there must have been a per-arranged plan to manouvre the withdrawal of all candidates from the Shiggaon Constituency for the purpose of achieving uncontested return of respondent No. 1, because there could not be and there were no withdrawals on 20th January, which was the date for filing nominations, and the evidence also proves clearly that the withdrawals, in fact, took place on 21st January, 1967, which was the date of scrutiny. It, however, appears to us that, in this newspaper, the date January 20, as the date of the news item in incorrect. If, in Bangalore, this news item had been received by the newspaper on 20th January, it would surely have been published in the issue of 21st January. The very fact that it was published in the issue of 22nd January shows that news must have been received by the newspaper on 21st January, and the date January 20 printed in it is an error in printing. No newspaper would unnecessarily delay such a news item by full 24 hours. On the 21st January, according to the evidence given by the Returning Officer and other witnesses examined on behalf of respondent No. 1, all the withdrawals had taken place by about 3 to 4 p.m. Of course, thereafter, this news about withdrawals could have been flashed to Bangalore and received there later in the evening of 21st January, so that it could be published in the morning issue of Prajavani of 22nd January, 1967. The publication of this news is, therefore, not at all comparable with the publication in Vishal Karnataka, to which were referred earlier. It is significant that the newspaper Vishal Karnataka, which is published at Hubli, was interested in appellant No. 1. This is clear from the circumstance that, after printing this news item about use of force and great threat to induce a candidate to withdraw his nomination, this very newspaper published a number of appeals to raise funds in order to support the case of appellant No. 1 for challenging the uncontested election of respondent No. 1. The publication of these appeals in subsequent issues of Vishal Karnataka has been admitted by appellant No. 1. The subscriptions were to be sent to Vishal Karnataka Office. In these circumstances, an inference clearly follows that, in fact, appellants No. 1 and 2 were not kept in confinement at the residence of R.W. 3 and they deliberately made out this story to challenge the uncontested election of respondent No. 1 some time on the evening of 21st January, 1967. Having decided that the election should be challenged on such a ground, they gave out this news time to Vishal Karnataka; but they did not realise that the publication of this news item would itself betray them and make it clear that they could not have been kept in confinement up to the early hours of 22nd January, 1967, which was the version they decided to put forward against respondent No. 1. Mr. Patil, learned counsel for the appellants, also tried to suggest that this news item might refer to the withdrawal of candidature of some candidate other then appellant No. 1, but we can see no basis for such a suggestion. No witness has made any statement indicating that any candidate other than appellant No. 1 had the grievance that the withdrawal of his nomination had been obtained by use of force or threats. None of the witnesses of the appellants, including P.W. 2, S. S. Sattar, their legal advisor, have stated that any other candidate was made to withdraw in that manner. On the other hand, in the election petition itself, the appellants have come forward with the case that the withdrawals of all other candidates, except his own, were voluntary and valid. This plea was put forward in order to claim the seat for appellant No. 1 himself on the election of respondent No. 1 being declared void; but this pleading clearly negatives any possible suggestion that there was some other candidate who was also subjected to threats and use of force to induce him to withdraw his

candidature. Obviously, this news items could refer to no one else, except appellant No. 1 and it could only appear in the morning issue of 22nd January, because the appellants were not under confinement on the 21st January, 1967. This piece of evidence, thus, leaves no room for doubt that the entire story of use of inducements, threats and illegal confinement has been concocted by the appellants, so that the witnesses examined in support of it cannot be at all relied upon. In these circumstances, we hold, as we have indicated earlier, that the High Court was justified in not insisting on the production of Patil Puttappa as a witness on behalf of respondent No. 1 or in not examining him as a court witness. The version put forward by the appellants was controverted in his evidence by R.W. 4, Mahalinga Shetty, who, according to the appellants, was in the company of Patil Puttappa at both stages when bribe was offered to appellant No. 1 and, later, when he was induced by threats and illegal confinement to withdraw his candidature. Further, R.W. 3 3 3 was examined to controvert the version of the incident alleged to have taken place at his residence during the illegal confinement of the appellants. Such evidence being available and the version put forward on behalf of the appellants having been shown to be false by version put forward on behalf of the appellants having been shown to be false by various circumstances indicated by us above, there could be no need for the Court to take the step of examination Patil Puttappa as a court witness. The High Court was fully justified in holding that the charges of corrupt practices of undue influence and bribery had not been proved against respondent No. 1.

20. The additional charge of obtaining assistance from a Government servant, viz., the Returning Officer, respondent No. 2, is also linked up with the same version of the appellants which we have above held to be false. Respondent No. 2 was said to have assisted in illegally obtaining the withdrawal of the candidature of appellant No. 1 by being a party to a faked withdrawal from being accepted by him. The case was that the withdrawal form of appellant No. 1 was not presented either by appellant No. 1 himself or by his election agent having been obtained in the circumstances indicated by the appellants in their version. Respondent No. 2, has however, clearly stated that this withdrawal form of appellant No. 1 was presented by appellant No. 1 himself, and we find no reason to disbelieve his evidence in view of our finding about the falsity of the version of the appellants. It is also significant that no witness was sought to be examined on behalf of the appellants to prove who in fact presented the withdrawal from on his behalf if appellant No. 1 did not do so. In view of the circumstantial evidence being in favour of the version put forward by the respondents, we consider that the High Court was right in accepting the evidence of respondent No. 2 on this point and rejecting the plea of the appellants that the withdrawal form of appellant No. 1 had been wrongly manoeuvred and had not been presented by him.

21. Lastly, we may take notice of the three further allegations that the nomination paper of respondent No. 1 was, in fact, not presented on 20th January, 1967; secondly that, if at all it was presented, it was not accompanied by a copy of the electoral roll showing that respondent No. 1 was entered as an elector in another constituency; and, thirdly, that it was not accompanied by a receipt showing the deposit of the security money as required by law. On all these points, there is the clear evidence of the Returning Officer as well as that of R. W. 3 who proposed the name of respondent No. 1 and who presented the nomination paper to the Returning Officer. There is no reason at all to disbelieve their evidence on these points, particularly when their evidence is also supported by the documents maintained in the office of the Returning Officer as well as in the Sub-Treasury. There is further the fact that no direct evidence has been led on behalf of the appellants to show that the nomination paper of respondent No. 1 was presented at some other time after the expiry of the date fixed for nomination and that, when so presented at the later stage, it was not accompanied by the two necessary documents. These pleas taken for challenging the validity of the election of respondent No. 1 have also, therefore, been rightly rejected by the High Court.

22. The appeal fails and is dismissed with costs. There will be one set of cost for hearing.

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