Charan Lal Sahu

Vs

Giani Zail Singh and Another

Nem Chandra Jain

Vs

Giani Zail Singh

Charan Singh and Others

Vs

Giani Zail Singh and Another

Election Petition No. 2, 3 and 4 of 1982

(CJI Y. V. Chandrachud, A. N. Sen, M. P. Thakkar, P. N. Bhagwati, D. P. Madon JJ)

13.12.1983

JUDGMENT

CHANDRACHUD, C. J. -

1. These three election petitions are filed under Section 14 of the Presidential and Vice-Presidential Elections Act, 1952 to challenge the election of respondent 1, Giani Zail Singh, as the President of India. The election to the office of the President of India was held on July 12, 1982. In all, 36 candidates had filed nomination papers including Shri. Charan Lal Sahu who is the petitioner in Petition No. 2 of 1982 and Shri. Nem Chandra Jain who is the petitioner in Election Petition No. 3 of 1982. The Returning Officer accepted the nomination papers of two candidates only : Giani Zail Singh and Shri. H. R. Khanna, a retired Judge of this Court. The result of the election was published in the Extraordinary Gazette of India on July 15, 1982 declaring Giani Zail Singh as the successful candidate. He took oath of office on July 25, 1982.

2. We will first take up for consideration Election Petitions Nos. 2 and 3 of 1982 which are filed respectively by Shri. Charan Lal Sahu and Shri. Nem Chandra Jain both of whom, incidentally, are Advocates.

Election Petitions Nos. 2 and 3 of 1982##

3. In Petition No. 2 of 1982, the petitioner asked for the following reliefs :

> [1] That the Constitutional Eleventh Amendment Act, 1961 be declared ultra vires the Constitution.
>
> [2] That Section 5-B[6] and 5-C, 21[3] of the Presidential and Vice-Presidential

> Election Act, 1952 [Amended] with Election Rules, 1974 be declared, illegal, void and unconstitutional, under Article 58 of the Constitution.
>
> [3] That the post of Prime Minister and other Ministers be declared that they are in office of profit hence they have played undue influence in the election of the returned candidate.
>
> [4] That the election of the [returned candidate] respondent 1 be declared void and nomination of respondent 2 be declared illegally accepted thus the petitioner be declared as elected as President under the Constitution, a stated in the petition under Section 18 of the Act.
>
> [5] That the above system of election of President is bad and unconstitutional, therefore, it should be held directly in future by all the electoral and Union of India be directed to amend Articles 54, 55 and 56 of the Constitution of India.
>
> [6] That Sections 4[1][2], 5, 6, 7 and 11 of the Salaries and Allowances of Ministers Act, 1952 [Act 58 of 1952] along with Section 3, 4, 5, 6, 7, 8 and 9 of the Salaries and Allowances of Members of Parliament Act, 1954 be declared void and unconstitutional.
>
> [Advisedly, we have not touched upon the prayer-clauses.]

4. In Petition Nod. 3 of 1982, the petitioner prays that the election of respondent 1 be set aside on the various grounds mentioned in the petition.

5. Apart from making several vague, loose and offhand allegations, the petitioners allege that respondent 1 exercised undue influence over the voters through his confidants. We do not consider it necessary to reproduce those allegations since we are of the opinion that these petitions are not maintainable.

6. A preliminary objection is taken to the maintainability of these petitions by Shri. Ashok Sen who appears on behalf of respondent 1 and by the learned Attorney-General. They contend that neither of the two petitioners was a 'candidate' within the meaning of Section 13[1] of the Act and since, under Section 14-A, an election petition can be filed only by a person who was a candidate at the election, the petitioners have no standing to file the petitions and therefore, the petitions must be dismissed as not maintainable.

7. Since the petitioners contested their alleged lack of locus to file the petitions, the following issue was framed by us as a preliminary issue in each of the two election petitions :

> Does the petitioner have no locus standi to maintain the petition on the ground that he was not a 'candidate' within the meaning of Section 13[a] read with Section 14-A of the Presidential and Vice-Presidential Elections Act, 1952 ?

8. Section 14 of the act provides by sub-section [1] that no election shall be called in question except by presenting an election petition to the authority specified in sub-section [2]. According to sub-section [2], the authority having jurisdiction to try an election petition is the Supreme Court. By Section 14-A[1] of the Act, an election petition may be presented on the grounds specified in Sections 18[1] and 19 "by any candidate at such election" or, "in the case of Presidential election, by

twenty or more electors joined together as petitioners". Section 13[a] of the act provides that unless the context otherwise requires, 'candidate' means a person 'who has been or claim to have been duly nominated as a candidate at an election".

9. These provisions show that there are three pre-conditions which govern an election petition by which a Presidential election is challenged. In the first place, such a petitions has to be filed in the Supreme Court. Secondly, the petition must disclose a challenge to the election on one or more of the grounds specified in sub section [1] of Section 18 or section 19. Thirdly, and that is important for our purpose, an election petition can be presented only by a person who was a candidate at the Presidential election or by twenty or more electors joined together as petitioners. Since the two election petitions which are at present under our consideration have not been filed by twenty or more electors, the question which arises for our consideration is whether the two petitioners in the respective election petitions were 'candidates' at the election held to the office of the President of India.

10. The definition of the word 'candidate' in Section 13[a] of the Act consists of two parts.'Candidate' means a person who has either been duly nominated as a candidate at a Presidential election or a person who claims to have been duly nominated. Neither of the two petitioner was duly nominated. This is incontrovertible, Section 5-B[1][a] of the act provides that on or before the date appointed for making nominations, each candidate shall deliver to the Returning Officer a nomination paper completed in the prescribed form, subscribed by the candidate as assenting to the nomination, and "in the case of Presidential election, also by at least ten electors as proposers and at least ten electors as seconders". It is common ground that the nomination papers filed by the two petitioners were not subscribed by ten electors as proposers and ten electors as seconders. In fact, it is precisely for that reason that the nomination papers filed by the two petitioners were rejected by the Returning Officers. Since the nomination papers of the two petitioners were not subscribed as required by Section 5-B[1][a] of the Act. it must follow that they were not duly nominated as candidates at the election.

11. The petitioners, however, contend that even if it is held that they were not duly nominated as candidates, their petitions cannot be dismissed on that ground since they "claim to have been duly nominated". It is true that, in the matter of claim to candidacy, a person who claims to have been duly nominated is on par with a person who, in fact, was duly nominated. But, the claim to have been duly nominated cannot be made by a person whose nomination paper does not comply with the mandatory requirements of Section 5-B(1)(a) of the Act. That is to say, person whose nomination paper, admittedly, was not subscribed by the requisite number of electors as proposers and seconders cannot claim that he was duly nominated. Such a claim can only be made by a person who can show that his nomination paper conformed to the provisions of Section 5-B and yet it was rejected, that is, wrongly rejected by the Returning Officer. To illustrate, if the Returning Officer rejects a nomination paper on the ground that one of the ten subscribers who had proposed the nomination is not an elector, the petitioner can claim to have been duly nominated if he proves that the said proposers was in fact an 'elector'.

12. Thus, the occasion for a person to make a claim that he was duly nominated can arise only if his nomination paper complies with the statutory requirements which govern the filing of nomination papers and not otherwise. The claim that he was 'duly' nominated necessarily implies and involves the claim that his nomination paper conformed to the requirements of the statute. Therefore, a contestant whose nomination paper is not subscribed by at least ten elector as proposers and ten electors as seconders, as required by Section 5-B(1)(a) of the Act cannot claim to have been duly

nominated, any more than a contestant who had not subscribed his assent to his own nomination can. The claim of a contestant that he was duly nominated must arise out of his compliance with the provisions of the Act. It cannot arise out of the violation of the Act. Otherwise, a person who had not filed any nomination paper at all but who had only informed the Returning Officer orally that he desired to contest the election could also contend that he "claims to have been duly nominated as a candidate."

13. It is not the case of the petitioners that the Returning Officer had wrongly rejected their nomination papers even though they were subscribed by ten or more electors as proposers and ten or more electors as seconders. Not only were the nomination papers rightly rejected on the ground of non-compliance with the mandatory requirement of Section 5-B(1)(a) of the Act. but the very case of the petitioners is that their nomination papers could not have been rejected by the Returning Officer on the ground of non-compliance with the aforesaid provision. Thus, their claim that they have been duly nominated is not within the framework of the act but is dehors the Act. It cannot be entertained.

14. In Charan Lal Sahu v. Fakruddin Ali Ahmed (AIR 1975 SC 1288 : (1975) 4 SCC 832), the petitioner claimed to have been duly nominated as a candidate though his nomination paper was rightly rejected on the ground of non-compliance with the provisions of Sections 5-B and 5-C of the Act. ' It was held by this Court that merely because a candidate is qualified under Article 58 of the Constitution, it does not follow that he is exempt from compliance with the requirements of law which the Parliament has enacted under Article 71(3) for regulating the mode and the manner in which nominations should be filed. Since the petitioner did not comply with the provisions of the aforesaid two sections, it was held that he could not claim to have been duly nominated and was therefore not a 'candidate. In the result, the election petition was dismissed by the Court on the ground that the petitioner did not have the locus standi to maintain it.

15. The challenge of the petitioners to the provision contained in Section 5-B(1)(a) of the Act on the ground of its alleged unreason ableness has no substance in it. The validity of that provision was upheld by this Court in Charan Lal Sahu v. Neelam Sanjeeva Reddy ((1978) 3 SCR 1 : (1978) 2 SCC 500 : AIR 1978 SC 499) Besides if the petitioners have no locus to file the election petitions, they cannot be heard on any of their contentions in these petitions.

16. Accordingly our finding on the preliminary issue is against the petitioners. We hold that they have no locus standi to file the election petitions since they were either duly nominated nor can they claim to have been duly nominated as candidates at the Presidential election. In view of this finding, Election Petition Nos. 2 and 3 of 1982 are dismissed.

17. It is regrettable that election petitions challenging the election to the high office of the President of India should be filed in a fashion as cavalier as the one which characterises these two petitions. The petitions have an extempore appearance and not even a second look leave alone a second thought, appears to have been given to the manner of drafting these petitions or to the contentions raised therein, In order to discourage the filing of such petitions, we would have been justified in passing a heavy order of costs against the two petitioners, But that is likely to create a needless misconception that this Court which had been constituted by the Act as the exclusive forum for deciding election petitions whereby a Presidential or Vice-Presidential the essence of the functioning of a democracy that elections to public offices must be open to the scrutiny of an independent tribunal. A heavy order of costs, in these two petitions, howsoever justified on their own facts, srould not result in nipping in the bud a well-founded claim on a future occasion. Therefore, we

refrain from passing any order of costs and, instead, express our disapproval of the light-hearted and indifferent manner in which these two petitions are drafted and filed.

Election petition No. 4 of 1982.##

18. This Election Petition is filed by 27 Members of the Parliament to challenge the election of Giani Zail Singh as the President of India. The petitioners belong to four opposition parties. The Lok Dal, the Democratic Socialist Party of India, the Bharatiya Janata Party and The Janata Party. These parties had jointly sponsored the candidature of Shri. H. R. Khanna a former Judge of this court. Giani Zail Singh was returned as the successful candidate by a large margin of votes.

19. The petitioners, being Members of the Parliament, were electors at the Presidential election. Their standing to file this petition is unquestioned.

20. One of the principal challenge of the petitioners to the election of Giani Zail Singh is that he is not a "suitable person" for holding the high office of the President of India. The petitioners have given their own reasons in support of this contention in paragraphs 5 to 8 of the petition. No useful purpose will be served by repeating those reasons in this judgment since, we are of the opinion that the election to the office of the President of India cannot be questioned on the ground that the returned candidate is not a suitable person for holding that office.

21. The following issue arises on the above contention raised by the petitions.

Can the election of a candidate to the office of the President of India be challenged on the ground that he is not a suitable person for holding that office ?

22. Section 18 of the Presidential and Vice-Presidential Election Act, 1952, which specifies the "grounds for declaring the election of a returned candidate to be void", reads thus :

> 18. (1) If the Supreme Court is of opinion -
>
> (a) that the offence of bribery or undue influence at the election has been committed by the returned candidate or by any person with the consent of the returned candidate; or
>
> (b) that the result of the election has been materially affected -
>
> (i) by the improper reception or refusal of a vote, or
>
> (ii) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, or
>
> (iii) by reason of the fact that the nomination of any candidate (other than the successful candidate), who had not withdrawn his candidature, has been wrongly accepted, or.
>
> (c) that the nomination of any candidate has been wrongly rejected or the nomination of the successful candidate has been wrongly accepted.
>
> the supreme Court shall declare the election of the returned candidate to be void.

> (2) For the purposes of this section, the offences of bribery and undue influence at an election have the same meaning as in Chapter IX-A of the Indian Penal Code.

23 Section 19 of the Act which specifies the "grounds for which a candidate other than the returned candidate may be declared to have been elected" reads thus :

> If any person who has lodged an election petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the Supreme Court is of opinion that in fact the petitioner or such other candidate received a majority of the valid votes, the Supreme Court shall, after declaring the election of the returned candidate to be void, declare the petitioner or such other candidate, as the case may be, to have been duly elected :

Provided that the petitioner or such other candidate shall not be declared to be duly elected if it is proved that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election.

24. These being the only provisions of the Act under which the election of a returned candidate can be declared void, the question as to whether the returned candidate is suitable for holding the officer of the President is irrelevant for the purposes of this election petition. While dealing with an election petition filed under Section 14 of the Act, this Court cannot inquire into the question whether the returned candidate is suitable for the office to which have is elected. The rights arising our of elections, including the right to contest or challenge an election, are not common law rights. They are creatures of the statutes which create, confer or limit those rights. Therefore, for deciding the question whether an election can be set aside on any alleged ground, the courts have to consult the provisions of law governing the particular election. They have to function within the framework of that law and cannot travel beyond it. Only those persons on whom the right of franchise is conferred by the statute can vote at the election. In the instant case, that right is conferred on every 'elector' as defined in Section 2(d) of the Act. which provides :

> 'elector' in relation to a Presidential election, means a member of the electoral college referred to in Article 54, and in relation to a Vice-Presidential election, means a member of the electoral college referred to in Article 66.

Only those person who are qualified to be elected to the particular office can contest the election. In the instant case, that right is regulated by Section 5-A of the Act which provides :

> Any person may be nominated as a candidate for election to the office of President or Vice-President if he is qualified to be elected to that office under the Constitution.

The election can be called into question in the manner prescribed by the statute and not in any other manner. In the instant case Section 14(1) of the Act provides that no election shall be called in question except by presenting an election petition to the authority specified in sub-section (2). By sub-section (2) of Section 14, the Supreme Court is constituted the sole authority for trying an election petition. Finally, an election can be called into question and set aside on those grounds only which are prescribed by the statute. In the instant case, the grounds for setting aside the election to the officer of the President or the Vice-President and the grounds on which a candidate other than the returned candidate may be declared to have been elected are laid down in Section 18 and 19 of

the Act. The election can neither be questioned nor set aside on any other ground. Therefore, the challenge to the election of the returned candidate on the ground of his want of suitability to occupy the office of the President cannot be entertained and must be rejected out of hand. (See K. Venkateswara Rao V. Bekkam Narasimha Reddi ((1969) 1 SCR 679, 684 : AIR 1969 SC 872 : (1969) 2 SCJ 505) and Charn Lal Sahu v. Nandkishore Bhatt ((1974) 1 SCR 294, 296 : (1973) 2 SCC 530, 533 : AIR 1973 SC 2464).)

25. Apart from the legal position that the rights flowing out of an election are statutory and not common law rights, it is impossible to conceive that any court of law can arrogate to itself the power to declare an election void on the ground that the returned candidate is not a suitable person to hold the office to which he is elected. Suitability of a candidate is for the electorate to judge and not for the court to decide. The court cannot substitute its own assessment of the suitability of a candidate for the verdict returned by the electorate. The verdict of the electorate is a verdict on the suitability of the candidate. 'Suitability is a fluid concept of uncertain import. The ballot-box is, or has to be assumed to be, its sole judge. Were the court to exercise the power to set aside an election on the ground that, in its opinion, the returned candidate is not a suitable person for the office to which has is elected, the statute will stand radically amended so as to give to the court a virtual right of veto not he question of suitability of the rival candidates. And then, an unsuccessful candidate will challenge the election of the successful candidate on the ground that he is more suitable than the latter. That is an impossible task for the courts to undertake and indeed, far beyond the limits of judicial review by the most liberal standard.

26. Accordingly, the challenge to the election of the returned candidate on the ground that he is not suitable for holding the office of the President of India fails and is rejected. Our finding on the issue is in the negative.

27. The other grounds on which the petitioners have challenged the election of respondent 1 are these : (1) That Shri M. H. Beg, former Chief Justice of the Supreme Court and now Chairman of the Minorities Commission, was engaged by respondent 1 and by the Prime Minister, Smt. Indira Gandhi, "for influencing the votes of the minority communities", (2) That Rao Birendra Singh, a Cabinet Minister of the Government of India, who is a "supporter and a close associate" of respondent 1, exercised undue influence over the voters by misusing the Government machinery in that, a statement issued by him asking the voters to votes for respondent 1 was published by the Press Information Bureau, Government of India; (3) That the Prime Minister participated in the election campaign of respondent 1 and misused the Government machinery for that purpose : (4) That the Prime Minister made a communal appeal to the Akali Dal that its members should vote for respondent 1; and (5) That Government helicopters and cars belonging to the Government were misused for the purpose of election of respondent 1. It is alleged by the petitioners that these various acts were committed by the well-wishers and supporters of respondent 1 with his connivance.

28. It was contended by Shri Asoke Sen that, even assuming that these allegation are true, they do not disclose any cause of action for setting aside the election of respondent 1. In view of these rival contentions, we framed the following issue for consideration :

> Whether the averments in the election petition, assuming them to be true and correct, disclose any cause of action for setting aside the election of the returned candidate (respondent 1) on the grounds stated in Section 18(1)(a) of the presidential and Vice-Presidential Elections Act. 1952 ?

29. Section 18(1)(a) of the Act which we have already set out, provides that the Supreme Court shall declare the election of the returned candidate to be void if it is of opinion -

that the offence of bribery and undue influence at the election has been committed by the returned candidate or by any person with the consent of the returned candidate.

We may keep aside the question of bribery since there is no allegation in the behalf. Nor is it alleged that the offence of undue influence was committed by the returned candidate himself. The allegation of the petitioners is that the offence of undue influence was committed by certain supporters and close associates of respondent 1 with his connivance. It is patent that this allegation, even if it is true, is not enough to fulfill the requirements of Section 18(1)(a). What that Section to the extent relevant, requires is that the offence of undue influence must be committed by some other person with the 'consent' of the returned candidate. There is no plea whatsoever in the petition that undue influence was exercised by those other persons with the consent of respondent 1.

30. It is contended by Shri Shujatullah Khan who appears on behalf of the petitioners, that connivance and consent are one and the same thing and that, there is no legal distinction between the two concepts. In support of this contention, learned counsel relies upon the meaning of the word 'connivance' as given in Webster's Dictionary (third Edition, Volume 1, p. 481); Random House Dictionary (p. 311); Black's Law Dictionary (p. 274); words and phrases (Permanent Edition, Volume 8-A, P. 173); and Corpus Juries Secundum (Volume 15-A p. 567). The reliance on these dictionaries and texts cannot carry the point at issue any further. The relevant question for consideration for the decision of the issue is whether there is any pleading in the petition to the effect that the offence of undue influence was committed with the consent of the returned candidate. Admittedly there is no pleading of consent. It is then no answer to say that the petitioners have pleaded connivance and, according to dictionaries, connivance means consent. The plea of consent is one thing : the fact that connivance means consent (assuming that it does) is quite another. It is not open to a petitioner in an election petition to plead in terms of synonyms. In these petitions, pleadings have to be precise specific and unambiguous so as to put the respondent on notice. The rule of pleadings that facts constituting the cause of action must be specifically pleaded is as fundamental as it is elementary. 'Connivance' may in certain situations amount to consent, which explains why the dictionaries give 'consent' as one of the meanings of the word 'connivance'. But it is not true to say that 'connivance' invariably and necessarily means or amounts to consent, that is to say, irrespective of the context of the given situation. The two cannot, therefore, be equated. Consent implies that parties are ad item. Connivance does not necessarily imply that parties are of one mind. They may or may not be, depending upon the facts of the situation. That is why, in the absence of a pleading that the offence of undue influence was committed with the consent of the returned candidate, one of the main ingredients of Section 18(1)(a) remains unsatisfied.

31. The importance of a specific pleading in these matters can be appreciated only if it is released that the absence of a specific plea puts the respondent at a greater disadvantage. He must know what case he had to meet. He cannot be kept guessing whether the petitioner means what he says, 'connivance' here, or whether the petitioner has used that expression as meaning 'consent'. It is remark able that, in their petition, the petitioners have furnished no particulars of the alleged consent, if what is meant by the use of the word connivance is consent. They cannot be allowed to keep their options open until the trial and adduce such evidence of consent as seems convenient and comes handy. That is the importance of precision in pleadings, particularly in election petitions. Accordingly, it is impermissible to substitute the word 'consent' for the word 'connivance' which occurs in the pleadings of the petitioners.

32. The legislative history of the statute lends support to our view that for the purposes of Section 18(1)(a), connivance is not the same thing as consent. Originally, when the Act was passed in 1952, Section 18(1)(a) provided that the Supreme Court shall declare the election of the returned candidate void if it is of opinion that the offence of bribery or undue influence has been committed by the returned candidate or by any person "with the connivance" of the returned candidate. This sub-section was amended by Section 7 of Presidential and Vice-Presidential Elections (Amendment) Act, 5 of 1974, which came into force on March 23, 1974. The word 'connivance' was substituted by the word 'consent' by the Amendment Act. If connivance carried the same meaning as consent and if one was the same as the other, the Parliament would not have taken the deliberate step of deleting the word 'connivance' and substituting it by the word 'consent'. The amendment made by the Amendment Act of 1974 shows that connivance and consent connote distinct concepts for the purpose of Section 18(1) (a) of the Act.

33. Since, admittedly, there is no pleading in the election petition that the offence of undue influence was committed with the consent of the returned candidate, the petition must be held to disclose no cause of action for setting aside the election of the returned candidate under Section 18(1)(a) of the Act.

34. Apart from this, Sri Asoke Sen is right that granting every thing in favour of the petitioners and assuming that all the they have alleged is true and correct, no case is made out for setting aside the election of the returned candidate under Section 18(1((a) of the Act. We will first take up the allegation of the petitioners that Shri M. H. Beg, Chairman of the Minorities Commission, canvassed support for respondent 1. The question which we have to consider is whether, in doing so, Shri Beg is guilty of the offence of undue influence. Section 18(2) of the Act provides that for the purpose of Section 18, the offences of bribery and undue influence at an election have the same meaning as in Chapter IX-A of the Penal Code. That chapter which was introduced into the Penal Code by Act 39 of 1920, deals with "Offences relating to Elections". Sections 171-B and 171-C of the Penal Code define the offences of bribery and undue influence respectively. Section 171-C reads thus :

> Undue influence at elections
>
> 171-C. (1) Whoever voluntarily interferes or attempt to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.
>
> (2) Without prejudice to the generality of the provisions of sub-section (1), whoever -
>
> (a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind or.
>
> (b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine pleasure or of spiritual censure,
>
> shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of subsection (1).
>
> (3) A declaration of public policy or a promise of public action or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this Section.

35. The gravamen of this section is that there must be interference or attempted interference with the "free exercise" of any electoral right. "Electoral right" is defined by Section 171-A(b) to mean the right of a person to stand, or not to stand, as, or to withdraw from being, a candidate or to vote or refrain from voting at an election. In so far as is relevant for our purpose, the election petition must show that Shri Beg interfered with the free exercise of the voters' right to voter at the Presidential election. The petition does not allege or show that Shri Beg interfered in any manner with the free exercise of the right of the voters to voter according to their choice or conscience. The petition alleges that Shri Beg commented severely upon the suitability of the rival candidate Shri H. R. Khanna by pointing out the so-called infirmities in the his judgment in the Fundamental Rights case (Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225). On the supposition that Judges constitute a brotherhood and are bound by ties of institutional loyalty, one may not approve of the tone and temper of the personal attack made by Shri Beg on Shri H. R. Khanna. But that is beside the point. We are neither concerned with the propriety of the statement made by Shri Beg nor with the question as to who, out of the two candidates, is more suitable to be the President of India. The point of the matter is that by conveying to the voters that respondent 1 was a much safer candidate than Shri Khanna and that Shri Khanna would not be a suitable candidate to hold the office of the President of India by reason of a judgment of his, Shri Beg could not be said to have interfered with the free exercise of the right of the voters to vote at the election. If the mere act of canvassing in favour of one candidate as against another were to amount to undue influence, the very process of a democratic election shall have been stifled because, the right to canvass support for a candidate is as much important as the right to vote for a candidate of one's choice. Therefore, in order that the offence of undue influence can be said to have been made out within the meaning of Section 171-C of the Penal code, something more than the mere act of canvassing for a candidate must be shown to have been done by the offender. That something more may, for example, be in the nature of a threat of an injury to a candidate or a voter as stated in sub-section (2)(a) of Section 171-C of the Penal Code or it may consist of inducing a belief of Divine displeasure in the mind of a candidate or a voter as stated in sub-section (2)(b). The act alleged as constituting undue influence must be in the nature of a pressure or tyranny on the mind of the candidate or the voter. It is not possible to enumerate exhaustively the diverse categories of acts which fall within the definition of undue influence. It is enough for our purpose to say, that of one thing there can be no doubt : The mere act of canvassing for a candidate cannot amount to undue influence within the meaning of Section 171-C of the Penal Code.

36. In Baburao Patel v. Dr. Zakir Husain ((1968) 2 SCR 133, 146 : AIR 1968 SC 904 : (1968) 2 SCJ 490), this Court while emphasising the distinction between mere canvassing and the exercise of undue influence, observed.

... It is difficult to lay down in general terms where mere canvassing ends and interference or attempt at interference with the free exercise of any electoral right begins. That is a matter to be determined in each case; but there can be no doubt that if what is done is merely canvassing it would not be undue influence. As sub-section (3) of Section 171-C shows, the mere exercise of a legal right without intent to interfere with an electoral right would not be undue influence.

37. In Shiv Kirpal Singh v. Shri V. V. Giri ((1971) 2 SCR 197, 225, 320, 321 : (1970) 2 SCC 567, 592, 593, 664, 665 : AIR 1970 SC 2097), the Court observed that "if any acts are done which merely influence the voter in making his choice between one candidate or another, they will not amount to interference with the free exercise of the electoral right", that the expression 'free exercise' of the electoral right must be read in the context of an election in a democratic society and, therefore, candidates and their supporters must be allowed to canvass support by all legal and

legitimate means. Accordingly, the offence of undue influence can be said to have been committed only if the voter is put under a threat or fear of some adverse consequence, or if he is induced to believe that he will become an object of Divine displeasure or spiritual censure if he casts or does not cast a vote in accordance with his decision : "... But, in cases where the only act done is for the purpose of convincing the voter that a particular candidate is not the proper candidate to whom the vote should be given, that act cannot be held to be one which interferes with the free exercise of the electoral right".

38. Ram Dial v. Sant Lal ((1959) Supp 2 SCR 748, 758, 759 : AIR 1959 SC 855 : 1959 SCJ 916) was a case of undue influence under proviso (a)(ii) to Section 123(2) of the Representation of the People Act, 1951. The appellant therein had circulated a poster under the authority of the supreme religious leader of the Namdhari Sikhs in a constituency where a large number of voters were Namdhari Sikhs. This Court observed that there cannot be the least doubt that even a religious leader has the right freely to express his opinion on the comparative merits of the contesting candidates and to canvass for such of them as he considers worthy of the confidence of the electors. Such a course of conduct on his part will only be a use of his great influence amongst a particular section of the voters in the constituency and that, it will amount to an abuse of his great influence only if the words which he utters leave no choice to the persons addressed by him in the exercise of their electoral rights. On the facts of the case it was held that the religious leader, by his exhortations and warnings to the Namdhari electors that disobedience of his mandate will carry Divine displeasure and spiritual censure left no choice to them to exercise their right of voting freely.

39. Thus, the allegation of the petitioners that Shri Beg asked the voters to cast their votes in favour of respondent 1 and not to cast them for Shri H. R. Khanna on the ground that the latter was not a safe or suitable candidate as compared with respondent 1, does not make out the offence of undue influence as defined in Section 171-C of the Penal Code. It must follow that the election petition does not disclose any cause of action for setting aside the election of respondent 1 on the ground of undue influence as specified in Section 18(1)(a) of the Act.

40. The remaining grounds alleged by the petitioners for invalidating the election of respondent 1 are misconceived. The use of Government machinery, abuse of official position and appeal to communal sentiments so long as such appeal does not amount to undue influence, are not considered by the Legislature to be circumstances which would invalidate a Presidential or a Vice-Presidential election. Assuming, therefore, that any such acts were done, they cannot be relied upon for declaring the election of respondent 1 void. as we have said already, the laws of election are self-contained code and the rights arising out of elections are the offsprings of those laws. We cannot engraft the provisions of the Representation of the People Act, 1951 upon the statute under consideration and thereby enlarge the scope of an election petition filed to challenge a Presidential or Vice-Presidential election. Such an election can be set aside on the grounds specified in Section 18(1) of the Act only. Since the other allegations made by the petitioners do not fall within the scope of that provision, they have to be rejected.

41. For these reasons, our finding on the issue under consideration is that the averments in the election petition, assuming them to be true and correct, do not disclose any cause of action for setting aside the election of the returned candidate on the grounds stated in Section 18(1)(a) of the Act.

42. It was contended on behalf of the petitioners that the Act would be unconstitutional if it is interpreted as limiting the challenge to the Presidential or Vice-Presidential election to the grounds

set forth in Section 18(1). In support of this argument reliance is placed by learned counsel for the petitioners on the provisions contained in Article 71(1) of the Constitution which says : "All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final". It is urged that the Constitution has conferred upon the Supreme Court the power to inquire into and decided upon every kind of doubt or dispute arising out of or in connection with a Presidential election and since, Section 18(1) restricts that power to the grounds stated therein, it is ultra vires Article 71(1). This argument overlooks that clause (3) of Article 71 confers power upon the Parliament, subject to the provisions of the Constitution, to make a law for regulating matters relating to or connected with the election of the President or the Vice-President. While enacting a law in pursuance of the power conferred by Article 71(3), the Parliament is entitled to specify the particular kind of doubts or disputes which shall be inquired into and decided by the Supreme Court. If the petitioners were right in their contention, every kind of fanciful doubt or frivolous dispute under the sun will have to be inquired into by this Court and election petitions will become a fertile ground for fighting political battles.

43. That leaves for consideration one other contention. Article 58(1) of the Constitution provides that no person shall be eligible for election as President unless he (a) is a citizen of India, (b) has completed the age of thirty-five years, and (c) is qualified for election as a member of the House of the People. Article 84(a) provides that a person shall not be qualified to be chosen to fill a seat in Parliament unless, inter alia, he makes and subscribes an oath or affirmation set out for the purpose in the Third Schedule. The argument of the petitioners is that a candidate contesting a Presidential election must take the oath as prescribed by Article 84(a) and since respondent 1 had not taken such oath, his election is unconstitutional. This argument is untenable. Article 58 which prescribes "Qualifications for election as President", provides three conditions of eligibility for contesting the Presidential election. One of these conditions is that the candidate must be qualified for election as a member of the House of the People. Article 84 speaks of "qualifications for membership of Parliament". No person can fill a seat in the Parliament unless, inter alia, he subscribes to the oath or affirmation according to the form set out in the Third Schedule. The from prescribed by the Third Schedule shows that it is restricted to candidates who desire to contest the election to the Parliament. In the very nature of things, a candidate who wants to contest the election for the office of the President cannot take the oath in any of the forms prescribed by the Third Schedule. That Schedule does not prescribe any form of oath for a person who desires to contest a Presidential election.

44. In the result, Election Petition No. 4 of 1982 is also dismissed. There will be no order as to costs.

</html