

**SUPREME COURT OF INDIA**

Janak Sinha

Vs.

Mahant Ram Kishore Das

C.A.No.1545 of 1970

(C. A. Vaidialingam, A. N. Ray and D. G. Palekar, JJ.)

23.08.1971

**JUDGEMENT**

**VAIDIALINGAM, J.:-**

1. This is an appeal under Section 116-A of the Representation of the People Act, 1951 (hereinafter to be referred as the Act) against the judgment and order dated June 30, 1970 of the Patna High Court in Election Petition No. 11 of 1969, setting aside the election of the appellant to the Bihar Legislative Assembly in the mid-term elections held in that State in February, 1969.

2. In the mid-term elections held in Bihar in February, 1969, for the Minapur Assembly Constituency No. 65 in the District of Muzaffarpur, eight candidates including the appellant and the respondent had filed their nomination papers and contested the election on behalf of various parties. The appellant was a candidate of the Congress party having a symbol of "a pair of bullocks with yoke" and the respondent was a candidate on behalf of the Soshit Dal, the symbol of which was "Fish". Though there were eight candidates in the field, the main contest was between the appellant and the respondent. The appellant was a Rajput by caste and the respondent a Bhumihaar Brahmin.

The date of poll was February 9, 1969, but in respect of two polling booths Nos. 57 and 99, there was a repoll on February 12, 1969. The counting of votes took place on February 13, 1969 and the results of the election were declared the same day. The appellant got 33,903 votes as against the respondent who got 32,978 votes and there was a difference of 925 votes between the appellant and the respondent. In consequence the appellant was declared elected.

3. The respondent filed, under Sections 80-A and 81 of the Act, Election Petition No. 11 of 1969 in the High Court, challenging the election of the appellant on various grounds. According to the respondent the appellant, his agents, workers and supporters, with his consent had committed corrupt practices on a very large scale under sub-sections (2) and (3) of Section 123 of the Act.

4. The first allegation was that the appellant, his agents, workers and supporters, with his consent, had made propagand and canvassed for votes for the appellant orally and through a pamphlet in the name of Rajput caste in different villages from about 10 days before the date of the poll. This canvassing on the basis of caste brought about tension and ill-feeling between the Rajputs, to which sect the appellant belonged and the Bhumihars, to which sect the respondent belonged. The allegations concerning the caste appeal have been made in paragraphs 17 and 18 of the election petition and particulars regarding this allegation have been given in Schedule II of the election petition. In the first column the names of the persons who committed corrupt practice under S. 123 (3) were mentioned; in column No. 2, the period during which the said practice was committed has been indicated and in column No. 3, the names of places where such corrupt practice was committed, were referred to.

5. The appellant on the other hand in paragraphs 16 and 17 of his written statement denied these allegations and in turn made counter-allegations against the respondent. He further pleaded that the respondent was also guilty of appealing to voters to vote on the basis of caste. Particulars of such acts of the respondent were given in great detail in the written statement. In particular the appellant pleaded that no such pamphlet referred to in the election petition has been printed or circulated by him or on his behalf with his consent. As the pamphlet has not been produced, it must be a got up document for the purpose of boosting up the case of the respondent. Regarding the allegations contained in Schedule II of the election petition, the appellant pleaded that the respondent's allegations were false and that he has purposely included in the list persons who are hostile or inimical to the appellant.

6. The second allegation was that the appellant, his agents, workers and supporters, with his consent, committed corrupt practice of undue influence on a large scale under S. 123 (2) of the Act at several places and polling booths. The substance of this allegation was that the appellant, his agents, workers and supporters assaulted, threatened and terrorised the voters of the constituency as well as the respondent, his agents, workers and supporters at several places including the polling booths on the day of the poll and prior to that and thus interfered with the free exercise of their electoral right. As a result of these acts, many voters could not exercise their franchise. In several places ballot

papers were snatched away from the voters and many voters were prevented from exercising their votes. Even the respondent was assaulted and was forced to leave the polling station and thus was prevented from remaining in the polling station or near the same, which as a candidate he had a right to do. Particulars of undue influence were given in Schedule I of the election petition. In column No. 1, the names of persons who committed corrupt practice were given; column No. 2, referred to the dates when such corrupt practice was committed; in Column No. 3 places where such corrupt practice was committed were enumerated; and column No. 4 gave the names of persons, on whom undue influence was practised.

7. All these allegations were again denied by the appellant. According to the appellant, the allegations made in the election petition were very fanciful and had been made in a spirit of revenge in view of the fact that the appellant was consecutively successful in the elections held in 1952, 1957 and 1962. He further stated that in the elections held in 1967, the respondent by adopting various illegal means managed to get elected by a very narrow margin. In consequence, the appellant had filed an election petition No. 4 of 1967, in the High Court, but the same was dismissed on technical grounds. The appellant had taken the matter in appeal to the Supreme Court; but in the meanwhile the Bihar Assembly was dissolved and as midterm elections were ordered, the appeal in the Supreme Court became infructuous. The respondent was very unpopular in his constituency and was himself guilty of various corrupt practices committed by him, his agents, workers and supporters and that he has secured bogus votes in the election. The appellant in turn made allegations that the respondent, his agents, workers and supporters, with his consent prevented his polling agents from discharging their duty and terrorised the voters. He denied as false the various allegations made by the respondent in his election petition.

8. While the respondent prayed for setting aside the election of the appellant as void and illegal on the grounds of corrupt practices committed by the appellant, his agents, workers and supporters with his consent, the appellant on the other hand, after denying all the allegations made against him in the election petition as false and frivolous, prayed for dismissal of the election petition with his costs.

9. From the allegations made in the election petition, it will be seen that the two main points that arose for consideration before the learned Judge were: (1) whether the appellant was guilty of the corrupt practice under S. 123 (3) of the Act, and (2) whether the appellant had committed undue influence under S. 123 (2) of the Act.

10. Regarding the allegation of corrupt practice under S. 123 (3), the learned Judge divided the consideration concerning this aspect into two parts, namely, (i) appealing to electors to vote on the basis of caste as per the printed pamphlet alleged to have been printed and published at the instance of the appellant, and (ii) making of caste appeal verbally or orally to the electors. According to the respondent, a pamphlet in Hindi containing an appeal to the voters to vote on the basis of Rajput caste had been got printed by the appellant and it was widely published and circulated, by the appellant his agents, workers and supporters, with his consent to the various voters in the

constituency. Two such printed pamphlets were marked on the side of the respondent as Exs. 2/E and 2/F. The learned Judge held that the pamphlet did contain an appeal to the voters to vote in the name of caste and to exercise their franchise to the appellant, who was a Rajput. The pamphlet also described the mis-deeds of the respondent that he does not deserve any votes. It was further stated that by voting for the appellant who was a Rajput, the voters will be enabling the Rajput caste to regain its lost prestige. It is the view of the learned Judge that as the pamphlet squarely comes under S. 123 (3) of the Act, the appellant will be guilty of corrupt practice under that section, if it is established that it was either printed and published by the appellant or if it is proved that the appellant, his agents, workers and supporters, with his consent have distributed the pamphlet to the voters.

11. On a consideration of the evidence the learned Judge held that the pamphlet in question had been got printed by one Naulakh Prasad, who was the polling agent and worker of the appellant, at Janhit Press. Nevertheless, according to the learned Judge the evidence adduced by the respondent is not sufficient to enable the Court to hold that the said pamphlet was got printed either by the appellant or with his consent.

12. The learned Judge then considered the evidence regarding making of appeal on the basis of caste by publishing and circulating the pamphlet and also by making appeal orally on the basis of caste. In considering this aspect, the learned Judge has referred to the fact that though in Schedule II of the election petition, the respondent had given the names of thirteen villages, where such corrupt practice of making an appeal to vote to the Rajput community on the basis of caste was made, not evidence was let in regarding eight villages. Therefore, the learned Judge considered the evidence adduced by the respondent regarding the remaining five villages, as well as the evidence led by way of rebuttal by the appellant in this regard. Those five villages were, Uphraolia, Harka, Tengraha, Gorigama and Tengrari. Even in respect of these five villages, the learned Judge ultimately held that the respondent has been able to establish that the caste appeal was made by the appellant, his agents, workers and supporters with his consent by circulating the pamphlet containing the caste appeal and also by making such appeals orally and verbally to the voters only in three villages, namely, Uphraolia, Harka and Gorigama. In respect of these three villages, the learned Judge held that the oral and documentary evidence establish that the appellant has committed corrupt practice under S. 123 (3) of the Act by canvassing on the basis of caste. In respect of the other two villages, namely, Tengraha and Tengrari, the learned Judge gave the benefit of doubt to the appellant.

13. Regarding the allegation of undue influence under S. 123 (2) of the Act, though the respondent had given in Schedule I several places where such corrupt practice was committed, the learned Judge is of the view that it is only at five places, namely, Dharampur, Maksudpur, Sitalpatti, Uphraolia and Ali Neora that it can be held that the appellant has committed such corrupt practice.

14. On these findings the learned Judge held that the respondent has succeeded in establishing both types of corrupt practices alleged against the appellant and, in consequence, declared the election of

the appellant, the returned candidate, as illegal and void, and as such set aside the same. The election petition was, in consequence, allowed with costs.

15. Dr. L. N. Singhvi, learned counsel for the appellant, very strenuously contested the findings recorded by the learned Judge in respect of the two types of corrupt practices alleged against the appellant. The counsel urged that in appreciating the evidence adduced by the parties, the learned Judge has adopted a double standard. While the Court was prepared to believe and act on the evidence of witnesses on the side of the respondent, though they were his workers, supporters and polling agents, the evidence of similar witnesses on the side of the appellant has been rejected on the ground that they were supporters, workers and agents of the appellant. Such a wholesale rejection of the evidence adduced by the appellant has very seriously prejudiced his defence. According to the counsel, the contradictions in the evidence of the respondent's witnesses have not at all been adverted to by the Court; while, on the other hand, even very minor discrepancies in the evidence on the side of the appellant have been magnified and put against the appellant. Even the contemporary documentary evidence, which supports the defence of the appellant has been totally misunderstood and misinterpreted by the Court or has been totally ignored. The entire evidence adduced by the respondent is very artificial and such type of evidence should not have found acceptance at the hands of the Court.

16. On the other hand, Mr. D. Goburdhun, learned counsel appearing for the respondent, has urged that the Court was perfectly justified in rejecting the evidence adduced by the appellant because it was absolutely unworthy of any credence. A perusal of the evidence of witnesses on the side of the appellant will show that their evidence was very artificial and that they were denying even obvious facts. Under those circumstances, according to the counsel, the grievance made on behalf of the appellant of the Court having adopted a double standard in the appreciation of the evidence, is not justified.

17. We will consider the correctness of the two findings recorded against the appellant under Ss. 123 (2) and 123 (3) of the Act. We will first take up for consideration the finding of the learned Judge that the appellant is guilty of corrupt practice under S. 123 (3) in that he was making an appeal to the voters on the basis of caste. We have already referred to the findings of the learned Judge that the respondent's evidence is not sufficient to hold that the pamphlet in question containing caste appeal was got printed by the appellant. At this stage, it may be mentioned that there is no dispute raised by the appellant before the High Court that the pamphlet did contain an appeal to the voters to vote on the basis of caste. The High Court has proceeded on the basis that the said pamphlet does contain an appeal to vote on the basis of caste. Dr. Singhvi, did not dispute even before us the fact that the pamphlet does contain an appeal in the name of caste. Therefore, only two questions arise regarding the caste appeal; (a) whether the pamphlet was got printed by the appellant and (b) whether it was published and circulated by the appellant, his agents, workers and supporters with his consent. Under this head the further question that arises for consideration is whether even apart from the pamphlet, the appellant, his agents workers or supporters or any other person with the consent of the appellant or his election agent made an appeal to vote on the basis of caste.

18. We will first consider the question regarding the printing of the pamphlet, copies of which have been marked as Exs. 2/E and 2/F. Before we proceed to consider this aspect, it is necessary to deal with the contention of Dr. Singhvi that the Court was not justified in allowing the respondent to place any reliance on the pamphlet. According to him there has been only a vague reference in the election petition to a pamphlet alleged to have been printed, published and circulated by the appellant. Particulars or details regarding the pamphlet had not been given in the election petition. On the other hand, the appellant has categorically stated in his written statement that he has not printed. Published or circulated any pamphlet containing caste appeal. He has further pleaded that as no particulars have been given in the election petition and as no such pamphlet has also been filed along with the election petition by the respondent, he was not in a position to know what is the pamphlet that is being referred to.

19. It is no doubt true that no copy of the pamphlet has been filed by the respondent along with his election petition, but he has referred to a pamphlet containing caste appeal as having been got printed by the appellant and circulated by him. The appellant has also as pointed out by Dr. Singhvi, taken the plea, which has already been referred to by us earlier. But we do not think that the appellant was blissfully ignorant of what exactly is the nature of the allegation that is being made by the respondent regarding the pamphlet. In fact, we have already referred to the fact that in the written statement the appellant also refers to the respondent having made appeal in the name of caste and thus securing votes. We will now refer to a few dates, which may have a bearing on the question whether the appellant was really prejudiced by the late production of the pamphlet. The election petition was filed on April 3, 1969. On April 21, 1969 the respondent filed his list of documents together with a petition to sent for those documents. The list filed by the respondent gave fuller details about the pamphlet. Amongst the details so given were that the pamphlet had been printed at Janhit Press as well as the headlines of the pamphlet. The Court on April 23, 1969 issued an order for summoning the documents contained in the list filed by the respondent. On April 30, 1969 a letter was addressed by the office of the High Court to the Press to send the records relating to the pamphlet. The appellant entered appearance on August 25, 1969 and filed his written statement the next day. He inspected the records in the case on September 2, 1969. As the records relating to the pamphlet had not been received from the Press; a further reminder was sent by the office of the High Court to the Press on November 5, 1969. The appellant had further inspections of the documents in the case on December 9, 1969 and January 28, 1970. The examination of witnesses commenced on January 31, 1970. It is significant that even at this stage, the appellant never made any grievance before the Court that he was unaware of the pamphlet referred to by the respondent and hence he was unable to plead his defence in greater details. As the records had not been produced by the Press, the respondent filed a petition on February 11, 1970 for issue of a warrant for arrest of the owner and Manager of the Press. The warrant was issued on February 12, 1970. It was at that stage that the appellant filed an application on February 13, 1970 that the financier of the Press in question was none else than the respondent himself. The proprietor of the Janhit Press was examined on the side of the respondent as P. W. 39 on February 19, 1970. The appellant also examined the witnesses to prove his allegation that the respondent was the financier of the Press, the implication being that the respondent has control of the press and that the pamphlet was got printed after the election, to get evidence in support of the allegation of caste appeal having been made by the appellant through the pamphlet.

20. Dr. Singhvi further referred us to the evidence of the respondent as P. W. 65 to the effect that he was fully aware of the existence of the pamphlet even three or four days prior to the date of poll. Nevertheless, the respondent, counsel pointed out, did not give full particulars about the pamphlet in his election petition, nor did he produce a copy of the pamphlet, which must have been given to him by one or the other witnesses who gave evidence on his behalf. Therefore, it was urged that the pamphlet has come into existence only after the election was over.

21. Before we deal with the evidence about the printing and distribution of the pamphlet as well as the oral appeal on the basis of caste, it is necessary to refer to sub-section (3) of S. 123 of the Act, which runs as follows:

"123. The following shall be deemed to be corrupt practices for the purposes of this Act: -

xx    xx    xx

(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate."

22. According to the respondent the pamphlet has been got printed by the appellant at the Janhit Press. Ramswarth Pandey, the owner and proprietor of the Janhit Press has given evidence as P. W. 39. He has referred to the papers being produced by him in obedience to the orders of the Court. He identified the pamphlet, which was shown to him, as having been printed in his Press. According to him the order for printing was given by one Naulakh Prasad. Naulakh Prasad gave one manuscript copy of the pamphlet to be printed at the Press, but at the request of the witness, he wrote out another copy marked Ex. 2 and gave it to the witness. The signatures contained in the manuscript copies were stated to be those of Naulakh Prasad. Two other persons who had accompanied Naulakh Prasad are also stated to have made endorsements on the copies, in the presence of the witnesses, marked Exs. 2A and 2B. The witness further refers to his Order Book and stated that entry No. 76 refers to the order dated January 31, 1969 placed by Naulakh Prasad. The witness was paid Rs. 20/- as printing charges. He has referred to the relevant entries in his bill book and other account books. He has categorically stated that the pamphlet was printed by him and at his press, namely, the Janhit Press, of which he was the proprietor. In cross-examination he has stated that he is a Bhumihar Brahmin by caste. He has further referred to the amount invested by him in the printing Press. To a definite suggestion that the respondent has financed him to open the press, he gave a definite answer

in the negative. The learned Judge has accepted the evidence of this witness and has held that the pamphlet was got printed at the press of P. W. 39 by Naulakh Prasad.

23. The appellant disclaimed all knowledge of Naulakh Prasad. He was confronted with Ex. 1/H, which is a form of appointment of one Naulakh Prasad by the appellant as his polling agent. He gave a very evasive answer that he had signed several blank forms for appointment of polling agents and in one such form the name of Naulakh Prasad may have been included. P. W. 67, Sukhdeo Prasad, who had acted as a polling agent of the respondent at polling booth No. 84 has given evidence to the effect that Naulakh Prasad was the polling agent of the appellant at the same booth. He identified the writing of Naulakh Prasad in the manuscript of the pamphlet produced by P. W. 39. He identified also the signature of Naulakh Prasad in Ex. 1/H. He has further stated that the entire family of Naulakh Prasad was helping the appellant who was a Congress candidate. His further evidence is to the effect that during the mid-term election, the appellant used to visit his village Kharar and stay in the house of Naulakh Prasad and that his election office was also located in the house of Naulakh Prasad. He has deposed, in answer to a question by the Court, that Naulakh Prasad is a resident of his village and both of them had studied together in school. The witness has further stated that Ramlakban Prasad is the father of Naulakh Prasad. In cross-examination the witness has stated that he was working for the respondent as his sympathies were with the Soshit Dal. He admitted that he was working as a polling agent for the respondent from 6 A. M. to 12.00 noon on the date of the election and there was also another polling agent by name Kailash Prasad. He has stated that there is only one Naulakh Prasad in his village and that there was only one polling booth. He has denied giving false evidence at the instance of the respondent.

24. The appellant relied on the evidence of D. Ws. 27, 48 and 52 to prove that Janhit Press was financed by the respondent. The learned Judge has not chosen to believe the evidence of these witnesses. As the criticism of the counsel is that the learned Judge has not properly appreciated the evidence of these witnesses, we will briefly refer to their evidence.

25. D. W. 27, Raj Kumar Singh has stated that he knows P. W. 39 as well as the respondent and that the latter is financing the press. But in cross-examination he has stated that he does not know whose name is entered in the register regarding the ownership of the press. Though he claimed to have gone to the press very often, he admitted that he cannot say what types of machinery there were in the said press and he cannot even give the topography of the press. He admitted that he is a Rajput by caste and he has also stated that though he is employed in Darbhanga, he had not taken leave for coming to the Court for giving evidence. In answer to the question of the Court, he has stated that the workers of the press were saying that the respondent was contributing money for the running of the press and that is the sole basis for his giving evidence to the effect that the respondent is financing the press.

26. D.W. 48 Baidya Nath Jha, who is the Manager of the Gramodaya Press, again speaks to the Janhit Press being financed by the respondent. He states that P. W. 39 and the respondent are

Bhumihar Brahmins. He has further spoken to the fact that P. W. 39 was previously working as a compositor in his press. He then refers to three of his employees having left his press and to their forming partnership with one outsider Prabhakan Kesry and that the said partnership started the Janhit Press. That partnership business ended in loss. After that P. W. 39 approached the respondent and the latter gave finance to P. W. 39 and the Janhit Press was started. The respondent distributed the assets of the partnership business to the various partners.

27. In cross-examination this witness has admitted that though the owner of a press has to file a declaration before the authorities, he cannot say who has filed a declaration as owner of the Janhit Press. He admits that he has not seen any partnership deed entered into between his former employees and a stranger. No doubt, he has denied a suggestion that P. W. 39 left his press and started in his own independent right the Janhit Press. He has further stated that he has not mentioned to any authorities that the Janhit press is really owned by the respondent. He has admitted that the Janhit Press prints small books and other jobs. He has categorically admitted that he has no concern with the financial affairs of the respondent and he does not also know where the respondent invests his money and what his business activities are. He has also admitted that the nephew of the appellant met him three or four days prior to his coming to Court and informed him that he will have to depose regarding the Janhit Press. It was only when he came to the witness box that he knew for the first time that he will have to speak about the financial matters relating to the Janhit Press. No doubt he has denied that he was tutored to give evidence on behalf of the appellant.

28. D. W. 52 Jagdish Singh has deposed that he knows the Janhit Press and that the same is financed by the respondent and that as he visits the press very often, he had occasion to see the respondent talking to P. W. 39 in the press. In his cross-examination he has stated that he is living about 12 miles away from Muzaffarpur and that his occupation is cultivation of land and that he is a Rajput. Though he claimed to own rickshaws, he admitted that he cannot say when or from where he purchased the rickshaws. He has also admitted that he has no idea as to how many presses are at Muzaffarpur and that he knows only D. W. 48 the owner of the Gramodaya Press. He has admitted that he has not seen any document relating to the Janhit Press.

29. A reading of the evidence of D. Ws. 27, 48 and 52 clearly shows that they have absolutely no personal knowledge about the working of the Janhit Press and that they are only giving evidence about the financial interest of the respondent in the said press to support the appellant. Their evidence is worthless to establish any connection of the respondent with the Janhit Press. In our opinion, their evidence has been quite rightly rejected by the learned Judge.

30. Dr. Singhvi then placed considerable reliance on the evidence of another set of defence witnesses to disprove that the pamphlet had been printed by or at the instance of the appellant. These witnesses are D. Ws. 5, 6, 14, 23, 26, 37, 42 and 77. They are said to be the signatories to the pamphlet. All of them have denied their signatures on the manuscript copy of the pamphlet and they have also disclaimed all knowledge about the pamphlet. In fact their evidence is that they have

come to know of the pamphlet only for the first time when they were in the witness box. The learned Judge had given a summary of their evidence and has ultimately held that their evidence cannot be accepted. We will have occasion to refer to the evidence of some of these witnesses when we deal with the question of distribution of the pamphlet and also of making oral and verbal appeal to the voters in the name of caste. It is enough at this stage to state that we agree with the findings of the learned Judge that the evidence of these witnesses cannot be accepted.

31. That Naulakh Prasad, who, according to P. W. 39 gave the order for the printing of the pamphlet is not an imaginary or fictitious person, is clear from the evidence on record. P. W. 39 has referred to Naulakh Prasad as the person who gave the order for printing P. W. 67 has referred to the fact and he and Naulakh Prasad belonged to the same village and that they studied together in the school. While P. W. 67 was the polling agent of the respondent in polling booth No. 84, Naulakh Prasad was the polling agent of the appellant in the same booth. P. W. 67 has referred to Ramlakhan Prasad being the father of Naulakh Prasad. It is significant to note that the appellant summoned Ramlakhan Prasad to give evidence on his behalf, but did not actually examine him. The evasive answer given by the appellant regarding Ex. 1/H is very unsatisfactory. Ex. 1/H is the form of appointment signed by the appellant nominating Naulakh Prasad as his polling agent. Dr. Singhvi no doubt attempted to explain away this circumstance by saying that polling agent Naulakh Prasad may be a person different from Naulakh Prasad spoken to by P. Ws. 39 and 67. We cannot accept this contention of the learned counsel. The attempt of the appellant to establish that the respondent was financier of the Janhit Press has miserably failed. The finding of the learned Judge that Naulakh Prasad, who was the polling agent of the appellant got the pamphlet printed at the Janhit Press is perfectly correct. But, in our opinion, the further finding of the learned Judge that there is no sufficient evidence to hold that the pamphlet was got printed at the instance or with the consent of the appellant is not very satisfactory. That finding, in our opinion, is a very halting one. On the other hand, the evidence discussed by us earlier and to be discussed later in connection with the distribution of the pamphlet, will clearly show that the pamphlet has been got printed by Naulakh Prasad at the instance or with the consent and knowledge of the appellant. That pamphlet admittedly contains an appeal to vote for the appellant on the basis of caste. Therefore, it follows that the pamphlet has been got printed for being used in the election campaign of the appellant.

32. We will now consider the evidence regarding the distribution of the pamphlet as well as the oral or verbal appeal alleged to have been made on the basis of caste by the appellant, his agents, workers and supporters. We will confine our discussion only to the three villages, namely, Uphraolia, Harka and Gorigame.

33. Regarding Uphraolia, the witnesses on the side of the respondent are P. Ws. 11, 20 and 21. P. W. 11 is a resident of Uphraolia and he was a voter in the concerned mid-term election. He has referred to the fact that he could not cast his vote because he was obstructed by the people belonging to the Congress party. He has given the names of those persons who caused the said obstruction. Regarding the distribution to the pamphlet he has referred to the fact that 4 or 5 days before the election 4 or 5 persons, namely, D. Ws. 5, 24, 37 and 55 and some others came to the village and told him that he should exercise his vote in favour of Janak Babu, the appellant, because he was a

Rajput. The witness himself was a Rajput. D. W. 5 Binda Singh gave the pamphlet which contained an appeal to vote in favour of the appellant who was a Rajput. He has further deposed that his son was the polling agent of the respondent at the booth situated in the Upper Primary School of his village. In cross-examination he has stated that he and his son only were working for the respondent in the village and that the others were in favour of the appellant. When the appeal was made to him to vote on the basis of caste, the witness replied that he would think over the matter. He has further stated that he has not preserved the pamphlet but he showed it to his son.

34. P. W. 20, Mangal Prasad Singh who belongs to Mauza Puraini has deposed that he was a Rajput by caste and that he was a voter in the mid-term election. The appellant who was a Congress nominee is also a Rajput. He has stated that he was helping the respondent in the election. He has further deposed that 3 or 4 days before the date of the poll, the appellant came to the village Uphraolia and met the witness. Village Uphraolia is about a mile away from his village. The appellant was in the company of D. Ws. 5, 6, 37, 44 and some others. The persons with him were his workers and supporters in the election. He has further stated that the appellant asked him to keep up the prestige of the Rajput caste by exercising his vote in favour of the appellant who was a Rajput and that he should not do anything to cause a slur on the Rajput community.

35. D. W. 5 gave the witness a printed pamphlet which was produced by the witness and marked as Ex. 'X' in the Court. He has further deposed that Ramlakhan Prasad, P. W. 21, was present when the witness was talking to the appellant and his workers. In cross-examination he has stated that casteism is prominent amongst Rajputs and not amongst the Bhumihars. He has further stated that he did not take any legal action regarding the pamphlet.

36. P. W. 21, Ramlakhan Prasad, who belongs to the same village as the of P. W. 20 has deposed that he was a voter in the mid-term election and that he is a Rajput by caste. He had gone to Uphraolia to consult Dr. Chandeshwar Prasad Singh to bring him to see his ailing father. It may be stated at this at this stage that the appellant cited Dr. Chandeshwar Prasad Singh as his witness, but did not actually examine him. This witness has given evidence supporting the version given by P. W. 20 regarding the appeal having been made by the appellant to vote on the basis of caste and to the appellant giving the pamphlet to P. W. 20.

37. The persons who were referred to by these witnesses have been examined by the appellant. The appellant does not deny having visited Uphraolia in connection with his election campaign. It will be seen by a reference to the evidence of P. Ws. 11, 20 and 21 that all of them have spoken to D. Ws. 5 and 37 being found in the company of the appellant. No doubt some of them also speak to D. Ws. 6, 24, 44 and 55 being present along with the appellant. In particular we will only refer to the evidence of D. Ws. 5 and 37 who have been referred to as being present with the appellant by all the three witnesses.

38. D. W. 5, Binda Singh knows the appellant from 1942 and has been a Congress worker throughout. He has stated that he has not worked on behalf of the appellant in the mid-term election. His further evidence is to the effect that he sees the pamphlet for the first time in the Court and that he had nothing to do with the distribution or publication of the pamphlet. He has also denied that he even went to Uphraolia, Harka or any other village. He has further deposed that the appellant had never accompanied him for any election purpose. In cross-examination he has stated that in Uphraolia the majority of the population was Rajput and that he is also a Rajput. He has even gone to the extent of saying that he never meets the appellant except occasionally 3 or 4 times in a year.

39. D. W. 37 Dip Narayan Singh has denied having made any appeal on the basis of caste on behalf of the appellant. In cross-examination he has stated that prior to his examination-in-chief he had no information that his name appears on any pamphlet, nor was he aware of any allegation that he had canvassed along with the appellant on the basis of caste.

40. The main criticism of Dr. Singhvi is that there are many discrepancies in the evidence given by P. Ws. 11, 20 and 21. The only witness from Uphraolia, namely, P. W. 11, has not referred to the appellant having come along with the D. W. 5 etc. to Uphraolia. On the other hand, it is only P. Ws. 20 and 21, who belong to a different village, speak to the appellant having come to Uphraolia along with D. Ws. 5 and 37 etc. and having made an appeal on the basis of caste. The counsel pointed out that there is a serious discrepancy as to who gave the pamphlet, whether D. W. 5 or the appellant. These aspects have not at all been considered by the learned Judge and that their evidence has been accepted rather in a mechanical manner by the High Court.

41. We are not impressed with these contentions of Dr. Singhvi. We have already pointed out that the appellant himself does not deny having gone to Uphraolia. D. W. 5, according to P. W. 11 gave the pamphlet containing an appeal in the name of caste and asking the voters to vote for the appellant, who was a Rajput. D. W. 5 is found in the company of the appellant by P. Ws. 20 and 21 also. Apart from the distribution of the pamphlet, D. W. 5 is also stated to have requested P. W. 11 to vote in favour of the appellant, who is a Rajput. The fact that D. W. 5 is found in the presence of the appellant when a pamphlet is distributed and an oral appeal is made on the basis of caste by the appellant himself, as spoken to by P. Ws. 20 and 21, clearly leads to the conclusion that when D. W. 5 was distributing the pamphlet, and made an appeal, in the name of caste to P. W. 11 who was a Rajput to vote in favour of the appellant who was also a Rajput, the action of D. W. 5 must have been with the consent of the appellant. But more than this evidence of P. W. 11, there is the direct evidence of P. Ws. 20 and 21 to the effect that it was the appellant himself who made request to P. W. 20, who was a Rajput, to vote in favour of the appellant, who was a Rajput. According to P. W. 20, no doubt, the pamphlet was given by D. W. 5, but according to P. W. 21, the pamphlet was given by the appellant himself. This discrepancy, in our opinion, is of a very minor character, because when there are 6 or 7 persons in a group canvassing for vote, it is very likely that the witnesses may make slight mistake regarding the actual person from that group who gave the pamphlet. They have given a common version that the appellant made an oral appeal in the name of caste to vote in his favour as he was a Rajput. Whatever discrepancy there may be regarding the distribution of the pamphlet by the appellant himself or by D. W. 5, both the witnesses P. Ws. 20 and 21 have

categorically stated that the appellant was present when D. W. 5 distributed the pamphlet containing the caste appeal.

42. Therefore, from the evidence of P. Ws. 11, 20 and 21 it is clear that the distribution of the pamphlet appealing for votes in the name of caste was made in the presence of the appellant and the letter had, apart from distributing the pamphlet, also made an oral appeal to vote for him on the basis of caste, he being a Rajput. Therefore, the making of appeal on the basis of caste by means of the pamphlet and orally by the appellant and by his agent or supporter D.W. 5, with his consent, is clearly established.

43. We are not inclined to accept the contention of Dr. Singhvi that the presence of P. Ws. 20 and 21 in the village of Uphraolia at the time when the appellant and others visited the same for election purposes has not been properly explained. In this connection it is significant to note that Dr. Chandeshwar Prasad Singh, whom P. W. 21 had gone to meet had been summoned by the appellant, but was not examined.

44. The evidence of witnesses, who have given evidence on the side of the appellant stating that they never visited the village either by themselves or in the company of the appellant and that they never distributed the pamphlet or made any oral appeal to vote on the basis of caste has been rightly disbelieved by the learned Judge and we agree with the reasons given by him in that regard.

45. Before we close the discussion on this aspect it is necessary to refer to a slight mistake committed by the learned Judge while discussing the evidence of D. W. 59, Jaldhari Sahni. The learned Judge has understood the evidence of this witness to the effect that he has admitted that Naulakh Prasad was issuing the pamphlet in the mid-term election and that such distribution must have been made on behalf of the appellant. It may be that the learned Judge was not prepared to accept the evidence given by the said witness when he speaks to Naulakh Prasad being the polling agent not of the appellant but of the respondent. Actually, the evidence of the said witness is to the effect that he belongs to Mauza Kharar and that Naulakh Prasad was the polling agent of the respondent and that Kailash Prasad was the polling agent of the appellant. He claims to know Naulakh Prasad as both of them reside in the same village. He further states that Naulakh Prasad was not the polling agent of the appellant. In cross-examination he has stated that Naulakh Prasad gave him the pamphlet in his house and that he was not working as the polling agent of the appellant. A reading of the evidence of this witness clearly shows that this evidence is absolutely false. Even the appellant does not claim that there was no person by name Naulakh Prasad, who acted as his polling agent. On the other hand, we have already referred to Ex. 1/H, under which the appellant has appointed Naulakh Prasad as his polling agent. We have already referred to the evidence of P. W. 67 to the effect that while he was the polling agent at the polling booth at Kharar on the behalf of the respondent, Naulakh Prasad at the same booth was the polling agent of the appellant. The evidence of D.W. 59 is only an attempt to make out a case that the pamphlet was distributed by the agent of the respondent himself. That evidence of D. W. 59 has to be read only to

be rejected. the mistake made by the learned Judge regarding the nature of the evidence given by D. W. 59 does not in any manner vitiate the finding recorded by the learned Judge, which has been referred to above and accepted by us.

45-A. Coming to village Harka, P.Ws. 15, 17, 19 and 22 speak to the caste appeal made by the appelland and his supporters or agents in the said village.

45-B. P. W. 15, Srinarain Sahi is a resident of village Harka and he is a Rjput. He deposed to the appelland, who was a Rajput, going to the village accompanied by D.Ws. 5, 24 and 37 and a few others. All those persons were Rajputs by caste and were the workers of the appelland. The came to the village 4 or 5 days before the poll. The witness was working in the mid-term election on behalf of the respondent. The appelland asked the witness as to why he a Rajput was supporting the respondent, who was a Bhumihar Brahmin. The appelland further asked the witness to work for him and also to vote in his favour as he is a Rajput and also to ask others in the village to vote for him. This appeal to vote for him and also to canvass votes for him from others was on the basis of caste. D. W. 5 who was with the appelland handed over the witness a printed copy of the pamphlet containing the caste appeal and he also asked the witnesses to vote for the appelland who was a Rajput. At that time P. W. 22 Nagina Sahi was also present as he had come to his house on some business. In cross-examination he has stated that the appelland and others came to the village and asked his vote on the basis of caste that day, but he could not remember the actual date. He further stated that he did not file any petition or complaint to any authority regarding the caste appeal made by the appelland. He has further spoken to having met the respondent and mentioned to him about the pamphlet and also to the nature of canvassing made by the appelland. It is significant to note that no suggestion has been made to this witness that the appelland never visited the village for the purpose of canvassing for votes. No doubt, some answers have been elicited to show that there is some enmity, between the witness and Gorakh Sahi, D. W. 24, who is a strong supporter of the appelland. More than that we are not able to find any suggestion being made to the witness as to why he should depose falsely against the appelland.

46. P. W. 17, Lal Bachan Sahi is again a resident of Harka and a Rajput by caste. He has also spoken to the fact that 4 or 5 days before the poll, the appelland accompanied by D.Ws. 24, 37, 55 and others came to the village. The persons who came with the appelland were all Rajputs by caste and were working in the election on behalf of the appelland Janak Babu (the appelland) asked the witness that he should vote for him as both of them are Rajputs by caste. D. W. 37 gave a copy of the pamphlet containing the caste appeal. The witness speaks to having mentioned to the respondent and others about this type of canvassing being made by the appelland. In cross-examination he has stated that the appelland has been fighting the elections for a long time and that D.Ws. 24 and 37 used to frequently come to the village for canvassing on behalf of the appelland even in the previous elections. The respondent also used to come to the village for making door to door canvassing. He has no doubt admitted that he did not protest to the appelland and his workers that what they were doing was wrong. Nor did the witness make any report to the police about this type of canvassing made by the appelland.

47. The next witness P. W. 19, Ramdeo Prasad Sahi also belongs to the village Harka and is a Rajput. He was a voter in the mid-term election. According to him the appellant who was a Rajput by caste came to the village about three or four days before the poll accompanied by D. Ws. 5, 24, 37 and 55. The appellant told the witness that he being a Rajput should vote for him as he was also a Rajput. The others who were with the appellant also stated the same thing. In cross-examination he has stated that his brother Ramganesh Sahi is involved in a case regarding the burning of Dharampur booth. He has further stated that he did not file any petition before the authorities regarding the canvassing on the basis of caste done by the appellant and his workers. He has also admitted that he was a polling agent of the respondent in one of the booths in Harka.

48. The next witness P. W. 22, Nagina Sahi has stated that he is a Rajput by caste and that he was a voter in the mid-term election. According to him the appellant had gone to his house 4 or 5 days before the poll along with D. Ws. 5, 24, 65, 73 and a few others. The appellant requested the witness to vote in his favour as both of them belonged to the Rajput caste. He has further deposed to the fact that the appellant took him to the house of P. W. 15 saying that the witness should ask P. W. 15 to work for the appellant as he was also a Rajput. The witness went with the appellant and others to the house of P. W. 15 and there asked the latter to vote for him as he was a Rajput. The appellant further told P. W. 15 that the latter should not work for the respondent. In cross-examination he has stated that Uphraolia village is half a mile from Harka and that he had not made any complaint to the authorities regarding the canvassing being made by the appellant on the basis of caste. He has further stated that though he did not like the idea of going to P.W. 15 in the company of the appellant and others to request him to vote on the basis of caste, nevertheless he went to the house of P. W. 15 as he did not want to disoblige the appellant. Even in the cross-examination he has stated that D. W. 5 support the appeal made on the basis of caste by the appellant.

49. We have already referred to the evidence of D. Ws. 5 and 37. Dr. Singhvi has taken us also through the evidence of D.Ws. 24, 55, 65 and 73 and others, who according to the respondent's witnesses are alleged to have accompanied the appellant when he visited the village Harka. All of them have unequivocally denied that they made any appeal on the basis of caste for securing votes in favour of the appellant. In fact, some of them go to the extent that they never visited the villages at all and that they had nothing to do with the distribution of pamphlet.

50. A reading of their evidence clearly shows that they are all active workers of the appellant and as such are interested in denying the allegations made against the appellant and his workers, which include those witnesses. We have already referred to the fact that P. W. 22 speaks to D. W. 65 Jamuna Sahi also having gone to the village Harka along with the appellant and was present when the appellant made a request for vote on the basis of caste. There is nothing elicited in the chief-examination of D. W. 65 that he did not visit P. W. 22 along with the appellant, nor has any answer been elicited from him in chief-examination that he was not present when the appellant requested P. W. 22 to accompany him to go and persuade P. W. 15 to support the appellant as he is a Rajput. We are only referring to the total absence of any suggestion in the chief-examination of D. W. 65 that

what P. W. 22 has stated is false.

51. The evidence of all the defence witnesses has been discussed by the learned Judge and we agree with the reasons given by the High Court for not acting on that evidence. The witnesses are all ardent workers of the appellant and some of them were even prepared to go to the extent of saying that they were not aware of the allegations made by the respondent in the election petition against the appellant and his workers. They were even prepared to say that ill they came to the witness box they did not know the nature of the evidence that they have to give.

52. One criticism that has been made by Dr. Singhvi regarding the acceptance of the evidence of P. Ws. 15 and 22 is that there is a very serious discrepancy as to how both of them came to meet when the appellant and his supporters came to the village. While P. W. 15 has stated that P. W. 22 was already with him when the appellant and his workers visited the village, P. W. 22, on the other hand, has stated that he was taken by the appellant to the house of P. W. 15 to persuade the latter to vote for the appellant and also to desist from working for the respondent. No doubt, there is this slight discrepancy in the evidence of the two witnesses, but it is rather significant to note that no such suggestions were made either to P. W. 15 or to P. W. 22, particularly to the latter regarding different versions given by the witnesses about their meeting each other and being witnesses to the oral appeal made on the basis of caste by the appellant and his supporters. We are in agreement with the finding of the learned Judge that the appellant had made caste appeal to vote for him on the basis of caste in the village of Harka.

53. Now coming to village Gorigama, the witnesses who speak to the visit of the appellant and his workers are P.Ws. 40, 41 and 48.

54. P. W. 40, Ram Sarikh Singh is a resident of village Gorigama and was a voter in the mid-term election. He is a Rajput by caste. He speaks to fact that the appellant had come to the village 6 to 7 days before the poll accompanied by D.Ws. 5, 42 and one or two others, who are all Rajputs. The appellant told the witnesses that he should vote for him because he was of the same caste as the witness. The appellant further gave the witness a pamphlet containing an appeal to vote on the basis of caste. he has also stated that P. W. 48, who was also present at that time joined the appellant in making a request to the witness to vote for the appellant. In cross-examination he has admitted, that he was the polling agent of the respondent. He has further stated that the appellant used to come to his village even on previous occasions and both of them were on 'dinning terms'. He has further deposed that though the appellant is not his relation, he has got Bhaiyari with him.

55. P. W. 41 Nirsu Mahar is also a resident of Gorigama and he was a voter in the mid-term election. He has also stated that the appellant visited the village 5 or 6 days before the poll along with D. Ws. 5, 42 and certain others. He saw all of them in the house of P. W. 40. There is no effective cross-examination regarding the answers given by this witness. No doubt P. W. 41 does not speak to

having witnessed the appellant making any appeal for vote on the basis of caste, but his evidence corroborates the evidence of P. W. 40 regarding the presence of the appellant and the persons mentioned by him in the village 5 or 6 days before the poll.

56. The last witness who speaks regarding Gorigama in P. W. 48 Bindeshwari Singh. He is also a resident of Gorigama and was a Rajput by caste. He speaks to the appellant having come to the village about 6 or 7 days before the poll and that he made the caste appeal at the house of P. W. 40, where he had gone to take on loan the tired bullock cart for his use. He further speaks to the appellant being accompanied by D. W. 5 and certain others. The appellant asked P. W. 40 to vote for him because both of them belonged to the Rajput caste. He also speaks to the appellant giving a pamphlet containing an appeal in the name of caste. The witness also was asked by the appellant to vote for him as he was also his caste man. In cross-examination he has stated that he was on visiting and dining terms with the appellant. The object of his visit to P. W. 40 has been stated by him to take on loan his tired bullock cart to enable him to go and bring his wife from Sasural. He has further stated that he did not make any written report about the nature of the canvassing done by the appellant to any authorities.

57. The criticism that is leveled by Dr. Singhvi to the acceptance of the evidence of P. Ws. 40 and 48 is that P. W. 40 has not spoken regarding the object of P. W. 48 visiting him, whereas P. W. 48 has given the reason, namely, of borrowing a bullock cart. He further stressed that even according to P.W. 40, P. W. 48 had also joined the appellant in making a request for votes to Rajput community. The circumstances, pointed out above, in our opinion, are not at all material to reject their evidence. P. W. 40 was not asked about the visit of P. W. 48, whereas P. W. 48 who was asked had necessarily to give reason for his presence in the house of P. W. 40. There is no suggestion put to either P. W. 40 or P. W. 48 that P. W. 40 had no tired bullock cart, no or was any suggestion put to P. W.48 that his wife at that time was not staying in village Sasural. That the appellant along with some of his workers was present in the village 4 or 5 days before the poll is borne out by the evidence of P. W. 41. His evidence lends support to the evidence of P. Ws. 40 and 48. Quite naturally the persons who are stated to have accompanied the appellant and who have given evidence do not admit their presence in the village or their having made any caste appeal. The evidence of P. Ws. 40 and 48 clearly establishes that the appellant not only circulated the pamphlet containing an appeal to vote in the name of caste, but also himself made an oral appeal to the voters to vote on the basis of caste.

58. From the above discussion it follows that the election petitioner, the respondent herein, has adduced reliable oral and documentary evidence to show that the pamphlet, copies of which are Exs. 2E and 2F, containing an appeal to vote on the basis of caste, were got printed by the appellant through his polling agent Naulakh Prasad at the Janhit Press. The said evidence further establishes that the pamphlets were distributed to the voters in the three villages, namely, Uphraolia, Harka and Gorigama, not only by the appellant but also by some of his workers with the consent of the appellant. The evidence further establishes that in the said three villages oral appeal to vote on the basis of caste was also made not only by the appellant but also by other persons, referred to above, in the presence and with the consent of the appellant. Therefore, it follows that the appellant has committed the corrupt practice under Section 123 (3) of the Act.

59. The second ground on which the election of the appellant was sought to be set aside was that the appellant has committed the corrupt practice of undue influence under Section 123 (2) of the Act, in that, on the date of poll, the appellant, his agents and other persons with his consent or the consent of his election agent interfered with the free exercise of electoral right. In view of our finding that the appellant is guilty of the corrupt practice under Section 123 (3), which by itself is enough to declare the election of the appellant void under Section 100 (1) (b) of the Act, it may not be really necessary for us to elaborately consider the allegation of undue influence made in the election petition. Anyhow we will briefly refer to one instance which squarely brings the matter under S. 123 (2) of the Act. Section 123 (2) of the Act runs as follows :

"123. The following shall be deemed to be corrupt practices for the purposes of this Act :-

x x x

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right :

"Provided that -

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who -

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-

communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure.

Shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

60. Explanation (1) which is also relevant runs as follows :

"Explanation - (1) In this section the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate."

61. In the election petition the respondent had enumerated various types of incidents of undue influence, namely, snatching away of ballot papers from some voters, preventing some voters from exercising their franchise, assaulting the respondent, his agent and supporters and kidnaping the polling agent of the respondent. Schedule I of the election petition gives particulars of undue influence committed by or on behalf of the appellant with his consent during the course of election. Column No. 1 give the names of some of the person who committed the corrupt practice; Column No. 2 gives the dates on which such corrupt practices were committed; Column No. 3 gives the places as well as the number of the polling booths where they were committed; and Column No. 4 gives the names of some of the person on whom undue influence was committed.

62. One criticism that has been leveled by Dr. Singhvi was that detailed particulars have not been given in this Schedule as to which type of corrupt practice alleged in the election petition has been committed and by whom. But as rightly pointed out by the High Court, this criticism is devoid of any merit. The general allegations have been made in the body of the election petition and particulars have been given in Schedule I. The appellant never cared to ask for fuller details or particulars. That the appellant knew full well the nature of the allegations that he had to meet under this head is fully evident from the fact that he himself made counter allegations against the respondent and also led elaborate evidence to counter the allegations made by the respondent. Though various places had been mentioned in Schedule I by the respondent where the corrupt practice of undue influence was stated to have been committed, the learned Judge is of the view that it is only in the villages of Dharampur, Maksudpur, Sitalpatti, Uphraolia and Ali Neora, that the appellant could be found guilty of corrupt practice under S. 123 (2). This finding of the learned Judge is on the basis that so far as these villages are concerned, oral evidence adduced on behalf of the respondent is fully corroborated by contemporaneous documentary evidence. Here again the attack made by Dr. Singhvi against the finding recorded by the learned Judge is that there is no finding by the learned Judge that the corrupt practice of undue influence has been committed by the candidate or his agent and that there is no further finding that the persons who are found to have committed this corrupt practice did so with the consent of the appellant or his election agent. Mr. Goburdhun, learned counsel for the respondent has accepted the position that excepting Dharampur he will not be able to satisfy this Court that corrupt practice of undue influence has been committed with the consent of the appellant or his election agent. Therefore, it is absolutely unnecessary for us to consider the discussion of the learned Judge regarding, maksudpur, Sitalpatti, Uhraolia and Ali

Neora. Mr. Goburdhun further urged that the findings of the learned Judge in respect of the village Dharampur are fully supported by the evidence on record.

63. So far as village Dharampur is concerned, it is admitted that in booth No. 57 the polling was very seriously disturbed on February 9, 1969 and hence it was postponed to February 12, 1969. Evidence has been let in on behalf of the respondent that he was assaulted at this booth on February 12, 1969 when polling took place, by the appellant, his polling agent and other persons, whose names had been given. It is the further case of the respondent that he was actually pushed out of the polling booth by the appellant, his election agent and supporters and that he sustained injuries, regarding which complaints had been made to the police. Again another incident is stated to have taken place at about 12 noon when the polling agent of the respondent was prevented from discharging his duties and removed from the polling booth by the appellant, and his supporters. No doubt, these allegations have been controverted by appellant. Both parties have led very voluminous evidence in this regard. Ultimately, the learned Judge has found that corrupt practice of undue influence was committed at Dharampur booth on the date of repoll, namely, on February 12, 1969, when the respondent was also slapped, fisted and removed from the booth. According to Dr. Singhvi this finding by itself is not enough to bring the matter under S. 123 (2) because there has been no interference with the exercise of any electoral right. In this connection Dr. Singhvi referred us to the definition of "electoral right" under S. 79 (d) which is as follows :

"79. In this Part in Part VII, unless the context otherwise requires;

(d) "electoral right" means the right of a person to stand or not to stand as, or to withdraw or not to withdraw from being, a candidate, or to vote or refrain from voting at an election."

64. According to Dr. Singhvi there is no finding by the learned Judge that electoral right, as defined in the Act has been in any manner either interfered with directly or indirectly or attempted to be interfered with. Though the finding of the learned Judge is, as mentioned earlier, the High Court has considered and discussed the various incidents which took place at booth No. 57 at Dharampur. We do not think it necessary to go into the aspects raised by Dr. Singhvi because the evidence clearly discloses that there has been one instance of a voter being prevented from exercising his vote and even on the basis of the contention of Dr. Singhvi, the matter will come squarely under S. 123 (2) read with S. 79 (d) of the Act. We have in mind the evidence of P. W. 44 Makhan Singh. He was a resident of Dharampur and he was a voter in the mid-term election and he had to cast his vote at the Dharampur polling booth. On the date when the voting was scheduled to take place i.e. February 9, 1969, the witness went and exercised his vote but later in the day as there was serious disturbance, voting was stopped. On February 12, 1969, the date of repoll at that booth, the witness went to the booth at about 10 A. M. He saw the appellant already near the booth and he also saw the respondent coming to the booth at about 10 A. M. accompanied by three or four of his workers and supporters. He speaks to the assault made on the respondent by the appellant, but it is not necessary for us to refer to that part of his evidence. The witness further proceeds to state that he was having the

symbol of 'Fish' in his hand, which is the symbol of the Soshit Dal. On seeing this the workers of the appellant turned him out and prevented him from going into the polling booth to exercise his franchise. In consequence the witness states that he could not cast his vote on that day. He further refers to the appellant being present at the booth at that time when he was being so prevented by his workers from exercising his franchise.

65. In cross-examination, many questions had been put to the witness regarding the assault said to have been committed by the appellant on the respondent at about that time. But so far as his evidence regarding his being prevented from exercising his vote is concerned, he has stated that he went to cast his vote and as he was prevented he had to go away. He has further stated that there were several people near the polling booth and that he did not file any petition anywhere that he was not allowed to vote. The evidence of this witness has been believed by the learned Judge. It will also be seen that in Schedule I to the election petition, regarding Dharampur, booth No. 57, the respondent has clearly stated in column No. 4 that P. W. 44 Makhan Singh of village Dharapur was one of the persons against whom corrupt practice of undue influence was committed. In column No. 1 he included the names of the appellant as well as his various supporters and workers, who have figured as witnesses on the side of the appellant as the persons who committed undue influence. That the appellant and the respondent were in the polling booth No. 57 at Dharampur at about 10 A. M. on February 12, 1969 is borne out by the evidence on the side of the appellant himself. Therefore, it is not necessary for us to refer to the evidence adduced by the respondent in this behalf.

66. D. W. 20 Ramchandra Jha the Inspector of Police, was deputed to be on duty at Dharampur polling booth on February 12, 1969. He was present at the booth from 8.30 A. M. and remained there till about 4 or 5 P. M. He has spoken to the fact that the respondent came to the booth at about 10 A. M. and that he had to escort him from the booth to his car which was outside the booth area as the respondent was complaining that his life was in danger. Here again this witness speaks to various other matters with which we are not concerned. We are only referring to the evidence of this witness for the limited purpose of finding corroboration to the evidence of P. W. 44 that when he went to the polling booth at about 10 a. m. on Feb. 12, 1969 he found both the appellant and the respondent and that there was an incident. In answer to the question put by the Court D. W. 20 has stated that at 10.30 or 10.45 A.M. he found both the appellant and the respondent having a very heated discussion and they were about to come to blows and this incident took place just within the polling booth where ballot boxes had been kept. This incident again corroborates the version of P. W. 44 that when he was in the polling booth at about 10 A. M. he must have witnessed some incident that took place between the appellant and the respondent.

67. There is no attempt to discredit the evidence of P. W. 44 regarding his categorical statement that he was prevented from exercising his vote by the workers of the appellant and that prevention took place in the presence of the appellant. When a voter is prevented from exercising his vote by the supporters of the appellant and in his presence and without any attempt made by the latter to stop his supporters from so doing, the only inference is that P. W. 44 was prevented from voting by the supporters of the appellant with the latter's consent. If that is so, it follows that there has been a

direct interference with the free exercise by P. W. 44 of his electoral right. As this one instance clearly establishes that the appellant has committed the corrupt practice of undue influence under S. 123 (2), it follows that it must be held that his election has to be set aside on this ground also.

68. In the result, the judgment and order of the High Court are confirmed and the appeal is dismissed with costs.

Appeal dismissed.