

D. P. Mishra

Vs

Kamal Narayan Sharma and Another

Civil Appeal No. 1738 of 1969

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

13.03.1970

JUDGMENT

SHAH, J. -

1. At an election held in June 1963 for electing a member from the Kasdol constituency in the State of Madhya Pradesh, D. P. Mishra who stood as a candidate on "the Congress ticket" was declared elected. The rival candidate Kamal Narayan Sharma filed a petition for setting aside the election of Mishra on the grounds that the latter had committed corrupt practices at the election in that he offered to bribe Sharma, by offering through his agent Dr. Ausaf Hussain to pay Sharma a sum of Rs. 50,000/- as inducement for withdrawing from the contest and thereby committed a corrupt practices defined in Section 123(1) of the Representation of the People Act, 1951; that Mishra published on April 12, 1963, April 26, 1963 and May 4, 1963 in a Hindi newspaper "Mahakoshal" edited, published and printed by Shyamacharan Shukla (who was engaged as an authorised agent by Mishra to conduct the election campaign on his behalf) statements of facts which were false and which they believed to be false did not believe to be true, in relation to the personal character and conduct of Sharma and in relation to Sharma's candidature, such statements being reasonable calculated to prejudice the prospects of Sharma's election and thereby committed corrupt practice defined in section 123(4) of the Representation of the People Act, 1951; that Mishra through his agents and workers hired or procured on payment or otherwise motor-vehicles and bullock-carts for conveying electors to the polling stations in the constituency and thereby committed a corrupt practice defined in Section 123(5) of the Representation of the People Act, 1951; and that he incurred and authorised, in contravention of Section 77 of the Representation of the People Act, 1951, expenditure in excess of the amount prescribed, and thereby committed a corrupt practice as defined in Section 123(6) of the Representation of the People Act, 1951. Mishra denied the allegations in support of the plea of corrupt practices alleged to be committed by him. The Election Tribunal substantially negated the allegations of corrupt practices and by order, dated December 28, 1966, dismissed the petition.

2. In an appeal under Section 116-A of the Representation of the People Act, 1951, against the order passed by the Tribunal, the High Court of Madhya Pradesh set aside the order and declared that the election of Mishra "was void under Section 100(1) (b) of the Representation of the People Act, 1951", for, it was proved that Mishra had incurred or authorised expenditure of an amount of Rs. 7,249.72 which was in excess of the permissible limit, and the expenditure being in contravention of Section 77 of the Act, Mishra was guilty of a corrupt practice at the election within the meaning of Section 123(6) of the Act. Against the order passed by the High Court, this appeal has been preferred with special leave.

3. Counsel for Mishra contended that (1) the appeal to the High Court was barred by the law of limitation and accordingly and 'High Court had no power to entertain and decide the appeal; (2) the High Court was not justified in allowing the particulars of the corrupt practices set up in the petition to be modified and to allow the petition to be amended at the stage of the hearing of the appeal and in recording evidence in support of the fresh corrupt practices so set up; and (3) that the evidence does not justify the finding that any corrupt practice was committed by Mishra as found by the High Court.

4. The judgment of the Election Tribunal was delivered on December 28, 1966. A certified copy of the judgment of the Tribunal was supplied to the appellant Sharma on April 27, 1967. The High Court was closed for the summer recess between May 7, 1967 and June 30, 1967 and the memorandum of appeal was lodged in the office of the Registrar of the High Court on July 1, 1967. Section 116-A of the Representation of the People Act, as it then stood, provided, in so far as it is relevant :

"(1) An appeal shall lie from every order made by a Tribunal under Section 98 or Section 99 to the High Court of the State in which the Tribunal is situated.

(2) The High Court shall, subject to the provisions of this Act, have the same powers, jurisdiction and authority, and follow the same procedure, with respect to an appeal under this Chapter as if the appeal were an appeal from an original decree passed by a Civil Court situated within the local limits of its civil appellate jurisdiction :

Provided that where the High Court consists of more than two judges every appeal under this Chapter shall be heard by a Bench of not less than two judges.

(3) Every appeal under this Chapter shall be preferred within a period of thirty days from the date of the order of the Tribunal under Section 98 or Section 99 :

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within such period.

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5. The right to appeal against the order of a Tribunal is conferred by Section 116-A of the Act. The Act provides a special period of limitation different from the period of limitation prescribed by Article 116 of the Limitation Act, 1963, for an appeal to the High Court under Code of Civil Procedure from any decree or order. But the expression "under the Code of Civil Procedure" in Article 116 of the Limitation Act means an appeal governed by Code of Civil Procedure, and by Section 116-A(2) the procedure with respect to an appeal from an order of the Tribunal. By virtue of Section 29(2) of the Limitation Act, Section 4 and 12 thereof apply and of the appeal is filed on the date on which the Court re-opens after the recess it will be regarded as within time if the period of limitation, after taking into account the time requisite for obtaining a certified copy, had expired during the course of the recess.

6. Section 29 of the Limitation Act, 1963, by sub-section (2) provides :

"Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provision of

Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Section 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

Computing the time taken for supplying the certified copies, the period of limitation expired during the summer recess, and the memorandum of appeal was lodged in Court on July 1, 1967. There is no provision in the Representation of the People Act, 1951, which excludes the application of Section 4 of the Limitation Act.

7. In *Vidyacharan Shukla v. Khubchand Baghel and Others*, ((1964) 6 SCR 129) this Court held that the exclusion of time provided by Section 12 of the Limitation Act, 1908, is permissible in computing the period of limitation for filing in the High Court under the Representation of the People Act, 1951. The Court in that case was interpreting Section 29(2) of the Limitation Act, 1908. It was held that in the absence of any express provision to the contrary in the special statute, the provisions of the Indian Limitation Act, 1908, contained in Section 4 and Sections 9 and 18 and 22 shall apply to the extent to which they were not expressly excluded by any special or local law.

8. The appeal filed by Sharma must in law be deemed to be filed within the period of limitation prescribed by section 116-A(3) of the Representation of the People Act, 1951.

9. We are also unable to agree with the learned counsel for Mishra that the High Court erred in allowing the amendment of the petition. In Paragraph 7 of the petition as originally filed it was averred :

"(a) The respondent (1) - (D. P. Mishra) - Incurred and authorised expenditure in contravention of Section 77 of the Representation of the People Act, 1951, and thereby committed the corrupt practice as defined under Section 123(6) of the Representation of the People Act, 1951.

(b) (i) The respondent (1) - (D. P. Mishra) - In his election expenses has given a return of expenses totalling up to about Rs. 6,300/-. He has deliberately not shown many items of expenditure incurred or authorised by him in connection with his election which if included would make the total expenditure much beyond the permissible limits."

In clauses (b)(ii), (b)(iii), (b)(iv), (b)(v), (b)(vi), (b)(vii), (b)(viii), (b)(ix), (c)(i), (c)(ii), (c)(iii), (c)(iv) and (c)(v) of Paragraph 7 were set out various items of expenditure which, it was claimed, were incurred or authorised by Mishra in connection with his election.

10. The petition was allowed to be amended by order of the high Court on May 4, 1968, and certain particulars of expenditure incurred by Mishra were incorporated in the petition. The circumstances in which the High Court permitted the amendment may be set out; On November 30, 1965, one Bhaskar Kathote was examined before the Tribunal as a witness for Sharma and from the statements made by him it appeared that Mishra had spent a large amount of money for purchasing cloth for banners used for the purpose of elections, and that amount was not disclosed in the statement of expenditure. An application to amend the petition by incorporating the particulars was made on December 1, 1965, before the Tribunal. The Tribunal rejected the application on the ground that it

"was very much belated".

11. On December 6, 1965, Sharma submitted another application before the Tribunal for amendment of the petition alleging, inter alia, that on March 25, 1963, Mishra had paid into the office of the Madhya Pradesh Congress Committee Rs. 700/- in connection with his election, by paying Rs. 200/- as application fee and deposit amount of Rs. 500/-, and that this item of expenditure was liable to be included in the return of election expenses filed by Mishra with the Returning Officer under Section 78 of the Representation of the People Act, 1951, and if that item be included the total expenditure incurred by Mishra exceeded the maximum amount of expenditure permitted for an Assembly constituency in Madhya Pradesh under Rule 90(2) of the Conduct of Election Rules, 1961, and on that account there was contravention of sub-section (3) of Section 77 of the Representation of the People Act, 1951, and a corrupt practice falling within the terms of Section 123(6) of the Act. The Tribunal rejected that application. In the view of the Tribunal the introduction of allegations made in the application if introduced would amount to adding fresh instances of corrupt practices falling within Section 123(6) of the Representation of the Peoples Act, and that in any event the application for amendment was "not only very much belated but the circumstances in which it was made led to an inference that it was also mala fide."

12. In appeal before the High Court Sharma by his application, dated April 28, 1968, repeated his request for leave to amend the petition in the manner set out in his application, dated December 1, 1965 and December 6, 1965. The High Court granted the application observing that the application was merely intended to amplify the particulars of the corrupt practices which had already been made in the election petition and that items (d) to (i) were not new items of expenditure, but they were sought to be introduced to show that Mishra had incurred and authorised expenditure in excess of the permissible limit of Rs. 7,000/-. In the view of the High Court since the material was already on the record it would be unjust to ignore it on the ground of omission of the details in the petition, and that delay by itself was no ground for refusing leave to supply particulars.

13. Additional issues were then raised, and statements of Ramnarayana Purohit and Mishra were thereafter recorded. The High Court held on a review of the evidence that an attempt was made but without the consent of Mishra to bribe Sharma by offering him Rs. 50,000/- in consideration for his withdrawal from the contest; that it was proved that Shyamacharan Shukla, Parmanand Patel, Laxmishankar Bhatt, Basant Kumar Tiwari, Chakrapani Shukla, Wasudeo Chandrakar, Bhaskar Singh, Rohini Kumar Bajapi, Jaideo Satpati and N. N. Seel were the agents of Mishra; that it was proved that electors were conveyed to some of the polling stations in motor-vehicles but it was not proved that any vehicle was hired or procured for this purpose with Mishra's consent; that it was proved that Mahakoshal, a Hindi Daily, published from Raipur, and Shyamacharan Shukla who was the proprietor, publisher, printer and keeper of the Press, were the agents of Mishra within the meaning of Section 123 of the Act; that it was proved that three Statements (Annexures I, II, and III) were published in the "Mahakoshal" issues of April 12, April 26 and May 4, 1963, in relation to the personal character and conduct of Sharma, that all the statements were false, and that Mishra did not believe any of them to be true and those statements were reasonably calculated to prejudice the election prospects of Sharma, but in the view of the High Court Mishra had incurred or authorised expenditure within the meaning of Section 77 of the Act which totalled Rs. 7,249.72, and since the amount exceeded the permissible limit, Mishra was guilty of corrupt practice under Section 123(6) of the Act. The High Court, however, declined to issue a notice to Shyamacharan Shukla under Section 99 of the Act calling upon him to show cause why he should not be named for committing corrupt practices as decided in Section 123(4) of the Act.

14. The arguments in this appeal are restricted to the corrupt practice which the High Court found Mishra had committed by incurring expenditure in excess of the permissible limit of Rs. 7,000/- for the Assembly Constituency.

15. We may observe that in the course of their judgment the learned Judges of the High Court recorded their conclusion that acts which would amount to corrupt practices, were in fact committed, but it was not proved that those acts were done with the consent of Mishra. In respect of the corrupt practice under Section 123(4), the High Court first held that Mishra had consented to the publication of the statements in the three annexures; and then proceeded somewhat inconsistently to "give the benefit of doubt" to Mishra. In the course of the judgment, the High Court observed :

"The statements, Annexures I, II and III appeared in the Mahakoshal. Shyamacharan Shukla was its editor. As will be seen the Mahakoshal and Shyamacharan Shukla were both agents of the respondent within the meaning of the election law."

16. Thereafter in Paragraph 83 of the judgment the High Court observed that direct evidence of consent can rarely be expected and in the absence of direct evidence, the question of consent has to be determined in the light of circumstantial evidence, each case being decided on its own facts. The Court then proceeded to set out the considerations which would guide the Court in dealing with the question whether the false statements published in the newspaper supporting the candidature of the publishing candidate was with his consent and recapitulated the evidence in support of the case in relation to the three statements - Annexures I, II and III. After referring to the admission made by Mishra that Shyamacharan Shukla had worked for him, and the evidence that Shyamacharan Shukla was personally associated with Mishra in his campaign and had extensively toured with Mishra, the High Court recorded its finding in Paragraph 96 :

"In ultimate analysis, the question of consent is one of fact and it is to be decided in each case on its facts and circumstances. Circumstances in their entirety have to be kept in view. It is the overall picture of the case which presents itself, and not isolated facts, which will guide the Court to reach the conclusion. In the present case, the cumulative effect of the respondent's closeness with the Mahakoshal an personal association with Shyamacharan Shukla for days together and the setting in which the false statements were published one after another, and the respondent not contradicting nor dissociating himself from them would have persuaded us to hold that these false statements (Annexures I, II and III) were published with the consent of the respondent."

The High Court then observed that Shyamacharan Shukla may have in his own enthusiasm published those false statements and therefore they gave the "benefit of doubt" to Mishra, with "much hesitation".

17. We are unable to endorse the method adopted by the High Court. If we had disagreed with the view of the High Court on the finding relating to the perpetrating corrupt practice by Mishra falling under Section 123(6) of the Representation of the People Act, 1951, it might have been necessary for us to consider this question more fully. In an election petition a corrupt practice may be proved only by evidence which establishes the case beyond reasonable doubt. But in giving the benefit of doubt the Court has to reach a judicial conclusion it cannot vacillate. The High Court has pointed out that there was strong and clear evidence justifying the conclusion that Mishra had consented to those publications. In our judgment, there was on the finding so recorded little scope for the High

Court to give Mishra "the benefit of doubt".

18. We may not consider the question whether the High Court was right in allowing the amendment of the petition, and whether the evidence establishes that corrupt practice within the meaning of Section 123(6) read with Section 77 of the Act was committed by Mishra. In our judgment, the High court was right in granting the amendment. In Paragraph 7, clauses (a) and (b)(i) of the election petition as originally filed Sharma averred that Mishra had incurred and authorised expenditure exceeding the permissible limit of Rs. 7,000/- fixed under the rules framed under the Representation of the People Act, 1951. Mishra in his statement of election expenses had disclosed that he had spent Rs. 6,234.14. By adding to the particulars of expenditure incurred which obviously could not be within the knowledge of the election petitioner, no new plea of corrupt practice was set up by Sharma. The particulars were of the election expenses. By seeking to amend the petition Sharma did not add new grounds of corrupt practice not disclosed in the petition he only furnished particulars of the corrupt practice already set out in Paragraph 7(a) and 7(b) (i) of the petition.

19. Section 83(1)(b) of the Representation of the People Act, 1951, as it stood in 1963, provided :

"(1) An election petition -

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(b) shall set forth particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice :"

By Section 90(5) it was provided :

"The Tribunal may, upon such terms as to costs and otherwise as it may deem fit allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition."

The words of clause (5) of Section 90 are clear. The Tribunal had no power to allow any amendment of the petition so as to supply or introduce particulars of a corrupt practice not alleged in the petition. But the particulars of the corrupt practice alleged in the petition may in appropriate cases be permitted to be introduced by amendment. In the present case by the amendment particulars of the corrupt practice set out in Paragraph 7, clauses (a) and (b)(i) previously alleged in the petition were introduced, and not particulars of a corrupt practice not previously set up in the petition. Sharma obviously could not have knowledge or information about the matters which from their very nature were within the special knowledge of Mishra. As soon as he came to learn about the additional particulars of the corrupt practice he applied to the Tribunal for leave to amend the petition. The Tribunal rejected the first application for amendment on the ground that there was delay in filing the application, and the second application on the ground that it was delayed and was also mala fide. We do not think the Tribunal was right in holding that there was undue delay which would justify rejection of the application for amendment, and there are no circumstances from

which it may be inferred that the application, dated December 6, 1965, was mala fide. We hold that the High Court was right in allowing the amendments to be made.

20. Mr. Sen appearing on behalf of Mishra contended that in allowing an application for amendment five years after the date on which the original petition was filed and allowing evidence to be recorded, the High Court has gravely erred. But Sharma did make an application for amendment during the trial of proceeding before the Tribunal. The Tribunal was, in our judgment, in grave error in rejecting the application. It was not the fault of Sharma that evidence of the particulars could not be recorded at an earlier stage. The oral evidence as recorded on behalf of Sharma was only formal, and only explanatory of the evidence already on the record.

21. The evidence relating to the incurring or authorising of expenditure in respect of the items held proved by the High Court falls under two heads : Rs. 700/- paid to the Madhya Pradesh "Congress Committee", Bhopal, on March 25, 1963, for standing on the Congress Ticket; and Rs. 510.25 on April 13, 1963, spent for purchasing cloth for preparing banners.

Section 77 of the Act, as it then stood, provided :

"(1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof, both dates inclusive.

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed."

Section 78 of the Act provided :

"Every contesting candidate at an election shall, within thirty days from the date of election of the returned candidate or, if there are more than one returned candidates at the election and the dates of their elections are different, the later of those two dates, lodge with the returning officer an account of his election expenses which shall be a true copy of the account kept by him or by his election agent under Section 77."

Section 100(1)(b) provided :

"Subject to the provisions of sub-section (2), if the Tribunal is of opinion -

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(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of the returned candidate or his election agent;

the Tribunal shall declare the election of the returned candidate to be void."

Under clause (6) of Section 123 the incurring or authorising of expenditure in contravention of

Section 77 was a corrupt practice.

22. Rule 131 framed under the Representation of the People Act, 1951, then in force, provided :

"(1) The account of election expenses to be kept by a candidate or his election agent under Section 77 shall contain the following particulars in respect of each item of expenditure from day to day, namely :

- (a) the date on which the expenditure was incurred or authorised;
 - (b) the nature of the expenditure (as for example travelling, postage or printing and the like);
 - (c) the amount of the expenditure -
 - (i) the amount paid;
 - (ii) the amount outstanding;
 - (d) the date of payment;
 - (e) the name and address of the payee;
 - (f) the serial number of vouchers, in case of amount paid;
 - (g) the serial number of bills, if any, in case of amount outstanding;
 - (h) the name and address of the persons to whom the amount outstanding is payable.
- (2) A voucher shall be obtained for every item of expenditure unless from the nature of the case, such as postage, travel by rail and the like, it is not practicable to obtain a voucher.
- (3) All vouchers shall be lodged along with the account of election expenses, arranged according to the date of payment and serially numbered by the candidate or his election agent and such serial numbers shall be entered in the account under item (f) of sub-rule (1).

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23. Mishra did not produce any account required to be maintained under Section 77 of the Act; he merely relied upon the statement headed "Account of election expenses - Election to Legislative Assembly Constituency, Kasdol" filed under Section 78 of the Act. This statement showed in respect of different items the date of incurring expenditure, nature of expenditure, the date of payment, amount outstanding, date of vouchers name and address of payee, if paid, serial number of voucher, serial number of bill, and the name and address of the person to whom outstanding. The Act requires the candidate at an election to keep a correct account of all expenditure. Section 78 enjoins a duty upon the candidate to file a true copy of the account kept by him.

24. It appears from Ext. A-1, Receipt No. 113, issued by the Madhya Pradesh Congress Committee, Bhopal that on March 25, 1963, Mishra paid Rs. 700/- to the Madhya Pradesh Congress Committee,

Bhopal. The permanent Secretary of the Congress Committee acknowledged receipt of the amount of Rs. 700/- from Mishra in connection with the bye-election to the State Legislative Assembly from Kasdol constituency. Out of that amount, Rs. 200/- were appropriated as application fee, and Rs. 500/- as deposit. This amount was however not included in the statement filed under Section 78 of the Act.

25. Mr. Sen contended that the payment was not liable to be disclosed in the statement of account filed by Mishra under Section 78 of the Act because it was incurred not by him, but by one Parmanand Patel without the knowledge and consent of Mishra, and that in any event the amount was not paid within the period prescribed by Section 77 of the Representation of the People Act, 1951. Counsel also contended that out of the amount deposited, Rs. 500/- being "refundable" to the person depositing it, it was never treated as appropriated by the Madhya Pradesh Congress Committee.

26. Ext. A-2 are the rules of the Madhya Pradesh Congress Committee, which have a bearing on the contentions raised by counsel. The rules prescribe the procedure for selection of Congress candidates approved by the Working Committee. Rule 8 deals with the observance of discipline and under the head "Application or Declaration of Consent", it is provided, in so far as it is material :

"1. A person may offer himself as a candidate for election to the Parliament or the State Legislature by filling up the prescribed Application Form or his name may be proposed by some one else but in all cases, each name shall have to be recommended by five members of the concerned D.C.C.

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The person concerned shall have to declare that he agrees to stand and shall have to fill up the Consent Form.

2. Along with the application, the intending candidate shall contribute Rs. 200/- only.
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This amount will not be refunded.

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5. In addition to the application money, each person concerned shall have to deposit Rs. 500/- in the case of State Legislature x

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7. Deposits, in all cases will be earmarked for the constituencies of the persons concerned. In case he is not selected, the deposit will be refunded."

Appended to these rules is the form of application and declaration of consent.

27. Rs. 700/- were paid into the office of the Congress Committee on March 25, 1963. Notice of election was published on March 27, 1963. The High Court has held that Rs. 200/- out of Rs. 700/- being application money must be deemed to have been expended on March 25, 1963, and cannot be regarded as expenditure within the period prescribed by Section 77. The High Court further held

that the amount of Rs. 500/- which was made as deposit was treated on April 1, 1963, as the money belonging to the Madhya Pradesh Congress Committee over which the person depositing had no interest.

28. In Receipt No. 113, dated March 25, 1963, it is stated that the amount was received from Mishra "through Ram Krishna Shrinivas". Mishra in his statement admitted that he knew the procedure for applying for the Congress ticket "but he claimed that he had not approached the District Congress Committee to give him the Congress ticket," since he was "absolutely certain" that the High Command of the Congress wanted him and would give him a ticket; that on March 30 or 31, 1963, he was called by the Congress President and was told that he had been granted the "Congress ticket" by the Parliamentary Board to contest the bye-election from Kasdol Constituency; and that thereafter he declared himself to be a candidate. He denied that he had authorised Parmanand Patel to pay into the office of the Congress Committee Rs. 700/- as application fee and deposit money. He also denied that he had any information regarding payment of the amount. According to Mishra, it was for the first time in November or December, 1965, that he came to learn on enquiry from Parmanand Patel that the latter had deposited the money with the Congress Committee.

29. Mishra however failed to produce his books of account. He stated that one Laxmishankar was in charge of the election office at Kasdol and that Laxmishankar maintained the accounts of his election expenses. He further stated that whenever he gave money to Laxmishankar the latter had entered the money in his accounts. Even these accounts have not been produced on the pretext that Laxmishankar had only given him the vouchers and the accounts were contained only in loose "sheets of paper under different heads". Even those sheets of paper were not produced. The Rules of the Congress Committee required that a candidate desiring to stand for election to the State Assembly on the "Congress ticket" shall pay an application fee of Rs. 200/- and deposit of Rs. 500/-. Mishra was cognizant of those Rules, but he says that the local Ad hoc Committee was inimical to him and that he was at the relevant time in Delhi and it was the President of the Congress who informed him that his candidature was accepted by the Parliamentary Board and that he was permitted to contest the bye-election from the Kasdol Constituency. However, Ramnarayan Purohit says that the Ad hoc Committee which was in charged of the election affairs in Madhya Pradesh considered the names of Mishra and one Kanhaiyalal for the "Congress ticket" in the bye-election and after taking votes it was found that Mishra received nine votes and Kanhaiyalal received eleven votes, and thereafter the Ad hoc committee sent both the names to the Central Parliamentary Board with the recommendation that the candidature of Kanhaiyalal be approved. This meeting, it was said, was held on March 26, 1963. It is true that Ramnarayan Purohit has stated that Ram Krishna Shrinivas at the time of paying the amount of Rs. 700/- did not hand over any application of Mishra. We are unable to accept that an application as required by the rules was not submitted, and still the name of Mishra was considered by the Congress Committee. If the amount of Rs. 700/- was only tendered without an application, Ramnarayan would have enquired why the application was not submitted. The counterfoil of the receipt maintained in the Madhya Pradesh Congress committee for Rs. 700/- showed that the amount was received from Mishra, that in all the books of account maintained in the Madhya Pradesh congress Committee the amount was also entered as paid by Mishra and the bare denial of Mishra that he had not paid Rs. 700/- cannot be accepted as correct. The application has apparently been withheld. The application could be denied, but not the receipt of money, for they had gone into the accounts.

30. Even assuming that there was no application, if it be believed that Rs. 700/- were paid by Mishra it could only be subject to the terms and conditions of the rules of the Congress Committee. It is pertinent to note the Mishra has admitted that the Ad hoc Congress Committee did not approve of

his candidature. He said that on coming to know of it he went to Delhi and he was informed by the congress President that Parliamentary Board had accepted his candidature. If his candidature was considered by the Ad hoc Congress Committee he must have been put to an enquiry as to how the Congress Committee could consider his name without any application and without any deposit as required by the rules. Mishra was a member of Congress for long time, he was once a Chief Minister and leader of the Congress Party in the Assembly. He was familiar with the rules of the Congress Committee as he had "secured the Congress ticket" previously on several occasions. It was the case of Mishra that the amount had been paid by Parmanand Patel. Parmanand Patel was actively working for Mishra during the course of the election. Mishra had informed the High Court that he desired to examine Parmanand Patel, but he ultimately did not examine him. We agree with the High Court that even if the Ad hoc Congress Committee was not favourable to the candidature of Mishra it was unlikely that he would anticipate the decision and would very imprudently not even comply with the requirement relating to the deposit of Rs. 700/- with the Madhya Pradesh Congress Committee and thereby "give a handle to the Ad hoc Committee not to consider his name". It is reasonable to infer in the circumstances that Mishra tried to secure the recommendation of the Ad hoc Congress Committee and for that purpose he deposited the money required by the Rules, notwithstanding any apprehension he may have felt that the Congress Committee may decide against him, and when he found that the local Committee had decided against him, he approached the Parliamentary Board and secured their approval to his candidature. We are therefore of the view, having regard to all the circumstances, that the amount of Rs. 700/- was deposited by Mishra through his agent on March 25, 1963, and his denial that the amount was deposited by him is untrue.

31. Under Section 77 of the Representation of the People Act, 1951, a separate and correct account of all expenditure in connection with the election incurred or authorised by a candidate or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof has to be kept by the candidate. The date of notification of calling the election was March 27, 1963 and the amount of Rs. 700/- was paid on March 25, 1963. Relying upon this circumstance that the amount of Rs. 700/- was deposited on March 25, 1963, it was contended that even if it be deemed to have been paid by Mishra, the expenditure did not fall within the period prescribed by Section 77 of the Act and was on that account not liable to be included in the statement of expenditure incurred in connection with the election. But Rs. 500/- out of Rs. 700/- were intended to be for deposit : they could, under the relevant rules, be allocated only after the candidate was approved. The meeting of the Ad hoc Congress Committee was held on March 26, 1963, and Mishra's name was turned down. The Parliamentary Board, however, approved his candidature on March 30 or 31, 1963. It was only after the ticket was given to Mishra that the amount of Rs. 500/- may be deemed to be appropriated under the rules. If his candidature was not approved the amount of Rs. 500/- was under the rules liable to be refunded : If the candidature was approved it was not liable to be refunded, and it would be used for the constituency. The amount of Rs. 500/- deposited by Mishra must, therefore, be deemed to have been appropriated on April 1, 1963, by the Madhya Pradesh Congress Committee and was incurred within the period prescribed by Section 77 of the Act.

32. It was urged, however, that granting that under the rules the amount of Rs. 500/- paid under Receipt No. 113, dated March 25, 1963, was not refundable, it was still treated by the Congress Committee in its accounts as refundable. Reliance in this connection was placed upon Ext. A-9 which catalogued the amounts received from different candidates and included the name of Mishra from whom an amount of Rs. 500/- was received as deposit. Reliance was also placed upon Exts. A-6 and 7 the balance-sheet of the Madhya Pradesh Congress Committee, Bhopal, dated December 27,

1963. Under the head "Liabilities" in the balance-sheet an amount of Rs. 25,075/- is shown as election deposit from candidates. It was urged that the amount of Rs. 500/- which was included in the total amount of Rs. 25,075/- was treated even in December, 1963, as lying in deposit and not appropriated to the account the Madhya Pradesh Congress Committee. This argument cannot be accepted. Exhibit A-9 on which reliance was placed is merely a list of the amounts received. The balance-sheet was tendered in evidence, but the auditors were not examined. Again a balance-sheet is only a statement of the sources from which the money has been received. No rational explanation has been furnished why the Committee did not appropriate the amount to the congress Committee funds. In our judgment, the High Court was right in holding that the amount of Rs. 500/- paid by Mishra was "expenditure incurred" on April 1, 1963, and was liable to be included in the statement of expenditure incurred for the purpose of the election.

33. The other item relates to Rs. 510.25 for purchasing cloth for use in preparing banners for election propaganda. In the return of election expenses under the entry, dated April 27, 1963, and amount of Rs. 370/- is shown as paid to Bhartiya Chitra Mandir for "painting charges", being Voucher No. 39. An amount of Rs. 200/- was also shown as paid on April 18, 1963, to the same firm under Voucher No. 28 as "advance against painting charges". Voucher No. 28, dated April 18, 1963, expressly recites that the amount was received from B. K. Tiwari. Reading Voucher Nos. 28 and 39 and the entries made in the return of election expenses together it appears that it was the claim of Mishra that Rs. 430/- were spent for cloth and painting charges at the rate of Rs. 5/- for ninety-six banners. Bhaskar Kathote of Bhartiya Chitra Mandir was examined as a witness on behalf of Sharma. He said that he had charged Rs. 5/- per banner for painting only, and cloth was supplied to him by Mishra. The witness said that he was paid Rs. 200/- as advance on April 18, 1963, when the order was placed with him and the balance of Rs. 370/- was paid to him on April 27, 1963 by Basant Kumar Tiwari. He also stated that he had handed over the receipt for that amount to Basant Kumar Tiwari, and also the voucher for Rs. 370/-. According to this witness the banners supplied were of three sizes - (i) 18' x 3'; (ii) 12' x 2-1/4' and (iii) 9' x 1/4'. Of these, 40 banners were of type (i) 20 banners of type (ii) and 42 banners of type (iii), and that he was supplied 375 yards of cloth for the banners. The witness produced for scrutiny before the Tribunal his cash book and the ledger for the year 1963-64 and he pointed out the entries from April 18, 1963 to April 27, 1963, which showed that only 9 yards of cloth was purchased by him for Rs. 12.37 on April 18, 1963. In Voucher No. 39 the entries are as follows :

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# Rs. P.96 cloth banners painting including cost of cloth @ Rs. 5.00 each .. 430.00
Boards of 6' x 4' each @ Rs. 6.00 .. 60.00
Stitching charges .. .. 20.00
Framing charges .. .. 10.00 ----- 570.00
Advance .. .. 200.00 ----- Balance .. .. 370.00." -----
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Bhaskar Kathote explained that he was asked to give a voucher containing the words "including cost of cloth", even though the cloth was supplied by him by Mishra. This statement is supported by a carbon copy of the bill, dated April 27, 1963, Ext. P-160. This carbon copy is in a bound book, leaves of which bear numbers in serial order and dates in chronological sequence. The book is, in our judgment, a reliable piece of evidence. In Bill No. 3006, dated April 27, 1963, cloth is not mentioned, in that Bill Bhaskar Kathote only charged for painting. The witness has deposed that the carbon copy of Bill No. 3006 is in his handwriting and is signed by him. The entries in the bill show that 96 banners @ Rs. 5/- each and 10 boards at Rs. 6/-, stitching charges Rs. 20/- and framing charges Rs. 10/, total Rs. 570/- less Rs. 200/-, balance Rs. 370/-. On the left-hand margin at the top the words "including cost of cloth" have been written. This entry is made in pencil : it supports the case of Bhaskar Kathote that he had written the words "including cost of cloth" at the instance of B.

K. Tiwari when he was asked to supply a voucher. The fact that in Voucher No. 39 the entry was for "96 cloth banners painting including cost of cloth @ Rs. 5.00 each", it would impossible to believe that on April 27, 1963, a businessman could have supplied 96 banners "duly painted" by him at the rate of Rs. 5/- per banner including the cost of cloth. Kathote has deposed that on April 22, 1963, he had supplied banners "painted" by him at the rate of Rs. 5/- to another customer. He produced a carbon copy in respect of that bill showing that he had charged that customer only for painting the banners and not for cloth. It may be noticed that at an average 4 yards of cloth was needed for each banner. Even the cheapest cloth used for banners would cost more than a rupee per yard : no reason has been suggested why Kathote should be willing to charge merely Rs. 5/- for cloth and painting charges inclusive, whereas he had charged other customers at the rate of Rs. 5/- for "painting only". There is not much doubt, having regard to the evidence of the witnesses examined in the case, that the banners displayed at the time of election in support of Mishra's candidature were 18 feet long approximately.

34. The testimony of Keshrichand a wholesale dealer in cloth may be considered at this stage. The witness stated that Basant Kumar Tiwari had purchased from his shop at Raipur coarse cloth about the time of the election and Tiwari had paid the price in cash. The witness produced a cash memo for Rs. 510.25, dated April 13, 1963, for supplying 370 meters of cloth which was made out in the name of B. K. Tiwari. The witness stated that the cloth was taken by Tiwari at the time of the mid-term Pool in 1967, and that Tiwari had told him that the Tiwari was "taking the cloth for the election of Mishra." The witness was examined in considerable detail, but nothing was elicited which throws any doubt on the truth of his statement. The High Court was impressed by the testimony of this witness. There is considerable evidence on the record to show that B. K. Tiwari was the agent of Mishra. It appears that even the return of election expenses along with the vouchers was filed by B. K. Tiwari. Mr. Sen urged that B. K. Tiwari was acting for and on behalf of several candidates, and he may have purchased the cloth for some other candidate. But the testimony of Keshrichand and the quantity of cloth utilised for "painting the banners leave no room for doubt that the cloth was utilised for painting banners to be utilised in the election campaign of Mishra.

35. We agree with the High Court that Mishra had spent Rs. 510.25 and that he has not disclosed it in the return of his election expenses. There is no reason to believe that B. K. Tiwari incurred the expenditure on behalf of Mishra but did not charge it to Mishra. Tiwari though he was present in court during the time when Keshrichand was examined was not put in the witness-box. Having regard to the circumstances that Mishra has not chosen to produce his accounts from which the statement of election-expenses under Section 78 was filed and having failed to show the source of the large quantity of cloth for "painting" the banners we are satisfied that the cloth purchased by B. K. Tiwari from Keshrichand's shop was utilised for the purpose of painting the banners.

36. With regard to two other items of Rs. 108.74 and Rs. 96/- respectively for the price of two bags of rice paid to Annapurna Rice Mills and cost of cards and letter papers paid to Mahakoshal Press, no arguments has been advanced before us.

37. The High Court was of the view that on taking proper accounts of the expenditure incurred and allowing certain items which were included in the statement of account but which were not liable to be included, it was proved that Mishra had spend an amount of Rs. 7,249.72 which exceeded the amount permissible under Section 77 of the Act, and Mishra having incurred or authorised expenditure in contravention of Section 77 of the Act he was guilty of a corrupt practice under Section 123(6) of the Act and the election of Mishra was clearly void under Section 100(1)(b) of the Act. We agree with the opinion of the High Court.

38. It is however necessary, before we finally decide this appeal, to deal with the application which is made by the respondents who were on their own application impleaded in this appeal. Mr. Chagla counsel for those respondents contends that the Court was bound to name Shyamacharan Shukla, printer, publisher, proprietor and keeper of Mahakoshal Press - a Hindi daily - under Section 99 of the Representation of the People Act, 1951. Section 99(1) of the Act, as it then stood, provided :

"(1) At the time of making an order under Section 98 the Tribunal shall also make an order -

(a) where any charge is made in the petition of any corrupt practice having been committed at the election, regarding -

(i) a finding whether any corrupt practice has or has not been proved to have been committed by, or with the consent of, any candidate or his agent at the election, and the nature of that corrupt practice; and

(ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and

#(b) x x x :##

Provided that a person who is not a party to the petition shall not be named in the order under sub-clause (ii) of clause (a) unless -

(a) he has been given notice to appear before the Tribunal and to show-cause why he should not be so named; and

(b) if he appears in pursuance of the notice, he has been given and opportunity of cross-examining any witness who has already been examined by the Tribunal and has given evidence against him, of calling evidence in his defence and of being heard."

39. The High Court recorded in Paragraph 199(4) and (5) of their judgment their conclusion as follows :

"It is proved that the Mahakoshal a Hindi daily, published from Raipur, and Shyamacharan Shukla, who was its proprietor, publisher, printer and keeper of the Press, were both agents of the respondent within the meaning of Section 123 of the Act.

(5) It is proved that three false statements (Annexures I, II and III) were published in the Mahakoshal, issues of the 12th and 26th April and 4th May, 1963, in relation to the personal character and conduct of the petitioner; that all the three were false; and that the respondent did not believe any of them to be true. It is held that they were statements of the fact and that they were reasonably calculated to prejudice the election prospects of the petitioner.

#x x x x##

40. At the hearing an application was made before the High court that a proceeding should be drawn up under Section 99 of the Act against Shyamacharan Shukla and a notice should be issued to him

why he should not be named as having committed corrupt practice under Section 123(4) of the Act. The High court observed that the three statements (Annexures I, II and III) were published in the Mahakoshal of which Shyamacharan Shukla was the proprietor, publisher, printer, keeper. The High Court further observed that Shyamacharan Shukla was the agent of Mishra within the meaning of Section 123(4) but Shyamacharan Shukla was not and could not be made a party to the election petition. But the High Court was of the view that when the appeal was placed for hearing in April 1968, Mishra had raised certain preliminary objections and Sharma had also urged those preliminary contentions all of which were decided by the order, dated May 4, 1968, and it was the duty of Sharma on that occasion to satisfy the High Court, Prima facie, that Shyamacharan Shukla had committed a corrupt practice under Section 123(4) of the act so that notice could be issued to him and opportunity to which he was entitled under Section 99 of the act may have been made available to him. But that was not done and in the opinion of the Court for avoiding further delay the application should be rejected.

41. We are unable to agree with the view so propounded by the High Court. Under Section 99 of the Act the Court has no discretion in the matter, if the Court was of the view that any person who is proved at the trial to have been guilty of any corrupt practice, not to name that person. It is true that preliminary objections were argued at an earlier stage, but Sharma could not before the appeal was heard ask the Court to issue a notice under Section 99 of the Act on the footing that his case which was rejected by the Tribunal will be accepted. The duty under the Act is cast upon the Court or the Tribunal, and on the ground that the party has not applied for a notice, the High Court could not avoid the obligation imposed by statute to take proceeding under Section 99 against the person proved at the trial to have been guilty of corrupt practice and to name him. We fail also to appreciate the ground on which the High Court has referred to delay being an "outweighing factor". Shyamacharan Shukla was however not a party to the proceeding and before he could be named a notice must go to him under Section 99 of the Act.

42. We direct that the proceeding be remanded to the High Court and the High Court do give notice to Shyamacharan Shukla under Section 99 of the Representation of the People Act, 1951, to appear and to show-cause why he should not be named for committing corrupt practices. If Shyamacharan Shukla appears in pursuance of the show-cause notice he will be entitled to an opportunity of cross-examining witnesses who has already been examined by the Tribunal and has given evidence against him and he will be entitled to give evidence in his defence and of being heard. The High Court to report to this Court within three months from the date on which the papers are received by it, if operation of tax order of the High Court granted by this Court is discharged.

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