ALLAHABAD HIGH COURT

Moti Lal

Vs.

Mangla Prasad

First Appeal No. 83 of 1958

(M.L. Chaturvedi and D.N. Roy, JJ.)

16.05.1958

JUDGMENT

M.L. Chaturvedi, J.

1. This is an appeal under Section 116-A of the Representation of the People Act of 1951 (hereinafter called the Act) against the judgment of an Election Tribunal dismissing the election petition filed by the appellant.

2. The appellant Sri Moti Lal is an elector in the double member of U. P. Legislative Assembly Constituency No. 179 known as Meja Constituency, in the district of Allahabad. One seat in the constituency was reserved for a member of the scheduled caste and the other seat was a general one. The respondent No. 1 Sri Mangla Prasad was a candidate for the general seat and was set up by the Congress party and respondent No. 3 Sri Salig Ram Jaiswal was also a candidate for the seat and was set up by the Praja Socialist party. The two Scheduled caste candidates were respondent No. 2 Sri Jokhai Ram on behalf of the Congress party, and respondent No. 4 Sri Bansrup on behalf of the Praja Socialist Party. The poll was held on the 25th February, 1957, but it subsequently transpired that at the polling centre Babhni-Hather ballot papers had been wrongly issued. The Returning Officer brought this fact to the notice of the Election Commission, and the Election Commission ordered a repoll in Babhni-Hather. Counting of votes for all the centres, excepting Babhni-Hather, took place on the 1st and 2nd March 1957 in the presence of all the candidates and their counting agents, and it was known to these persons that both the Congress candidates had secured more votes than the candidates set up by the Praja Socialist Party. The repoll at Babhni-Hather took place on the 7th March, 1957. Counting of votes for this centre was held on the 8th March, 1957. Sri Mangla Prasad, respondent No. 1, secured 41653 total votes and Jokhai Ram 45846 votes. The two candidates set up by the Praja Socialist Party, namely, Sri Salig Ram Jaiswal and Sri Bansrup received 36590 and 40053 votes respectively. The respondents Nos. 1 and 2 were accordingly declared to have been elected to the

U. P. Legislative Assembly from this constituency.

3. The appellant, as an elector, preferred an election petition and sent it to the Election Commission within time allowed by law. The Election Commission appointed Sri P. K. Kaul, a retired Judge of this Court, as the Election Tribunal and referred the election petition for trial to Sri P. K. Kaul. The main prayers contained in the election petition are that the election of the respondents Nos. 1 and 2 be declared to be void and that it further be declared that the respondent No. 4 Sri Bansrup is the duly elected member of the U. P. Legislative Assembly from this constituency. Numerous grounds for setting aside the election were mentioned in the election petition and they were all denied by the respondents Nos. 1 and 2, who alone contested the election petition. The pleadings gave rise to as many as 21 issues. Many of these issues were overlapping and the Election Tribunal has considered such issues together. It has decided all the issues against the appellant.

4. At the hearing before us the learned counsel for the appellant urged four points. They are as follows :-

> 1. The first point urged by him is that the respondent No. 1 has been proved to be guilty of the corrupt practice mentioned in sub-section (7) of Section 123 of the Act, inasmuch as he obtained or procured assistance for the furtherance of the prospects of his election, from Sri Behari Lal, Sub-Inspector of Police, Sri Sukhdeo Ram Yadava, Consolidator employed in the department of Consolidation of Holdings, and Sri Rashid Ahmad, a lekhpal.
> 2. The second point urged by him is that the counting of votes obtained by the candidates at polling stations other than Babhni-Hather, before the repoll at Babhni-Hather had taken place, was a breach of the provisions of the Representation of the People Act, according to which the counting of votes should have been done only after polling had taken place at all the polling stations in the constituency.
> 3. The third point taken by the learned counsel is that another breach of the Constitution and of the Act was committed at all the polling stations, inasmuch as the peons posted at these polling stations were asked to instruct the voters that they would get two ballot papers but they should not put both of them in the box of the same candidate.
> The learned counsel contends that the peons should have further instructed the voters to put one ballot paper in one out of the two boxes of the two scheduled caste candidates and the other ballot paper in one of the two boxes of the two candidates for the general seat. The argument is that the omission to give full instructions has resulted in the voters putting both their ballot papers in the boxes for the two candidates for the general seat. He further says that in cases where a voter cast both his votes in favour of the two candidates for the general seat, one of the votes should have been declared to be invalid, because the voter was bound to cast at least one vote in favour of one of the two scheduled caste candidates, if he wanted to exercise his right of franchise in respect of both of his votes.

4. The fourth point taken by the learned counsel is that the cumulative effect of the commission of corrupt practice, mentioned in point No. 1, and the illegalities, mentioned in points Nos. 2 and 3, was that the result of the election had been materially affected.

We may now proceed to consider the different points urged by the learned counsel for the appellant.

Point No. 1.

5. That the respondent No. 1 has been proved to be guilty of the corrupt practice mentioned in sub-section (7) of Section 123 of the Act inasmuch as he obtained or procured assistance for the furtherance of the prospects of his election from Sri Behari Lal, Sub-Inspector of Police, Sri Sukhdeo Ram Yadav, a consolidator employed in the department of Consolidation of Holdings, and Sri Rashid Ahmad a Lekh-pal. The Election Tribunal framed issue No. 5 on this point and the relevant averments in the election petition are contained in clause (h) of paragraph 10. Originally in this paragraph it was averred that the respondents Nos. 1 and 2 and their agents and supporters, with the consent of the said respondents, obtained and procured the assistance of a number of persons in the service of the U. P. Government and belonging to one or the other of the classes mentioned in Section 123 (7) of the Act. This was said to have been done for the furtherance of the prospects of the election of the respondents Nos. 1 and 2 and had also materially affected the result of the election. Schedule A attached to the election petition, which refers to Sri Behari Lal, Sub-Jnspector of Police, mentions four actions of the Sub-Inspector of Police, namely, canvassing, distribution of cards, threatening voters and inducing voters.

The villages where the above four actions had been committed have been mentioned in the second column and the period of the commission of all these acts is given as every day about two months prior to the date of the Poll." In the remark column it is slated that the complaint against the Sub-Inspector was made to the Election Commission by sending ft telegram.

6. Schedule C relates to Sri Sukhdeo Ram Yadav, Naib Tahsildar, Consolidation of Holdings, and he is said to be responsible for the commission of 8 kinds of improper actions and the villages where they were committed have been mentioned. The period of the commission of the acts is shown as "'every day about a fortnight prior to the date of Poll". In the remarks column it is stated that written objections were filed at Upraura polling station against Sukhdeo Ram Yadav.

7. Schedule E gives a list of 38 lekhpals with the names of the villages where these lekhpals canvassed for the respondents and the period of canvassing is given as 20th January to 25th February 1957. Reference need not be made to other schedules.

8. Subsequently, the appellant filed an application for the amendment of his pleadings, some of which were allowed by the Election Tribunal by its order dated 14-9-1957. Before passing the order, it recorded the statements of the counsel for the parties with respect to some matters under controversy before it. With respect to the averments in clause (h) of paragraph 10, counsel for the respondents objected that full particulars had not been supplied, as the names of persons who

procured the assistance from the Government servants had not been mentioned nor had the nature of assistance, the manner in which it was obtained and the time and place at which it was obtained or procured had been disclosed. He prayed for rejecting the application made for amending the pleadings in this respect and for refusing to let this matter proceed to trial. Sri Mukherji, counsel for the appellant, then stated before the Tribunal that so far as clause (h) of paragraph 10 was concerned he would

> "lead evidence only about assistance having been obtained and procured by respondents Nos. 1 and 2. I do not want to lead any evidence on this subject concerning their agents and supporters". On this statement having been made, the words and their agents and supporters" were deleted. The clause, as it stands now, only contains the averment that respondents Nos. 1 and 2 obtained and procured assistance of persons in the service of Government. In Schedule A a list of persons was added, who were said to have been threatened by Shri Behari Lal.

9. After the deletion of the Portion, mentioned above, from clause (h) of paragraph 10, it was no longer open to the appellant to lead evidence of the fact that the agents and workers of the contesting respondents had obtained or procured assistance from any persons in the service of the Government, whether with or without the consent of the said respondents. The appellant was only entitled to prove that the respondents Nos. 1 and 2 themselves had obtained or procured assistance. Having been faced with this situtaion, the learned counsel for the appellant argued that, if the respondents Nos. 1 and 2 happened to receive any assistance from any person in the service of the Government, it should be held that the said respondent had obtained such assistance.

He conceded that this would not amount to procuring assistance but urged that obtaining assistance may be a mere passive act and, if the respondents happened to receive any assistance, they should be held guilty of the commission of corrupt practice mentioned in section 123 (7) of the Act. We do not agree with the learned counsel that a mere passive receipt of assistance without the consent or will of the candidate concerned can be said to fall under sub-section (7). It is true that the Legislature has used two words 'obtaining' and 'procuring' with the disjunctive word 'or' between them, and generally speaking it may be held that when the Legislature chooses to use two words in a disjunctive manner, the words generally are not synonyms. Maxwell in his book on "Interpretation of Statutes", 10th edition has said at page 321 :

> "Where analogous words are used each may be presumed to be susceptible of a separate and distinct meaning, for the Legislature is not supposed to use words without a meaning". But the above is not a rule of universal application and the very next sentence is,
>
> "But the use of tautologous expressions is not uncommon in statutes, and there is no such presumption against fullness, or even superfluity of expression, in statutes, or other written instruments, as amounts to a rule of interpretation controlling what might otherwise be their proper construction".

10. In Shorter Oxford English Dictionary the meaning given of the word 'procure' is

> "to bring about by care or by pains; to obtain by care or effort; to acquire".

It is not necessary to consider further the meaning of the word 'procure', for the learned counsel for the appellant conceded that in order to prove that assistance from a person in the service of the Government had been procured, it must be shown that the candidate had consciously done some positive act in order to bring about the result of receiving assistance from the person. His main contention was that the use of the other word 'obtain' did not necessarily signify that the assistance must have been obtained as a result of some positive and conscious action of the candidate. He said that the word 'obtain' meant nothing more than to get or receive. The meaning of the word 'obtain' in the dictionary, mentioned above is given as,

> "to procure or gain as the result of purpose or effort; to get."

11. We think that the word 'obtain' in Section 123(7) has been used in the sense of the meaning which connotes 'purpose' or 'effort' behind the action of the candidate. The word has not been used in the sub-section in the sense of a mere passive receipt of assistance without the candidate being even conscious of the fact that the assistance has been rendered. In order to bring the case under sub-section (7) it must be shown that the candidate did some effort or performed some purposeful act in order to get the assistance. The receipt of assistance must be the result of either purpose or effort, which implies that the getting of the assistance should be the result of some conscious action of the candidate and not a mere passive happening of his getting the assistance. It further appears to be unreasonable to impute to the Legislature an intention that the election of a candidate should be declared to be void, even though the candidate had no knowledge even of the fact that some person in the service of Government had taken into his head to assist a particular candidate.

12. This would be inconsistent with the entire scheme of the Act, as it stands after its amendment by Act No. XXVII of 1956. The grounds for declaring an election to be void are mentioned in subsection (1) of Section 100 and, as far as the commission of corrupt practice goes, the scheme appears to be that, if the corrupt practice has been committed by a returned candidate or his election agent or by any other person, with the consent of a returned candidate or his election agent, the case would fall under Section 100(1)(b) and tire commission of corrupt practice by itself would be sufficient for declaring his election to be void; but if the corrupt practice has been committed by a person other than the persons mentioned above, the election of the returned candidate is not declared to be void unless the commission of the corrupt practice has materially affected the result of the election, in so far as it concerns the returned candidate. All agents other than the election agents would fall within the expression 'any other person' so that it is quite clear that even if a corrupt practice is committed by an agent, as defined in Explanation 2 attached to

sub-section (7) of Section 123, the case would not fall under clause (b) of Section 100 (1), unless it is further proved that the said agent committed the corrupt practice with the consent of the returned candidate or of his election agent. In this connection the learned counsel for the appellant argued that a reading of sub-section (2) of Section 100 would show that a candidate is always liable for the actions of his agents. Sub-section (2) begins by saying :

> "If in the opinion of the Tribunal, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice".

The learned counsel argued that the words, quoted above, clearly showed that a returned candidate could be held to be guilty because of the action of his agent. The learned counsel referred to clause (a) of the sub-section and said that sub-section (2) could only apply where the corrupt practice was committed without the consent of the returned candidate. Still the words, quoted above, contemplated a case where a candidate could be held to be guilty by some action of his agent. This contention of the learned counsel cannot be accepted for various reasons.

13. Sub-section (2) is not a disqualifying clause at all and was never intended to lay down conditions on proof of which the election of a candidate was to be declared to be void. It is concerned only with the cases of a trivial nature in which the corrupt practice was committed without the consent and contrary to the orders of the candidate or his election agent, and in which the candidate or his election agent took all reasonable means for preventing the commission of the corrupt practice. It is in the nature of an exception to sub-section (1) and mentions four conditions on the fulfilment of all of which alone sub-section (2) can come into operation. The provisions of sub-section (2) will apply only to a case where, in the opinion of the Tribunal, a returned candidate is held to be guilty because of some of his agent. But this can never happen under sub-section (1) unless it has been established that the returned candidate had consented to his agent committing the corrupt practice. The words " a returned candidate has been guilty by an agent" presuppose that the guilt of the returned candidate has been established and they do not purport to create a ground by themselves of declaring the election to be void.

14. A reference to Section 100, as it stood before the amendment of 1956, makes the position clear. In the unamended section, sub-section (2)(b) was to the effect that if the Tribunal was of opinion that any corrupt practice specified in Section 123 had been committed by a returned candidate or his agent or by any other person with the connivance of a returned candidate or his agent, the Tribunal was to declare the election of the candidate to be void. Then came sub-section (3) which was word for word the same, as the present sub-section (2), excepting for an insignificant difference. Sub-section (3) then had a meaning because it provided an exception to clause (b) of sub-section (2), though sub-section (2) began by saying that it was subject to the provisions of sub-section (3). After the amendment, sub-section (2) of Section 100 appears to be a wholly superfluous and meaningless piece of legislation. No case falling under sub-section (2) can even fall within the ambit of sub-section (1) of Section 100. A case which fulfils all the

requirements of clauses (a) to (d) of sub-
section (2) will never fall under Section 100(1)(b) or Section 100(1)(d)(ii) of the Act.

15. We may now refer to the unsatisfactory nature of pleadings on this question of obtaining assistance from persons in the service of Government. In Schedule A it is stated that Behari Lal Sub-Inspector did canvassing, distribution of cards, threatening voters and inducing voters, and he did this for every day about two months prior to the date of the polls. The villages in which different kind of assistance was given have been mentioned, but the time of all the types of canvassing done in the villages is "every day about 2 months prior to the date of the polls". This means that in all the villages Behari Lal was doing all these different kinds of canvassing work every day for a period of two months. The pleading is, to say the least, very unsatisfactory, and is in line with the general trend followed in this election petition of trying to allege all sorts of corrupt practices, leaving it open to the appellant to furnish such evidence subsequently as he might be able to collect. Sukhdeo Ram Yadav is said to have afforded assistance by doing eight kinds of work in these villages every day for about a fortnight prior to the date of poll. It is impossible for a respondent in an election petition to meet allegations like this. This fact that these allegations were made without any sense of responsibility is proved from the nature of evidence that ultimately could be produced. The learned counsel for the appellant argued that sufficient particulars of the commission of corrupt practice had been given, but as a matter of fact very few particulars of the commission of corrupt practice were really given. The corrupt practice is the obtaining or procuring of assistance either by the candidate or by others for him and not the actions of Government servants. The petition does not disclose the date, the time and the place when the respondent Sri Mangla Prasad obtained or procured assistance from any of the Government servants mentioned in the election petition. The pleadings really were not in compliance with Section 83 of the Representation of the People Act as remarked by the Election Tribunal, but as the case has gone to trial and evidence has been adduced on the point, we think that it should not be discarded at this stage of the case on the ground that the pleadings in the case were very defective. We consequently proceed to consider it, keeping in view the fact that the appellant did not or could not make any definite allegations till the stage of leading evidence except in two matters, namely the complaint by P. W. 46, Radhey Shiam Pathak, against Behari Lal and by P. W. 34 Uma Datt Tewari against Sukhdeo Ram Yadav.

16. It may also be stated that no evidence has been produced to prove that either respondent No. 1 or respondent No. 2 approached any of the Government servants to afford assistance to them for the furtherance of the prospects of their election. An attempt has only been made to prove that the respondent No. 1 or some of his workers were present at the time when the persons in the service of the Government were affording assistance for the furtherance of the prospects of the election of respondent No. 1. The evidence of the presence of the workers or supporters of the respondent No. 1 at such times need not be considered at all, because the case that the workers and supporters of the respondents obtained or procured assistance from the persons in the service of the Government was expressly given up before the Tribunal, by the learned counsel for the

appellant. We have also held above that mere proof that some assistance was offered by a person in the service of the Government is not sufficient by itself to bring the case within the ambit of sub-section (7) of Section 123 of the Act. It must further be proved that assistance was obtained or procured from a person in the service of the Government.

> (After discussing evidence their Lordships decided point No. 1 against the appellant and proceeded.)

17. We agree with the findings of the Election Tribunal as regards the credibility of the oral evidence produced by the appellant on point No. 1 except in regard to distribution of cards by Behari Lal in village Sunderpur.
Point No. 2.

18. Whether the counting of votes before the repoll at village Babhni Hather was against the provisions of the Representation of the People Act.
19. This point was made the subject matter of issue No. 15(a) and (b). The relevant averments in the election petition are contained in paragraph 10(t). In their written statements both the respondents Nos. 1 and 2 have denied that any irregularity was committed.

20. The relevant facts with respect to this point are that the polling at all stations took place on 25-2-1957, but it was discovered that wrong ballot papers had been issued at Babhni Hather and a reference was made 'to the Election Commission by the Returning Officer, Allahabad. The Election Commission directed, by its telegram dated 1-3-1957,

> "taking of fresh polls for either election under Section 58 of the Representation of the People Act, 1951, in polling station number fifty-four of Meja Assembly Constituency forming a component part of Allahabad Parliamentary Constituency on sevendi March between 8-30 a. m. and 4-30 p. m." The date and hour of fresh poll was to be notified and a fresh set of ballot paper boxes was to be issued. In compliance with the above direction, the 7th of March was fixed for the repoll at Babhni Hather, but the counting with respect to the other polling stations took place on the 1 st and 2nd Mar. 1957.

As a result of this counting, it became apparent that even if all the voters of this polling stations cast their votes in favour of respondent No. 3, the said respondent could not succeed as the total number of votes secured by Sri Mangla Prasad and Sri Jokhai Ram. (Sie) Respondent No. 3 says that for this reason he took no further interest in the polling at Babhni Hather on 7-3-1957 as a result of which he did not get any vote at this polling station. Altogether 883 votes were cast, out of which 11 were declared invalid and 872 were in favour of the respondent No. 1.

21. P. W. 59 Sri Debi Singh Faujdar was the District Election Officer and also the Returning Officer of Meja Constituency in the last election. From his statement it appears that the actual

mistake committed by the Presiding Officer at Babhni Hather was that, the constituency being a double member constituency, each voter should have got two ballot papers of the same series, having the same serial number, but this instruction of the Election Commission was not observed. The Presiding Officer did issue ballot papers marked A and B to each voter, but did not in some cases issue the ballot papers of the same series to them. When the counting for other stations started, the candidates or their counting agents who were present at the time, were told on 1-3-1957, that the votes for Babhni Hather would not be counted due to the above mistake but none of them took any objection to the counting of the rest of the votes. The contention of the learned counsel for the appellant is that the case tell under Section 57 of the Representation of the People Act, and the last sentence of that section enjoins that counting of votes should be done alter the polling at all the centres had taken place. It is true that there is this direction contained in the last sentence of the section, but the section deals with cases in which the taking of poll has to be adjourned, before it has been held. It enumerates the conditions under which the poll should not be held at all and should be postponed. It has nothing to do with a case where the polling has actually taken place. The Election Commission purported to act under Section 58, which specifies the conditions on the happening of which a repoll is to be ordered. This section does not contain any direction that the counting of votes should take place after the polling at all the centres had been finished. But the conditions enumerated in this section, on the happening of which a repoll can be ordered, do not include a case like the one before us. The section does not say that a repoll is to take place if the Returning Officer has committed a mistake in issuing the ballot papers. The case thus does not fall under Section 58 either. As Section 57 of the Act did not apply, there was no prohibition against counting of votes polled at other centres. The above decision is sufficient for disposing of the point argued by the learned counsel; but connected with it is the question whether the votes cast in favour of respondent No. 1 at Babhni Hather on 7-3-1957 were wrongly counted in favour of the said respondent and whether this illegality affected the result of the election.

22. The learned Advocate General relied upon Article 324 of the Constitution, which provides that superintendence, direction and control of elections to the Legislature of every State, as well as some others, shall vest in the Election Commission. The Election Commission has thus been conferred very wide powers in the conduct of elections like the one before us, and the superintendence, direction and control over the elections vest in the Election Commission. Article 327 of the Constitution says that, subject to the provisions of the Constitution, Parliament may from time to time, by law, make provisions with respect to all matters relating to or in connection with elections to either House of the Legislature of a State or to either House of Parliament. It is under this provisions of the Constitution that the Representation of the People Act has been enacted by the Parliament and in matter governed by the Representation of the People Act, the position appears to be that the Election Commission is bound to follow the provisions of the Act in respect of the express directions contained in the Act passed by the Parliament, in the exercise of its powers under Article 327 of the Constitution. Article 327 has been made subject to the provisions of the Constitution and Article 324(1) is one of such

provisions, but the power contained in Article 324(1) is a general power and the Election Commission, therefore, would be bound to carry out the specific provisions contained in any Act passed by the Parliament. But where the Act itself omits to provide for a contingency and does not contain any provision for meeting the situation, the general power conferred upon the Election Commission by Article 324(1) of the Constitution will come into play, and the commission will have a right to pass the necessary orders, if they fall within the ambits of its powers, enumerated in Article 324(1). The question whether a repoll should be held or not at a particular polling station is one which falls under the words 'conduct of an election'.

23. For the above reasons, we are inclined to think that the Election Commission was empowered to direct a repoll under Article 324(1). But we need not express any final opinion on the point, because even if all the votes polled at Babhni Hather are held to be invalid, the result of the election could not be different, as the difference in the number of votes secured by the respondent No. 1 and the respondent No. 3 exceeds six thousands. Following the principle laid down in the case of *Va-shista Narain Sharma v. Dev Chandra reported in*[1] it must be held that the result of the election so far as the respondents No. 1 and 3 are concerned has not been materially affected by the irregularity, assuming there was one. No such argument has been advanced to us

[1] AIR 1954 SC 513

with respect to respondent No. 2, Sri Bansrup, and it has not been contended that Bansrup did not receive any votes at the repoll at Babhni Hather. The votes previously polled have not been counted at all and we think that, in view of the principle laid down in *Hari Vishnu Kamath v. Ahmed Ishaque reported in*[2] the votes previously cast must be held to be invalid as wrong ballot papers had been issued. This point, therefore, must also be answered against the appellant.
Point No. 3.

24. The third point urged by the learned counsel for the appellant is that wrong instructions were issued to voters by the peons posted at different polling stations, and, as the same wrong instructions were given at all the polling stations, the irregularity must be held to have materially affected the result of the election.

25. Issues Nos. 1 (a) and (b) were framed by the Election Tribunal and the relevant averments are contained in paragraph 10(a) of the election petition. They are to the effect that one vote in this double member constituency was reserved for the scheduled caste candidate, but, on the day of and during the election, the peons on duty at the entrance of the polling compartments used to warn every voter that he should insert the two ballot papers in two different boxes if he wanted both of his votes to be counted, and if he inserted both the ballot papers in the same box, one of the votes would be rejected. The complaint of the appellant is that the voters should further have been told that they could insert only one ballot paper in either of the two boxes kept for the candidates for the general seat and they could not insert both the ballot papers in each of the two boxes kept for the two candidates for that seat. The learned counsel has argued that one of the seats having been reserved for a scheduled caste candidate, the voter could elect only one person

for the general seat and therefore he could not cast both of his votes in favour of the two candidates for the general seat thus omitting to vote entirely for any candidate of the scheduled caste.

It is contended that special provisions have been made relating to elections to seats reserved for the scheduled castes, in Part XVI of the Constitution, and Article 332 of the Constitution contains specific directions that seats shall be reserved for the scheduled castes and the scheduled tribes in every State. The Article also lays down the number of seats to be reserved, which should be in proportion to the total number of seats and the population of the scheduled castes in the State. But the learned counsel has not been able to point out any specific provision either in the Constitution or in the Representation of the People Act, which restricts the right of the elector to cast his vote in favour of any candidate or candidates of his choice, and the argument has been based on the general scheme laid down in the Constitution conferring special scheme laid down in the Constitution. We do not think that the contentions of the learned counsel for the appellant have any force and the rule about the reservation of scats necessarily implies the reservation of vote also for members of the scheduled caste. The Constitution has avoided even the shadow of separate electorates. Even the reservation of seats is for a definite period of time. The right of franchise which every adult citizen enjoys has not in any way been restricted and every elector has a right of expressing his choice for two candidates in a double member constituency. There having been placed no restriction on this choice, the elector can cast both of his votes in favour of any two candidates. It is admitted that he can cast both of his votes in

[2] AIR 1955 SC 233

favour of both the candidates for the scheduled castes and the law is not likely to have contemplated the conferment of any further favour on the members of the scheduled castes, by imposing a further restriction on the right of the elector to express his choice only for one candidate in a double member constituency. Section 55 of the Representation of the People Act makes it clear that it is possible that both members of the scheduled castes may be elected in a double member constituency, though both members not belonging to such caste cannot be elected. The instructions that were issued by the peons on duty, to the electors, were fully in accordance with the provisions of Section 63 of the Representation of the People Act and we think that the instructions were full and complete. This point also, therefore, must be decided against the appellant.

Point No. 4.

26. The 4th point is whether the result of the election had been materially affected by the commission of any of the corrupt practices committed by persons other than the respondent No. 1 and his election agent, but with the consent of either of them; and by the alleged irregularities which were the subject matter of points Nos. 2 and 8.

27. We have held that, as far as the commission of the corrupt practice by obtaining or procuring assistance from persons in the service of the Government is concerned, no such case has been established against the respondent No. 1 or respondent No. 2 at all, and the case that the workers

and supporters of the said respondents committed the corrupt practice had been specifically given up by the learned counsel for the appellant on the date of the settlement of issues. We have already said that there was no irregularity committed as far as point no. 3 is concerned, and with regard to point No. 2 also we have held that there was probably no irregularity, but even if there was one, it did not materially affect the result of the election.

28. For the reasons given above, this appeal should fail and it is accordingly dismissed with costs. We assess counsel's fee at Rs. 400/-.
Appeal dismissed.