

ALLAHABAD HIGH COURT

Madan Lal

Vs.

Zargham Haider

First Appeal No. 73 of 1957. against order of Member, Election Tribunal, Gonda,

(V. Bhargava and M.L. Chaturvedi, JJ.)

28.08.1957. 03.01.1958

JUDGMENT

V. Bhargava, J.

1. This is an appeal under Section 116A of the Representation of the People Act, 1951, as amended upto date. An election was held for the U. P. Legislative Assembly from the Bahraich North '269 Constituency. There were three candidates for election to the seat who are the three respondents in this appeal. Respondent No. 1 Syed Zargam Haider alias Hijjan Mian was declared as the successful candidate. The actual polling took place on 25-2-1957 and the result of the election was declared on 2-3-1957. The appelland Madan Lal, who was a voter but had not stood as a candidate, filed his election petition before the election Commission on 16-4-1957, which was the last date of limitation prescribed for presentation of election petitions under the Act. The Election Commission entrusted this petition for trial to the Election Tribunal at Gonda and fixed 12-6-1957, as the date for appearance of parties before the Tribunal.

2. The election of respondent No. 1 was challenged by the appelland on the ground of corrupt practices which were enumerated in paras 4 (a) to 4 (e) of the petition. On 27-6-1957 the respondents filed their written statements. Respondent No. 1, amongst other pleas, put forward the defense that all these paras 4 (a) to 4 (e) in which corrupt practices had been alleged were vague and were, therefore, liable to be struck off. On 2-7-1957 permission was granted to the appelland to file a replication which was actually filed on 8-7-1957. On the same date preliminary issues were framed, -the main preliminary issue being whether the allegations contained in paras 4(a) to 4(e) were vague and liable to be struck off. July 20, 1957 was fixed for arguments on these issues but the hearing was adjourned to 27-7-1957. On that date, the appelland moved an application requesting the Election Tribunal to make an order directing him to furnish better and further particulars of the corrupt practices which had been alleged in paras 4(a) to 4(e) of the petition. That application was rejected the same day. On 29-7-1957, arguments were heard on the

preliminary issues and thereafter the appellant presented an application requesting for a week's time in order to file an application for amendment of these paragraphs. On 1-8-1957, before the preliminary issues could be decided, the appellant moved an application for amendment of these paragraphs of the petition. Objections to this application for amendment were presented by respondent No. 1 on 14-08-1957. Parties were then heard on 26-08-1957 on the amendment application which was rejected by the Election Tribunal. On 28-08-1957, the Tribunal heard the parties on the preliminary issues and held that all the paras 4(a) to 4(e) of the petition were liable to be struck off. The Tribunal, therefore, struck off those paragraphs. Thereafter, the Tribunal proceeded to examine the petition as it remained after these paragraphs had been deleted and came to the view that the petition disclosed no cause of action and there was, therefore, no question of taking further proceedings in the trial. The Tribunal therefore dismissed the petition and awarded costs against the appellant to respondent No. 1. The order striking off paragraphs 4(a) to 4(e) of the petition as well as the order dismissing the petition as one single composite order passed on 28-8-1957. It is against this order that the appellant has come up in appeal to this Court under Section 116A of the Representation of the People Act.

3. When this appeal came up for hearing, a preliminary objection was taken by learned counsel for respondent No. 1 that this appeal was not maintainable as the order dated the 28th of August, 1957 was not an order under Section 98 or 99 of the Representation of the People Act and the right of appeal to this Court under Section 116A of the Act had been granted only against order passed under Section 98 or 99 of the Act. The contention of the learned Counsel was that by the order of the 28th August, 1957, the petition had been decided at an early stage and not at the conclusion of the trial, whereas orders under Section 98 of the Representation of the People Act can only be passed at the conclusion of the trial. In our opinion, this preliminary objection cannot prevail. If we confine our attention to the provisions of the Representation of the People Act only, we find that, under that Act, there are only two provisions under which an election petition can be dismissed by the Election Tribunal. There is firstly the provision in sub-section (3) of Section 90 of the Act which contains a mandatory direction to the Tribunal to dismiss an election petition which does not comply with the provisions of Section 81, Section 82 or Section 117, notwithstanding that the petition may not have been dismissed by the Election Commission under Section 85. The only other provision for dismissing a petition is that contained in Section 98. It has not been contended by learned Counsel for the respondents, nor could it possibly be urged, that the present order dated the 28th of August, 1957, dismissing the election petition, is or can be an order under sub-section (3) of Section 90 of the Representation of the People Act. If, therefore, the provisions of this Act alone are examined, it would have to be held that the dismissal order must be an order under Section 98 of the Act which is the only other provision under which an order of dismissal can be passed. It was, however, urged by learned Counsel that, in considering the stages at which an election petition can be dismissed, the Court should not confine itself to the provision of the Representation of the People Act. Since the Code of Civil Procedure has been made applicable to the trial of an election petition by an Election Tribunal, the principles laid down in that Code must also be examined in order to see whether a particular

order of dismissal is an order at the conclusion of the trial or is an order at an earlier stage. This Court in *Bhudhar Lal v. Bansidhar Shukla*¹, and *Smt. Godavari v. Shiva Prasad Nagar*², Lucknow Bench, has

¹ F.C.A. No. 64 of 1957 (All)

² F.C.A. No. 65 of 1957 (All)

already held that an order under sub-section (3) of Section 90 of the Representation of the People Act dismissing an election petition is not an order at the conclusion of a trial and an appeal against such an order does not lie under Section 116A of the Act. The learned Chief Justice, before whom the case came up on a difference of opinion between the other two learned Judges who heard the appeal, distinguished between an order by which a petition had been dismissed in limine and an order dismissing a petition after the hearing of the petition. The former was held to be an order which itself concluded the trial whereas the latter an order made at the conclusion of the trial. In the case before us, the order which was passed by the Election Tribunal dismissing the election petition on 28-8-1957 did not conclude the trial in limine.

It was not a case where the petition was dismissed on a preliminary ground before the trial had begun. In fact the proceedings taken before the Election Tribunal show that apart of the trial was gone through before the order (was made. The parties had appeared before the Tribunal. The respondents had filed their written statements. The appellant had filed a replication. There was an application for amendment of the pleadings and that application was also dismissed. The pleadings in paragraphs 4(a) to 4(e) of the petition were then struck off. It was subsequent to all these proceedings that the order of dismissal of the petition was made by the Tribunal. This order, therefore, was an order which was made after the trial had already commenced. An order under sub-section (3) of Section 90 of the Act is an order made before the commencement of the trial. It may be, of course, that in some cases such an order might be made after the trial had commenced, but the provision for dismissal has clearly been made with the purpose of excluding a trial by dismissing the petition. The order in the present case is of a different nature because the ground for that order arose after a part of the trial had been gone through. It was not till the written statement had been filed application for amendment had been dismissed on arguments about the vagueness of some paragraphs had been heard and decided by the Tribunal and the Tribunal had struck off these paragraphs that occasion arose for dismissing the petition on the ground of want of cause of action. As has been held by the Supreme Court in *Harish Chandra Bajpai v. Triloki Singh*³, the provisions of Chapter III of the Representation of the People Act read as a whole clearly show that the word "trial" is used as meaning the entire proceedings before the Tribunal for the time when the petition is transferred to it under Section 86 until the pronouncement of the award. The pronouncement of the award would, of course, in most cases follow a complete hearing including the recording of evidence tendered by both parties. In some cases, however, the award on an election petition may be pronounced without recording evidence because at an earlier stage it is found that the petition has no force and cannot succeed. The decision that, after paras 4(a) to 4(e) of the petition had been struck off, no cause of action was

left which could be investigated by the Court was a point relating to the merits of the petition and, having decided that the petition disclosed no cause of action, the Tribunal proceeded to dismiss the petition, which dismissal must be held to be a decision of the petition on merits.

4. The third angle from which this point can be examined is the effect of the provisions of the Code of Civil Procedure. Under sub-section (1), of Section 90 of the

³ AIR 1957 SC 444

Representation of the People Act, it has been laid down that

"Subject to the provisions of this Act and of any rules made there under, every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908), to the trial of suits".

An examination of the provision of the Code of Civil Procedure would show that in cases where a plaint does not disclose any cause of action the plaint can be rejected under Order 7, Rule 11. If, therefore, it be held that the dismissal of the election petition by the Tribunal in the present case was not a decision on merits but a decision under the provisions of the Code of Civil Procedure, the order of 28-8-1957 must be deemed to have been passed in pursuance of the provisions of Order 7, Rule 11, C.P.C. The nature of such an order is indicated by the Code of Civil Procedure itself. Section 2 of the Code of Civil Procedure means,

"the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 47 or 144."

Thereafter, the definition proceeds to lay down certain exceptions which are not to be included within the definition of the word "decree". With these exceptions, we are not concerned. The order, which is now the subject-matter of the appeal before us, is equivalent to an order rejecting a plaint under Order 7, Rule 11, C.P.C. and the definition of the word "decree" indicates that such an order amounts to a decree. It is implied in the very nature of it that it is passed at the conclusion of a trial. It is the formal expression of an adjudication by the Court which conclusively determines the rights of the parties with regard to all or any of the matters in controversy. In the present case, the matter in controversy was whether the election of respondent No. 1 should or should not be declared void. The order of 28-8-1957 conclusively determined this question by dismissal of the petition. That order was, therefore, in the nature of an order dismissing a suit, which order of dismissal under the Code of Civil Procedure is treated as a decree. Consequently, even if the provisions of the Code of Civil Procedure are examined and the effect of the order of 28-8-1957 is considered in the light of those provisions it would appear

that the order of 28-8-1957 dismissing the election petition was an order made at the conclusion of the trial and consequently would be an order falling within the scope of Section 98 of the Representation of the People Act.

5. The conclusion of a trial need not necessarily come after evidence of both parties has been recorded. A trial may be concluded after it has once commenced even without evidence being recorded. In some cases parties may tender no evidence at all and, after the pleadings and issues have been framed, it may be sufficient for the Court to hear the parties and deliver judgment. In such cases, the judgment would be one passed at the conclusion of a trial, in the present case the dismissal of the petition was certainly at a stage when evidence of parties had not been recorded but the trial had commenced and the trial was concluded by that order. Consequently, we hold that the order appealed against is an order under Section 98 of the Representation of the People Act so that this appeal is maintainable.

6. The appeal being maintainable, we have to consider how far the appeal can succeed on merits. In considering the merits of the appeal, one important point that has to be kept in view is that, under Section 100 of the Representation of the People Act, an election can be declared void on the ground of the commission of a corrupt practice under two different circumstances. The first circumstance is when a corrupt practice has been committed by a returned candidate himself or by his election agent or by any other person with the consent of the returned candidate or his election agent. In such cases, it is enough for the election petitioner to establish that the corrupt practice had been committed. The other circumstance is when the corrupt practice has been committed in the interest of the returned candidate by a person other than that candidate or his election agent or a person acting with the consent of such a candidate or election agent. In such a case, Section 100 of the Representation of the People Act requires, that, In addition to the proof of the commission of the corrupt practice, the election petition must also allege and establish that the result of the election has been materially affected by the commission of that corrupt practice. In the present case, the allegations of corrupt practice contained in paras 4(a) to 4(e) of the petition mention corrupt practices committed by respondent No. 1 himself as well as corrupt practices committed by his agents and supporters. So far as the corrupt practices alleged to have been committed by respondent No. 1 himself are concerned, his election can be declared void merely on proof of the commission of those corrupt practices. So far as the remaining corrupt practices alleged to have been committed by his agents and supporters are concerned, the appellant was required to allege and prove the further fact that the commission of those corrupt practices had materially affected the result of the election. None of the agents and supporters who have been mentioned in these paragraphs is alleged to have been the election agent of respondent No. 1. Further there is no allegation in paragraphs 4(c) to 4(e) of the petition that any of those agents or supporters committed the corrupt practices with the consent of respondent No. 1 or his election agent. When no such allegations were made, it was necessary for the appellant, in order to ask for a declaration that the election of respondent No. 1 was void, to allege that the commission of the corrupt practices by the supporters and agents had materially affected the

result of the election. No such allegation was made by the appellant in those paragraphs or even subsequently when he moved the application for amendment of the petition. In these circumstances, in dealing with appeal, all the allegations which have been made in paras 4(c) to 4(e) of the petition as well as the allegations which appear in the application for amendment moved by the appellant which relate to the commission of these corrupt practices by the agents and supporters of respondent No. 1 must be ignored. All these pleadings regarding these corrupt practices become irrelevant because, in the absence of an allegation that these corrupt practices had materially affected the result of the election, they cannot be grounds for setting aside the election of respondent No. 1. The result of this view expressed by us is that, in dealing with this appeal, we need examine the contents of paragraphs 4(c) to 4 (e) only to the extent that they contain allegations of commission of corrupt practices by respondent no. 1 alone.

7. Paragraph 4 (d) is the only paragraph where no act by the respondent himself is alleged. In that paragraph, the allegation is that respondent no. 1 had sought the election as a candidate on behalf of the Praja Socialist Party and the further allegation is that the Praja Socialist Party committed corrupt practices for the furtherance of the prospects of election of respondent no. 1 by directly and indirectly attempting to interfere with the free exercise of vote by making misrepresentation to the electors through posters, which misled the electors to believe that Mahatma Gandhi, the Father of the Nation, had enjoined on the people the dissolution of the Congress Organization and had enjoined the electors to vote for the candidate set up by the Praja Socialist Party. It is now here alleged that the respondent himself made any misrepresentation to the electors through posters pasted by him. This paragraph, therefore, has to be struck off altogether on the ground that it contains no allegation of any corrupt practice by the candidate himself and, so far as the Praja Socialist Party is concerned, it has not been alleged that, even if it committed a corrupt practice, it materially affected the result of the election.

8. The first two charges of corrupt practice contained in paras 4 (a) and 4 (b) can be dealt with together. In both of them, there were allegations that respondent no. 1, his agents and other persons at the instance and with the approval of respondent No. 1 had procured and hired on payment and otherwise Ekkas, Tongas and Rickshaws for the conveyance of the electors or had hired bullock-carts for the conveyance of electors to various polling stations. Both these paragraphs have been struck off by the Election Tribunal on the grounds of vagueness. The application which was moved for amendment of these paragraphs was rejected. It was contended before us by the learned counsel for the appellant that the Election Tribunal went wrong in rejecting the application for amendment. In our opinion, in this appeal it is not necessary for us to go at all into the question whether that amendment application was rightly rejected or should have been allowed. Even on the basis that it has been wrongly rejected, it appears to us that the appellant cannot support these two paragraphs as being sufficiently precise and fulfilling the requirements of Section 83 of the Representation of the People Act. By the amendment application, all that was sought was to give the names of the agents and other persons who, at the

instance and with the approval of respondent no. 1, had procured and hired the various conveyances. For the sake of examining how far these paragraphs satisfied the requirements of Section 83 of the Representation of the People Act, we shall proceed on the assumption that the details about the names of the agents and supporters sought to be introduced by the amendment application had existed. It appears to us, however, that even after taking into account the names of those agents and supporters these two paragraphs do not contain the full particulars which are required to be given under Section 83 of the Representation of the People Act. It is to be noticed that, under Section 123 (5) of the Representation of the People Act, a corrupt practice consists in the act of hiring or procuring certain types of vehicles by a candidate or his agent or by any other person for the conveyance of any elector to or from any polling station. A corrupt practice is, therefore, committed not by conveying the voter but by the act of hiring or procuring the conveyance. In clause (b) of Section 83 (1), an election petitioner is required to set forth full particulars of the corrupt practice including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. The language used in this provision of law requires the setting forth of the full particulars of the corrupt practice and specially mentions at least three particulars which must be given. ' These are the names of the parties alleged to have committed the corrupt practice, the date when the corrupt practice was committed and the place of the corrupt practice. We have already indicated above that, in the case of the corrupt practice alleged in paragraphs 4(a) and 4(b) of the present petition, the commission of the corrupt practice was brought about by the act of hiring or procuring the conveyance. In the circumstances, the appellant was required to give the names of the parties who performed the act of hiring or procuring the conveyance, he was required to give the date of the commission of this act of hiring or procuring the conveyance and he was required to give the place where this act of hiring or procuring the conveyance was committed. No attempt was made by the appellant to give the last two of these particulars in the petition or even in the amendment application. What was given was a description of the place to which the electors were conveyed by these conveyances. The mere conveying of the electors by hired or procured conveyances did not constitute corrupt practices. May be, it is an essential ingredient for an act to constitute a corrupt practice under Clause (5) of Section 123 of the Representation of the People Act to allege and prove the actual conveyance of the voters also but that is a point on which we need not express any final opinion at this stage. Even if such a point has to be established by the petitioner, the principal charge which has to be alleged and proved by the petitioner is that the conveyance was actually hired or procured by the candidate or his agent or any other person. Since he has to allege the hiring or procuring of the conveyance, he must under Section 83 (1) (b) give the particulars of the act of hiring or procuring and, when giving these particulars, in addition to other particulars that may be necessary he must at least give the bare minimum indicated in that provision of law, viz. the names of the parties alleged to have committed such a corrupt practice and the date and place of the commission of each such practice. In the present petition, the dates of hiring or procuring of conveyances which, according to paragraphs 4(a) and 4(b), were hired by respondent no. 1 his agents or supporters have not been indicated at all. The places where they were hired or procured are also not mentioned. There

are also no particulars to indicate what was the nature of each vehicle which was hired, as all of them have been described in the alternative without indicating at all which type of conveyance was hired by the candidate himself and which one by a particular agent or a particular supporter. Further, no details are given from which the particular vehicles, which were hired or procured, could be identified. It may have been sufficient for the petitioner either to give the registered number, if the vehicles were registered, or the licence numbers, if the vehicles were licensed, or to give the names of the owners of the vehicles. In any case, sufficient particulars could have been given which would have enabled the respondent to discover which particular vehicle he was charged with having hired or procured. All these details are missing. The result is that these corrupt practices are alleged in such vague terms that it is not possible for the respondent to meet the allegations made in these two paragraphs. The paragraphs further do not satisfy the requirements of Section 83 (1) (b) of the Representation of the People Act. It has already been held by this Court that, to the trial of an election petition by an Election Tribunal, the provisions of Order 6, rule 16, C. P. C. apply. The Tribunal, in the circumstances indicated above, was fully justified in striking off the pleadings contained in paragraphs 4(a) and 4(b) of the petition.

9. There remains the question of paragraphs 4 (c) and 4 (e). We consider it convenient to deal with paragraph 4(e) first. This paragraph, as put in the original petition, was extremely vague. All that was said in this paragraph was that respondent no. 1, his agents and supporters, for the furtherance of the prospects of the election of respondent no. 1, used national symbols such as the national flag in the constituency which was prohibited by law. In this paragraph, it appears that in fact no particulars at all were given except one single particular relating to the identity of one of the persons who had committed the corrupt practice. That person was the respondent no. 1 himself. His agents and supporters were described by using these vague words without giving their names. The manner in which the national symbols had been used was not at all indicated. Even the actual national symbols, that were used, were not specified. The allegation was in a vague form that what had been used were "national symbols such as the National Flag." The place or places where the national symbols had been used were not given. In a very vague form, it was mentioned that national symbols had been used in the constituency. That is no description at all of the place or places within the constituency where the corrupt practice of using the national symbols had been committed. So far as this election petition was concerned, the corrupt practice of using national symbols could only be relevant provided the national symbols had been used somewhere within the constituency. Instead of indicating the exact place or places where the act of using national symbols was done, what the petitioner did was to mention the whole constituency. The mere fact that the actual place of user was somewhere within the constituency would not mean that the way in which the place was indicated in this paragraph did amount to giving the particulars relating to the place of commission of the corrupt practice. Thus, in this paragraph, no particulars at all were given by the petitioner except, as we have said earlier, one specific particular relating to the identity of respondent No. 1 himself as one of the users of the national symbol. Clearly, what the petitioner did was to reproduce a major part of the language used in sub-section (3) of Section 123 of the Representation of the People Act relating

to this corrupt practice. In that provision of law one of the corrupt practices is defined to be the use of, or appeal to, national symbols such as the national flag or the national emblem. The national flag and the national emblem were mentioned as examples or national symbols. It is surprising that, in the petition where it was necessary for the petitioner to allege the exact national symbol which was used because he had to base his petition on facts which had already come into existence before the petition was filed he could not specify the particular national symbol used, but used the vague words "national symbols" and cited the example of the national flag as had been cited in the law itself. It seems that the petitioner had no definite information of facts on which he could base his ground.

He made allegations in the vague language which was used in the law itself and then hoped that he would be permitted to enter into a roving inquiry where, from time to time, he could change his case and bring forward any charges under this head on which he could subsequently collect materials. Such a pleading is clearly contrary to the provision of Section 83 of the Representation of the People Act and, in our opinion, such defects cannot be removed by applying for an amendment under Section 90 (5) of the Representation of the People Act. Under the latter provision of law, a Tribunal is empowered to allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition. It is to be noticed that this power granted to the Tribunal is confined to permitting an amendment or amplification. There can be an amendment or amplification of any particular only if the particular is first mentioned but it is either not a full particular or there has been some omission or accidental error in mentioning the particular. In a case where no particular at all is given, it cannot be said that this provision would permit the particulars to be supplied subsequently at any stage when the petitioner might choose to move the Tribunal to exercise its powers under this provision of law. In the case of paragraph 4(e), as we have indicated above, there were actually no particulars at all of the type required, either specifically or by necessary implication, under Section 83 of the Representation of the People Act and we do not think that Section 90 (5) could cover the case of an amendment or amplification by supplying of the particulars, for the first time, by a subsequent application in such a case. Consequently, the Tribunal was right in rejecting the application for amendment in so far as it related to paragraph 4(e) of the petition and in further striking off this paragraph under Order 6, Rule 16, C. P. C. as containing pleadings that were much too vague.

10. Finally, we come to paragraph 4(c) of the petition. In this paragraph, the allegation was that there had been systematic appeals to the Mohammedan electors to vote and to refrain from voting on grounds of community and religion. It was alleged that these systematic appeals had been issued by respondent No. 1 himself, his agents and other supporters, particularly Khwaja Khalil Ahmad Shah of Baharaich. The manner of making such appeals was said to be by holding Milad in five mosques on three different dates, 22nd, 23rd and 24th of February, 1957. It was further alleged that regular exhortations were made to the electors assembled in these mosques by respondent No. 1, his agents and supporters after the Milad with the sole purpose of exciting the religious susceptibilities of the Mohammedan electors, with a view to influence them to cast

their votes in favour of respondent No. 1 on religious and communal grounds. In this paragraph, the corrupt practice is said to have been committed by respondent No. 1, his agents and other supporters. So far as the commission of the corrupt practice by agents and other supporters is concerned, there is no allegation that they did so with the consent of respondent No. 1 or his election agents. Further, there is no allegation at all that the corrupt practice committed by the agents and supporters of respondent No. 1 had materially affected the result of the election. Consequently, in this paragraph also, so far as the allegation of the commission of corrupt practice by the agents and supporters of respondent No. 1 is concerned, that allegation has to be ignored and must be struck off from the paragraph for the reasons which we have already indicated earlier in this order.

11. There then remains the allegation of systematic appeals having been made by respondent No. 1. In the paragraph as it was originally put in the petition, the respondent No. 1 was described by this very description and that was quite sufficient for the purpose of the petition, as the full details of his identity were given at the beginning of the petition. The party, which was alleged to have committed the corrupt practice in the case of respondent No. 1, was, therefore described with full particulars. The dates when the corrupt practice was committed were also given in the paragraph by stating that the appeals had been made on the 22nd, 23rd and 24th of February, 1957.

The appeals, according to this paragraph, had been made by a number of persons and in several mosques. There was an ambiguity in this paragraph as to which particular person, charged with the corrupt practice, had committed the act of making an appeal in which particular mosque and on which particular date. The appellant gave three dates together without allocating to each date and appeals which were made in particular mosques mentioned in that paragraph. This is one of the defects which the appellant sought to rectify by his amendment application in respect of this paragraph. It appears to us that this prayer for amendment sought by the appellant was an appropriate prayer which could be put forward under Section 90 (5) of the Representation of the People Act. He had already given the dates for the acts constituting that had been committed but he had failed to specify separately the date of each separate act which constituted the corrupt practice. By the amendment application he has now clarified this position. According to Schedule III, sought to be added by the amendment application, respondent No. 1 made an appeal in Jama Masjid, Bashirganj on the 22nd of February, 1957, in Pir-Ki-Imli Ke Paswali Masjid, Nazirpura, on the 23rd of February, 1957, in Bambaiya Masjid, Bari Haat on the 23rd of February, 1957, in Ghasiyari Masjid, Salarganj on the 22nd of February, 1957, and in Chaurahe Ki Masjid, Chhawani on 22nd of February, 1957. It will thus appear that all the appeals by respondent No. 1, even after the specification were alleged to have been made on one or the other of the three dates which had already been mentioned in the original paragraph 4(c) of the petition. This amendment was, therefore, only a clarification for the purpose of removing the ambiguity and making the particulars already given clearer. Such an alteration in the paragraph would, in our opinion, be an amendment or an amplification of the nature contemplated by Section 90 (5) of the Representation of the People Act and this amendment should have been allowed by the Election Tribunal. Then a further amendment sought is by giving a more precise

description of the mosques in which respondent No. 1 made these appeals. In the original petition, the mosques were indicated by merely mentioning the mohallas in which they were situated. It appears that the appellant thought that his giving the names of the mohallas, in which the mosques were situated, would be sufficient to enable the respondent to identify the particular mosques to which he was referring.

When an objection was taken in the written statement on this point a contention was put forward on behalf of the appellant that sufficient particulars had been given; but later, when the appellant felt that the Tribunal was not inclined to accept his submission that the particulars were sufficient, he applied for amendment in order to give more detailed particulars in this respect. Again it seems that the appellant did try to give the particulars relating to the situation of the mosques but they were a little vague and incomplete. Consequently, by the amendment application he sought to specify each mosque by giving a more detailed description of it. The mohallas given are the same as were indicated in the original petition, but a further description of each mosque is given so that, if there be more than one mosque in that mohalla, the particular mosque which was used, could be easily identified. This is clearly an amplification of a particular which was already given in the original petition. Such an amplification should have been permitted under Section 90 (5) of the Representation of the People Act.

12. For opposing the amendment application a further contention was put forward by learned counsel that this application for amendment was made at a very late stage and, at such a stage, there would be no justification for allowing any amendment. We firstly take note of the fact that the Election Tribunal, in dismissing the amendment application, did not come to the view that the stage was so late that it would be inappropriate to allow an amendment application and the application was dismissed on an entirely different ground. Further, in the circumstances of the present case, we are of the opinion that the delay was not such as to disentitle the appellant from seeking this amendment. As we have indicated above, he had already given the dates when the appeals were said to have been made by respondent No. 1, his agents and his supporters and he had already given the description of the mosques which he thought would be sufficient. In the circumstances it would not be unnatural if, at the time of arguments before the Election Tribunal, he sought to justify his position and submitted that sufficient particulars had already been supplied. When at the conclusion of arguments, he discovered that his submission was not going to be accepted or possibly when in the arguments he got an indication of what particulars were missing, he moved this amendment application amplifying the particulars already given. We do not think that, in these circumstances, there would have been any justification for refusing this application for amendment.

13. In addition to these (sic) this ground, learned counsel for the respondents has urged one other ground before us for justifying the order passed by the Election Tribunal striking off paragraph 4 (c) of this petition. According to learned counsel, it was not sufficient in this paragraph for the appellant to say that systematic appeals had been made to the Mohammedan electors to vote and to refrain from voting on grounds of community and religion, nor was it sufficient to say that

regular exhortations were made to the electors assembled in the mosques with the sole purpose of exciting the religious susceptibilities of the Mohammedan electors with, a view to influence them to cast their votes in favor of respondent No. 1 on religious and communal grounds. The contention of learned counsel is that, if the appellant wanted to rely on the corrupt practice of making systematic appeals to the Mohammedan electors to vote and to refrain from voting on grounds of community and religion with the sole purpose of exciting their religious susceptibilities, the appellant should have given in his pleadings the exact words which had been used by respondent No. 1 when making such appeals. It is no doubt correct that, if the actual words could have been reproduced, it would have been more helpful to the respondent for the purpose of meeting the charge brought against him, but we are unable to accept the contention that, under Section 83 of the Representation of the People Act, it was mandatory for the appellant to reproduce the exact words. The language, which has been used in paragraph 4(c), gives a very clear indication of the nature of the appeals that were made. There is a mention that the appeals were made in the evenings after holding Milad and that the appeals were addressed to the Mohammedan electors who were present. There is the allegation that the appeals were to the effect that the electors should vote or refrain from voting on grounds of community and religion. There is the allegation that there were regular exhortations to the electors to cast their votes in favor of respondent No. 1 and that these exhortations were made with the sole purpose of exciting the religious susceptibilities of the Mohammedan electors who were present. It seems to us that these details given are quite sufficient to indicate the nature of the appeals that were made and there was no necessity to reproduce the actual words which were used in the appeals. The exact words may have to be proved during the trial of the petition but that is another matter on which we refrain from expressing any opinion at this stage. So far as the pleadings in the petition are concerned, the facts which have been stated in the paragraph appear to us to be sufficient to satisfy the requirements of Section 83 of the Representation of the People Act.

14. As a result of our above decisions, the order of the Tribunal striking off paragraphs 4(a), 4(b), 4(d) and 4(e) of the petition is maintained and to that extent the appeal fails. The order of the Tribunal striking off paragraph 4(c) of the petition is set aside but the portions in that paragraph relating to appeals made by persons other than respondent No. 1 shall be ignored. For the purpose of the trial of the petition, paragraph 4(c) shall be read as containing only the allegation of commission of corrupt practice by respondent No. 1 alone including particulars supplied in the amendment application. With these directions we set aside the order of the Election Tribunal dismissing the petition and remand the petition for a fresh trial to the Election Tribunal.

15. Costs of this appeal will abide the result of the petition, but whenever a direction is made for the payment of costs to one party or the other, the amount of costs of this appeal shall be deemed to be a sum of Rs. 250/-.

Order accordingly.