

Rampakavi Rayappa Belagali

Vs

B. D. Jatti and Others

Civil Appeal No. 2394 of 1968

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

15.10.1970

JUDGMENT

GROVER, J. -

1. This is an appeal from a judgment of the Mysore High Court dismissing an election petition which had been filed by two electors challenging the election of respondent No. 1 B. D. Jatti from the Jamkhandi Constituency at the General Elections held in 1967.
2. The last date for filing of nomination papers was January 19, 1967. The polling took place on February 2, 1967 and the result was declared on February 22, 1967. The only contesting candidates were respondent No. 1 and respondent No. 2 M. M. Shivappa. Respondent No. 1 secured 24,578 votes whereas respondent No. 2 got 21,261 votes. The election petition was filed on April 6, 1967, by I. S. Ghattarki and P. R. Belagali who were electors in the Jamkhandi Constituency. Each of them had acted as an election agent of respondent No. 2. Petitioner No. 1 Ghattarki was his election agent from February 10, 1967, till the last date of the election and petitioner No. 2 Belagali acted as an election agent from January 19, 1967 to February 4, 1967. The trial of the petition commenced on December 11, 1967 and after certain witnesses had been examined on February 1, 1967, petitioner No. 1, Ghattarki, made an application praying for permission to withdraw from the petition "for all purposes". Petitioner No. 2 objected to his withdrawal. The learned judge dismissed the application of petitioner No. 1 on the ground that Section 110(1) of the Representation of the Peoples Act, 1951, hereinafter called the "Act" did not permit withdrawal by one petitioner without the consent of his co-petitioner. It has, however, been noted by the learned judge that both the petitioners continued to be represented by one counsel Shri B. S. Patil.
3. It may be mentioned at this stage that the election petition is a very long document and that the evidence which has been produced by the parties is also voluminous. The judgment of the learned judge consists of 227 printed pages. A number of issues were framed but the controversy before us has been confined only to certain points.
4. The first question which falls for consideration arises out of issue No. 1 which consists of three clauses and was framed in the following terms :

"1(a) Do the petitioners prove that the 1st respondent was not an elector at all and therefore not qualified to stand for election ?

(b) Are the petitioners precluded from questioning the validity of the entry of the name of the 1st respondent as elector in the Electoral Roll relating to Jamkandi

Constituency ?

(c) Has this Court no jurisdiction to go into the said question of validity ?"

It was held by the learned trial judge that the petitioners (in the election petition) were not precluded from questioning the validity of the entry of the name of respondent No. 1 as an elector in the Electoral Roll relating to Jamkhandi Constituency and that the court had the jurisdiction to go into that question. It was, however, found on a consideration of the evidence that the petitioners had failed to prove that respondent No. 1 was not an elector and was not qualified to stand for election to seat in the Mysore Legislative Assembly from Jamkhandi constituency. If the view of the trial judge that the court had the jurisdiction in an election petition to go into the question of the validity of an entry in an Electoral Roll is erroneous and if the court was precluded from deciding this matter it will be altogether unnecessary to consider the evidence led for the purpose of clause (a) of issue No. 1.

5. The Principal allegations of the petitioners on issue No. 1(a) were that respondent No. 1 had ceased to be a person ordinarily resident within the constituency of Jamkhandi during the period relevant to the 1967 general Elections. It was further asserted that by long stay in the city of Bangalore the name of respondent No. 1 had been entered in the Electoral Roll relating to the municipal area of that city and that respondent No. 1 with the object of getting his name entered in the Roll of Jamkhandi Constituency had either got his name deleted from the Bangalore Roll or had tried to get is changed from that Roll to the Roll of Jamkhandi Constituency.

6. In order to decide the jurisdiction and powers of the court trying an election petition under the provision of the Act to determine the validity or legality of an entry in an Electoral Roll we shall have to look at the relevant provisions of the Act. The Representation of the Peoples Act, 1950, to be called the "Act of 1950" and the Constitution. Part II of the Act deals with the qualifications and disqualifications for Membership of Parliament and State Legislature. Section 5(c) is as follows :

"A person shall not be qualified to be chosen to fill a seat in the legislative assembly of a State unless

#(a)(b)##

(c) in the case of any other seat he is an elector for any Assembly constituency in that State."

The word "elector" is defined by Section 2(1)(c) to mean in relation to a constituency a person whose name is entered in the Electoral Roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in Section 16 of the Act of 1950. Chapter III of the Act contains disqualifications for Membership of Parliament and State Legislatures. According to Section 7(b) "disqualified" means disqualified for being chosen as and for being a Member of either house of Parliament or of the Legislative Assembly, etc. Sections 8 to 11 give the disqualifications on conviction for certain offences, for commission of corrupt practices and other matters which need not be noticed. The position under the Act, therefore, is that in order to stand for election to a legislative assembly of a State a person must be an elector for any assembly constituency in that State and he must not be subject to any of the disqualifications mentioned in Section 16 of the act of 1950 or the disqualifications given in Chapter III of the Act. The Act of 1950 was meant to provide for the allocation of seats and the delimitation of constituencies for the

purpose of elections to the House of the People and the Legislatures of States, the qualifications of voters at such elections, the preparation of Electoral Rolls and matters connected therewith.

7. Part III thereof contains provision for Electoral Rolls for assembly constituencies. According to Section 15 for every constituency there shall be an Electoral Roll which shall be prepared in accordance with the provisions of the Act of 1950 under the superintendence, direction and control of the Election Commission. Section 16 is in these terms :

"Section 16. - Disqualifications for registration in an electoral roll.

(1) A person shall be disqualified for registration in an electoral roll if he -

(a) is not a citizen of India : or

(b) is of unsound mind and stands so declared by a competent court; or

(c) is for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections.

(2) The name of any person who becomes so disqualified after registration shall forthwith be struck off the electoral roll in which it is included :

Provided that"

Section 19 gives the conditions of registration in the Electoral Roll. It provides that every person who is not less than 21 years of age on the qualifying date and is ordinarily resident in a constituency shall be entitled to be registered in the Electoral Roll for that constituency. Section 20 deals with the meaning of "ordinarily resident". The preparation and revision of Electoral Roll has to be made in accordance with Section 21 and the correction of entries is provided by Section 22. Section 24 contains a provision for an appeal which can be filed to the Chief Electoral Officer from any order of the Electoral Registration Officer under Section 22 or Section 23. Under Section 30 no civil court shall have jurisdiction to entertain or adjudicate upon any question whether any person is or is not entitled for registration in an Electoral Roll for a constituency. There are elaborate rules which have been promulgated for preparation and revision of the Electoral Rolls, namely, Electors' Rules, 1960. It may be noted that the conditions about being ordinarily resident in a constituency for the purpose of registration are meant for that purpose alone and have nothing to do with the disqualifications for registration which are prescribed by Section 16 of the Act of 1950 which alone are relevant to the definition of an "elector" as given in Section 2(1)(c) of the Act. The entire scheme of the Act of 1950 and the amplitude of its provisions show that the entries made in an Electoral Roll of a constituency can only be challenged in accordance with the machinery provided by it and not in any other manner or before any other forum unless some question of violation of the provisions of the Constitution is involved.

Article 173 of the Constitution relates to qualifications for membership of the State Legislature. It reads :

"Article 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 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;

(b) is, in the case of a seat in the legislative assembly, not less than twenty-five years of age and, in the case of a seat in the legislative council, not less than thirty years of age; and

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

The qualifications, as mentioned previously, have been prescribed by Section 5 of the Act. Condition (b) in Section 19 of the Act of 1950 of being ordinarily resident in a constituency finds no place in any of the provisions of the Act or in Article 173 of the Constitution. The decision of this court in *Durga Shankar Mehta v. Thakur Raghuraj Singh and Others* (1955 (1) SCR 267; AIR 1954 SC 520) involved non-compliance with the provisions of clause (b) of Article 173 and in case of a candidate who was constitutionally incapable of being returned as a member it was held that the Election Tribunal could declare his election to be void by applying sub-section (2)(c) of Section 100 of the Act. The present case is clearly not of that kind and no violation or infringement of any provision of Article 173 has been or could be established.

8. The other provisions relating to election are contained in Part XV of the Constitution. Article 324 deals with the superintendence, direction and control of elections which are vested in the Election Commission. Article 325 declares that no person shall be ineligible for inclusion in an Electoral Roll on account only of religion, race, caste, sex or any of them. Article 326 says that the elections to the House of People and the Legislative Assemblies of States shall be on the basis of adult franchise. Article 327 gives power to the parliament to make provisions with respect to elections to Legislatures. Article 329 bars the interference of courts in electoral matters. By virtue of that Article no election shall be called in question except by an election petition. It is abundantly clear that in the present case the question whether respondent No. I was ordinarily resident in Jamkhandi Constituency during the material period and was entitled to be registered in the Electoral Roll could not be the subject-matter of enquiry except in accordance with the provisions of the Act of 1950. The grounds on which the election can be declared to be void under the Act are set out in Section 100 of the Act. Clause (d) is "that the result of the election, in so far as it concerns a returned candidate, has been materially affected - (i) (ii) (iii) (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act". Nothing could be clearer than the ambit of this provision. It does not entitle the court in an election petition to set aside any election on the grounds of non-compliance with the provisions of the Act of 1950 or of any rules made thereunder with the exception of Section 16.

9. The learned trial judge does not have fully and properly appreciated the correct ratio and true determination of the points involved in *Durga Shankar Mehta's* case (*supra*). The distinction is too obvious to bear repetition. It seems that a Bench decision of the Mysore High Court in *K. Sriramulu v. K. Deviah* ((1965) 1 Mys LJ 676) was distinguished without any justification by the learned judge. It was clearly laid therein that in an election petition the correctness of the Electoral Roll cannot be gone into. The decision of a Full Bench of the Punjab and Haryana High Court in *Roop Lal Mehta v. Dhan Singh and Others* ((1967) PLR 618) about the finality of the Electoral Roll was also not noticed. In this view of the matter the evidence relating to issue No. 1(a) becomes wholly irrelevant and redundant. The decision on that issue in favour of respondent No. 1, is however affirmed.

10. The next issue on which arguments have been addressed is the 4th one. Clauses (a), (b) and (c) of that issue need alone be produced as nothing has been urged with reference to clause (d).

"IV. (a) Do the petitioners prove that all or any of the police officers enumerated in sub-para (E) of Paragraph III of the petition administered threats to voters or otherwise abused their position as police officers so as to prevent voters from voting freely at the election in the circumstances described in the said sub-paragraph ?

(b) Do the petitioners further prove that in relation to such acts the said police officer were in the circumstances of the case agents for election of the 1st respondent and that their acts have materially affected the result of the election so far as the 1st respondent is concerned ?

(c) Do the petitioners prove that Bellubbi, Executive Engineer Ghataprabha left Bank Canal Scheme, canvassed votes for the 1st respondent in the company of the 1st respondent at the village of Aski, Asangi, Kulhalli and Hippargi ?"

The only police officers who have figured in the arguments are S. G. Kallur, Deputy Superintendent of Police and S. S. Hasbi, an Inspector of Police. It could be appropriately mentioned here that respondents 1 and 2 have been figuring as contesting candidates from Jamkhandi Constituency at all the four General Election held from 1952 onwards. After his defeat at the elections held in 1957 and 1962 respondent No. 2 had preferred an election petition challenging the election of respondent No. 1. In the petition which was filed in 1962 allegations had been made against Kallur and Hasbi which were very much similar to those in the present petition. In 1962 Hasbi was posted in Jamkhandi as Sub-Inspector of Police. He was again posted as Inspector in Jamkhandi in July, 1966. Kallur was Deputy Superintendent of Police, Bijapur Division, in 1962. On September 23, 1964 he was transferred to Bagalkot in which Division Jamkhandi is situated. Respondent No. 1 was the Food Minister when the elections were held in 1967. According to the allegations in the petition these two officers were very strong partisans of respondent No. 1 and they had specially been posted to Jamkhandi with a view to seeing that respondent No. 1 got full support at the elections. The allegations in the petition relating to the part played by these officers were two-fold; one was that they went about in the company of respondent No. 1 and canvassed votes for him by putting pressure on the voters. The other was that during the election days they arrested or threatened to arrest certain staunch supporters of respondent No. 2 including the latter. We need not refer to all the incidents which are enumerated in sub-para (c) of Para 3 of the petition because the arguments have been confined only to certain incidents. The canvassing which has been alleged relates to the villages of Aski and Asangi. There is another village Banahatti which is not very far from these villages and which also figures in the alleged incidents. The learned judge has fully discussed the evidence of the witnesses who deposed to the visit of Kallur and Hasbi in the company of respondent No. 1. Eight witnesses stated that the visit to their villages was about 15 days before the date of polling. The learned Judge found that the alleged visit could not be earlier than the 3rd February or later than the 5th. The witnesses who deposed to canvassing maintained that all the three, namely, Kallur, Hasbi and respondent No. 1 went from house to house and did the canvassing. The result of the discussion of the relevant evidence on the above allegations is to be found in Para 305 of the judgment under appeal. This is what the learned judge has said :

"So far as these villagers are concerned, they have close connections with Banahatti and Rabkavi and are in an area witnesses from which for the petitioners were all collected by Kallappa Hoogar. The date of the visit is either the same or quite close

to a date on which both Hasbi and Kallur were undoubtedly at Bijapur. Hence, even intrinsically, the evidence is not of such character as to be readily accepted without close scrutiny or verification."

11. The main criticism of the counsel for the appellant (petitioner No. 1 has been impleaded in this court as respondent No. 3) is that the learned judge has proceeded on conjectures and has merely made an assumption that the witnesses had been collected by Kallappa Hoogar. No one had suggested in evidence that Hoogar was responsible for persuading or taking these witnesses for evidence to the court from Jankhandi to Bangalore - a distance of about 350 miles. This however, does not appear to be factually correct. Hoogar, who appeared as P.W. 58, stated in cross-examination that he had requested witnesses at Banahatti to go to the court to give evidence and had made similar requests to some witnesses from Aski and Asangi. The other infirmity in the judgment of the learned judge which has been pointed out is that P.W. 2 Panduranga Hane has been stated to have made no mention of the meeting which was held at Asangi on the Katta near the Panchayat where the police officers as also respondent No. 2 addressed the meeting canvassing support for the latter. Counsel for the appellant maintains that P.W. 2 did depose to the presence and participation of these officers at that meeting. The evidence of P.W. 2 on this point is extremely vague. All that he says is that he saw the police officers (Kallur and Hasbi) only when they came to Asangi in the company of respondent No. 1. He could not clearly identify them if he happened to meet them again. He knew their names because respondent No. 1 pointed out to them by name. He denied that these police officers came to his house for canvassing though, according to him, they came to the street where his house is located.

12. Learned judge did not place reliance on the evidence produced by the appellant with regard to house to house canvassing at the villages Aski and Asangi by the police officers Kallur and Hasbi in the company of respondent No. 1. We may at this stage mention the principles which have been laid down by this court while dealing with a plea relating to corrupt practices in an election appeal. This is what has been stated in a very recent decision in *Meghraj Patodia v. R. K. Birla and Others* (1970 (2) SCC 888 at 894 (Civil Appeal No. 1094 of 1969, dt. 10-9-1970)) :

"Taking into consideration the fact that a plea of corrupt practice is somewhat akin to a criminal charge and the further fact that the election cases are tried by experienced judges of the High Court, this Court ordinarily does not go behind the findings of fact reached by the trial judge who had the benefit of seeing the witnesses examined before him unless there is something basically wrong in the conclusions reached by his or the procedure adopted by him. This is not a rule of law but a rule of prudence."

We are not satisfied that any case has been made out in the light of the above observations for interference with the conclusion of the learned trial judge about the participation of Kallur and Hasbi in the campaign for canvassing in support of respondent No. 1.

The next incident to which our attention has been invited is the arrest of P.W. 15 Basalingappa Khebbani by Kallur on the evening of January 31, 1967. It had further been alleged that Khebbani had been administered beating on that evening. According to the learned Judge the visit of Kallur to the village of Seraguppi to which Khebbani belonged was 20 or 21 days before the polling. Khebbani went to Kallur the next day where he was beaten and arrested. According to the evidence which was produced on behalf of the appellant on the visit to his village, which the learned Judge believed, must have taken place on January 30, 1967 Kallur sent for Khebbani and his father and asked the former why he was not working for respondent No. 2. When Khebbani replied that he did

not see anything wrong in doing so Kallur threatened his saying that if he did not desist from giving support to respondent No. 2 Kallur would have him kicked and beaten. On the following day when he went to Jamkhandi he saw a Congress election propaganda meeting being held near a temple. When he was standing there Kallur case, caught hold of him and put him into a jeep and took him to the police station where he was beaten. It was respondent No. 3 who got him released. The learned Judge noticed that when Khebbani was produced before the Magistrate he never mentioned to him that Kallur had beaten him. Kallur in his evidence as R.W. 9 had completely denied having arrested or beaten Khebbani. The charge-sheet Exhibit R-33 showed that it was V. K. Naik, Assistant Sub-Inspector of Jamkhandi who had lodged the complaint. The charge against Khebbani and two other persons who had also been arrested was that they had torn off certain posters put up by the representatives of the Congress Party for their propaganda on the wall of a certain temple. Khebbani had been ultimately acquitted in this case. According to the learned Judge there were four facts which were either proved or admitted : (1) that there was a meeting of the Congress on January 31, 1967 at Jamkhandi; (2) that Kallur was in Jamkhandi on the evening of the same day; (3) Khebbani was arrested on that very day and (4) a charge-sheet had been filed against Khebbani, Gondi and Tungal, etc. on the footing of information lodged by an Assistant Sub-Inspector of Police. The second petitioner had deposed that he had personally seen Kallur arresting Khebbani. The learned Judge did not rely on his evidence. He was of the view that on the basis of the charge-sheet prima facie the arrest was made in the normal course by the Assistant Sub-Inspector Naik and the investigation was made by another police officer of the name of Rajput. When the Assistant Sub-Inspector had taken cognizance of the offence it was unnecessary for Kallur who was Deputy Superintendent of Police to make a "dramatic arrest" by pulling Khebbani by the hand and spiriting him away in a jeep. The story of the threat given by Kallur at village Seraguppi was who also not believed.

13. The learned Judge believed the evidence of Kallur that he had nothing to do with the arrest of Khebbani or that he had threatened him in his village as alleged by Khebbani whose evidence was disbelieved. Nothing has been brought to our notice to show that there was anything basically wrong in the conclusion reached by the learned Judge with regard to the aforesaid allegations.

14. The next allegation which has been pressed relates to the arrest of Gondi who was an active canvasser of respondent No. 2 by Inspector Hasbi on February 16, 1967. This was done on a charge of Gondi having pelted a stone at the car of respondent No. 1. According to the evidence of Gondi P.W. 63 a propaganda meeting had been arranged on behalf of respondent No. 2 near the post office Jamkhandi on the evening of February 16, 1967. It was addressed by M. K. Upadhyya P.W. 50. The appellant presided over that meeting. When P.W. 50 was addressing the meeting an open jeep came from the said of the Tehsildar's office. There were seven or eight persons in it. They had sticks and stones. When the jeep came some people in the audience got up and there was a little disturbance. Upadhyya's speech was interrupted for about 10 minutes. Hasbi then arrested him and took him to the police station where he was released on the following afternoon. Gondi was tried and was ultimately acquitted. The learned Judge considered the entire evidence relating to the incident including that of Gondi, Upadhyya and the appellant. He found several inherent weaknesses and infirmities in the said oral evidence. Hasbi had denied making the arrest. In examination-in-chief he had stated that he was not even present at Jamkhandi on the evening of February 16, 1967 and that he had left for Indi on that date. He made certain statements about the dates on which he proceeded to Indi and returned to Jamkhandi on which it was argued before the learned Judge on behalf of the appellant that his entire evidence should be rejected as unacceptable. It was also urged, as has been contended before us, that Hasbi was a partisan of respondent No. 1 and had done active work for him not only during the 1967 elections but also previously. The final conclusion reached by the learned Judge on a

consideration of the other relevant evidence on the point was that the allegations in the petition about the unlawful arrest of Gondi by Hasbi on February 16, 1967 had not been established.

15. Our attention has been invited to Exhibit P-44 which purports to be a request for transfer of police officers addressed by the voters of Jamkhandi Constituency to the Election Commission, New Delhi. It was stated therein that Hasbi and Kallur should be transferred to some other place in order to ensure fair and impartial election in the Jamkhandi Constituency. It was mentioned that these officers had been posted at the time of the precious General Election also in Jamkhandi area. A copy of the same was addressed to the Chief Minister as also the Home Minister of the Mysore State. A similar letter Exhibit P-63, dated January 16, 1967 had been addressed by one L. A. Patil who described himself as the Secretary of the Mysore State Voters' Council, admitted that his letter Exhibit P-63 did not contain any statement of facts relating to specific acts of Kallur and Hasbi. He also could not give any satisfactory answer to a question put to him as to why he did not bring it to the notice of the Superintendent of Police or the Deputy Inspector General of Police that Kallur and Hasbi were trying to support or help respondent No. 1 Hoogar had also written to the Home Minister of the Mysore State as early as November 14, 1967 the letter Exhibit P-66 expressing similar apprehension of the people of Jamkhandi by Kallur and Hasbi having been posted to that area. The Deputy Commissioner, Bijapur, wrote to Hoogar a letter Exhibit P-67 dated January 19, 1967 asking him to meet him in his office at Bijapur on January 31, 1967 to substantiate the allegations contained in Hoogar's letter. Admittedly neither Hoogar nor the appellant to whom the letter of the Deputy Commissioner is stated to have been handed over went to meet the Deputy Commissioner to satisfy him about what has been alleged against the aforesaid police officers. The complaints which had been sent to the Election Commission were not sufficient to establish that Kallur and Hasbi had actually been responsible for the arrest of Khebbani and Gondi. The learned Judge considered every piece of evidence in great detail and we do not find any basic infirmity in his conclusion that the allegations made in the petition with regard to the aforesaid arrests had not been substantiated.

16. The only other matters that have been pressed on behalf of the appellant arise out of issues Nos. 3(a) and 5 which were to the following effect :

"3(a) Do the petitioners prove that all or any of the Presiding Officers Polling Stations enumerated in sub-para (d) of Paragraph III of the petition omitted to issue ballot papers to any voters and marked them themselves in favour of the 1st respondent and dropped them in the ballot boxes ?

* * *

5. Do the petitioners prove that the 1st respondent himself has obtained or procured for the furtherance of the prospects of his election assistance other than the casting of their own votes from persons in the service of the State Government including the polling officers and police officers mentioned above ?"

The arguments were confined to the complicity of the Presiding Officers of the Polling Stations Nos. 19 and 20. The Presiding Officer at No. 19 was Biradar Patil and at No. 20, H. S. Huli. The complaint against Patil was that he had issued ballot papers relating to the election to Lok Sabha and the ballot papers in respect of assembly election were withheld from the voters. On most of them the seal was put by the Presiding Officer himself in favour of respondent No. 1. In the petition it was stated that the Presiding Officer of Polling Station No. 19 was caught red-handed in the very act of

marking the ballot papers in favour of respondent No. 1. He had also issued an acknowledgment for having received a complaint in writing made by respondent No. 2 himself who along with his polling agent had so caught the Presiding Officer. This complaint was taken away by Patil and had not been sent to the Returning Officer along with the other papers. Some time later in May or June he discovered that he should have sent it to the Returning Officer. He then forwarded it to the Returning Officer on June 29, 1967 along with his explanation Exhibit P-5. Patil had given an acknowledgment Exhibit P-4 when this complaint was handed over to him. This acknowledgment is couched in queer language and may be reproduced :

"Received your complaint regarding the smudged impressions of the seals on the ballot papers. [When I myself was affixing the seal (?) on the symbols of the Bullocks] and regarding propaganda carried on by the officers for casting the votes."

It was dated February 19, 1967 and bore the signature of Patil who was the Presiding Officer of Hunnur Polling Station No. 19. The explanation which was sent by Patil Exhibit P-5 to the Returning Officer was that the election agent of respondent No. 2 had submitted to him a complaint on the election day, namely, February 19, 1967 regarding the distinguishing mark on the back of the papers. In that complaint it had been said that the distinguishing marks were not appropriately put. The copy of the complaint remained with him due to oversight and was being sent. The complaint which was forwarded by the Presiding Officer along with this letter is Exhibit P-6 which is on some form and at the bottom of that form appear the following words :

"While affixing the seals on the ballot papers, the smudged impressions thereof have appeared on the ballot papers. Moreover, the officers have carried on propaganda for votes. It is requested that proper steps may be taken in this behalf."

This was signed by the Chief Polling Agent of respondent No. 2.

17. Learned counsel for the appellant has contended before us that Exhibit P-6 is not the complaint in respect of which acknowledgment Exhibit P-4 was given by the Presiding Officer Patil. There was a different complaint which had been withheld by him because it contained allegations of the nature which were admitted by the Presiding Officer in the acknowledgment Exhibit P-4. That complaint had been filed by respondent No. 2 himself. The learned Judge who was fully conversant with the Kannada language in which these documents had been written made the following observation with regard to them :

"Comparing the text of the complaint with Exhibit P-4 the acknowledgment, the irresistible inference is that lines 2, 3 and 4 of Exhibit P-4 tally with the text of the complaint Exhibit P-6 and that the first line thereto at Exhibit P-4(a), is wholly out of context. I have no doubt therefore, that the first line could not have been written by whoever gave Exhibit P-4 as an acknowledgment for Exhibit P-6."

18. The learned Judge discussed the evidence relating to Exhibit P-4 and the complaint filed on behalf of respondent No. 2. and further observed :

"But watching the witness and examining his answer in the light of ordinary human probabilities and comparing document Exhibit P-4 with other documents already considered by me, I feel convinced that Biradar Patil has spoken the truth when he said that Exhibit P-6 is the only complaint received by him at his polling station and

the first line of Exhibit P-4 separately marked Exhibit P-4(a) was not written by him. I also believe his denial of the petitioners' case that he had either issued only Parliamentary ballot papers or market the Assembly ballot papers himself."

19. As regards M. S. Huli, Presiding Officer of Polling Station No. 20, he had been working as a Senior Lecturer in Chemistry in the Arts and Science College, Jamkhandi. It was for the first time that he functioned as a Presiding Officer in 1967 at the election. He had also been given a similar complaint on behalf of respondent No. 2 but that complaint was missing and was not produced. He had given an acknowledgment for it. He gave an explanation that the Deputy Commissioner had come to the Polling Station and he started talking to him. Thereafter he forgot about the complaint and later on when he looked for it in the evening he found it missing. His evidence was considered in detail by the learned Judge as also the evidence of Romesh Navani P.W. 36 and Basappa Mali P.W. 64 who had been produced by the election petitioners in support of their case. The learned Judge had no doubt that Huli was not guilty of anything except the mistake of not having been sufficiently careful about the complaint which had been given to him. It was observed that he was the only Presiding Officer against whom complaints of like nature had been made. The general picture which emerged from the evidence was that all these complaints showed a common pattern and authorship. So far as the main case against Huli was concerned of marking the ballot papers and putting them into the ballot boxes himself the learned Judge accepted his denial because he disbelieved Ramesh Navani P.W. 36 and Basappa Mali P.W. 64 who had given evidence in that behalf. The appreciation of evidence by the learned trial Judge both with regard to Biradar Patil and Huli does not disclose any such infirmity, which would justify out re-opening his decision on the allegations relating to the complicity of the aforesaid Presiding Officers in rendering illegal help to respondent No. 1.

20. Counsel for the appellant has given to us a list of 11 complaints and representations which were sent to the Home Minister, Mysore Election Commission, New Delhi, Collector Bijapur and other concerned authorities in which various allegations were made against the two police officers, Kallur and Hasbi apart from other illegalities and irregularities which had been allegedly committed by or on behalf of respondent No. 1. The suggestion is that these representations or complaints were made promptly and at the time when the particular incident took place and they furnish corroboration of the evidence of witnesses produced by the election petitioners with regard to the commission of corrupt practices by respondent No. 1 and his supporters. The learned Judge has discussed and taken into consideration practically all these representations while appreciating the evidence of the witnesses. As his conclusions have been accepted as correct by us nothing further need be said about these representations or complaints.

21. In conclusion it may be observed that the impression left by the facts and circumstances of this case on our mind is that the authorities concerned in the Mysore State were not careful or discrete enough in posting Hasbi for the second time to Jamkhandi in July, 1966 when it was known that the relations between him and respondent No. 2 had been very unhappy in the past and by which time it could also be foreseen and appears to be known that there would be another contest between respondent No. 1 and respondent No. 2 who had been fighting elections since 1952. Similarly with regard to Kallur it would have been a wise step to transfer him before the elections from the area in which Jamkhandi is situate because he had also figured similarly in the previous contest between the two respondents. Free and fair elections are the very foundation of democratic institutions and just as it is said that justice must not only be done but must also seem to be done; similarly elections should not only be fairly and properly held but should also seem to be so conducted as to inspire confidence in the minds of the electors that everything has been above board and has been done to

ensure free elections. It will be a sad day in the history of our country when the police and the Government officers create even an impression that they are interfering for the benefit of one or the other candidate. This is particularly so if a candidate is holding an important position or assignment like respondent No. 1, who, at the material time was a Minister in the state.

22. The appeal fails and is dismissed. In view of all the facts and circumstances of the case we make no order as to costs in this Court.

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