

MADHYA PRADESH HIGH COURT

Bhartendra Singh

Vs.

Ramsahai Pandey

Election Petn. No. 1 of 1971

(Surajbhan, J.)

09.07.1971

ORDER

Surajbhan, J.

1. (Dated 9-7-1971):- (On preliminary issues Nos.8 (a) and (b), 9, 10, 11, 14 and 15).

I. Issue Nos.8 (a) and 8 (b) :- Sri Thakur the learned counsel for the petitioner, has submitted that as the respondent No.7 is neither a necessary nor a proper party for the decision of this election petition and thus his name is struck off from the array of the respondents, the allegation made in paragraph 12 of the petition and the particulars supplied in annexure-7 are not now necessary, and paragraph No.12 of the petition may be permitted to be struck off. Counsel for the other parties have also raised no objection to this submission, and the result is that paragraph No.12 of the petition is ordered to be struck off. With this view, it is not necessary to go into the question whether the allegation made in this paragraph suffers from lack of material particulars. As a consequence, it is now unnecessary to keep the issue for proof, and it is also, therefore, struck off.

2. II. Issue No.9:- Sri Dharmadhikari, the learned counsel for respondent No.1, has taken me through the affidavit filed by the petitioner and contended that in para 1 (A) of the affidavit, the petitioner has said that corrupt practices pleaded in paragraphs 3 to 6 of the petition along with the pleadings in paragraph 2 of the same petition and in paragraphs of the annexures 1, 2 and 3 along with their full leaf-lets, are true to his knowledge and information received and believed to be true and in paragraph (b) again he has said that the statements made in the above said paragraphs are true to his information, which are not according to the provisions of Order 19, Rule 3 of the Code and the affidavit is, therefore, defective.

3. Sri Thakur, the learned counsel for the petitioner, on the other hand, has urged that in para B of his affidavit, he has again repeated that the aforesaid statements are true to his information also and thus there is no defect in the form of the affidavit filed which may only be a repetition.

4. I have heard the learned counsel for the parties and given my careful consideration to the questions raised before me, and I am of the opinion that the affidavit filed by the petitioner is not in accordance with the law.

5. It is true that the Proviso to section 83 of the Representation of the People Act, 1951, does provide that where the petitioner alleges any corrupt practice, that petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof, and the reason for the same is obvious, as, if the affidavit is found to be false, the deponent can be made liable for perjury. Rule 94(a) of the Conduct of Election Rules, 1961, provides that the affidavit referred to in the Proviso to sub-section (1) of Section 83 of the R.P. Act shall be sworn before a magistrate of the First Class or a Notary or a Commissioner of Oaths and shall be in the form No.25.

6. Order 19 of the Code of Civil Procedure deals with affidavits. Rule 3 of this Order says that affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove except on interlocutory applications on which the statements of his belief may be admitted, provided that the grounds thereof are stated. In the instant case, the petitioner, in paragraph A of the affidavit, as aforesaid, has said that the corrupt practices alleged in paragraphs 3, 4 and 5 and 6 of his petition, along with annexures are true to his knowledge and information received and believed to be true which appears to be meaningless, as the identical facts cannot be verified both on knowledge and information. Rule 4 of Chapter III of the High Court Rules and Orders also says that except in interlocutory proceedings, the affidavits shall strictly be confined to such facts as the declarant is able of his own knowledge to prove. So the contention raised by Sri Dharmadhikari is correct and as the defect found in the affidavit is not fatal, the petitioner is allowed to file a correct affidavit before the Court during the course of the day, and the issue is decided accordingly.

7. III. Issue No.10: Sri Dharmadhikari, the learned counsel for respondent No.1 has

not been able to point out as to how the verification made by the petitioner at the end of his petition is defective.

8. Section 83(c) of the Representation of the People Act says that an election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure 1908 for the verification of the pleadings. Order 6 Rule 15 (2) which deals with verification of the pleadings clearly says that the person verifying shall specify by reference to the numbered paragraphs of the pleadings what he verifies from his own knowledge and what he verifies upon information received and believed to be true. The petitioner in his verification of the petition has said that he had verified the contents of paragraphs 1 to the end of the petition as true to his information received and believed to be true. The object of verifying is to fix on the party verifying the responsibility for the statements that he makes. It is true that the court is bound to see in every case that the pleadings are verified in the manner prescribed as the verification is not treated as a formality. In the instant case, in my view, the verification made by the petitioner is proper and I am supported in my view by the ruling of the SC in *Bhikaji Keshao Joshi v. Brijlal Nandlal Biyani*¹

9. This issue is, therefore, decided in favor of the petitioner and against the respondent No.1.

10. IV. Issue No.11:- The respondent No.1 has raised an objection in para 15 of his written statement that the petitioner having not complied with the provisions of Section 81(1)(3) of the R.P. Act, 1951, the petition was liable to be dismissed, and therefore, this issue was framed.

11. Sri Dharmadhikari has rightly conceded before me that there is no such non-compliance and as a result, this issue stands decided in favor of the petitioner and against the respondent No.1.

12. V. Issues 13, 14 and 15:- The above three issues are connected and it would be convenient to deal with them together.

13. These issues were framed on the additional pleadings of the respondent No.6. and they are three in number, viz.

- (i) the election was rigged with ingenious devices, i. e. the ballot paper was subject to chemical treatment and the election deserved to be set aside.
- (ii) the amendment of old Rule 56 of the Conduct of Election Rules, 1961, is ultra vires and that had materially affected the result of the election, and
- (iii) the illegal reservation of the symbol for the Congress (J) and its allotment to respondent No.1 has materially affected the result of the election.

14. This election petition has been filed by a voter of Rajnandgaon Parliamentary (Lok Sabha) Constituency. Respondent No.6 is the defeated candidate at the election. The petitioner in paragraph 2 of his prayer clause has prayed that respondent No.6 should be declared duly elected as a returned candidate from this Constituency. Respondent No.6 in paragraph 10 of her written statement has prayed that the election petition be allowed with costs. It is also pertinent to note that no recriminatory petition has been filed under Section 97 of the Representation of the People Act, 1951.

15. The question for decision is, whether respondent No. 6 is legally competent to raise those additional pleas as in A, B and C, as aforesaid.

16. Sri Dwivedi, the learned counsel for respondent No.6, has argued that as the Code of Civil Procedure is applicable to the election petitions, the respondent No.6 is competent to raise all these pleas vide Order 8, Rule 2, and there is nothing in Section 100 of the Representation of the People Act, 1951, to disentitle the respondent from raising any plea which is available to the petitioner. Sri Thakur for the petitioner has also supported him, but Sri Dharmadhikari, the learned counsel on behalf of the respondent No.1, has invited my attention to Article 329 (b) of the Constitution as well as to Section 80 of the R.P. Act and other relevant sections, and urged that the respondent No.6 had not come before the court with an election petition, and she could not be allowed to raise those allegations which virtually take the form of a new election petition and that too after the period of limitation was over.

17. Having heard the learned counsel for the parties, I have formed the opinion that respondent No.6 cannot be allowed to raise those allegations which virtually make her written statement as an election petition for the reasons I presently show.

18. Article 329 (b) of the Constitution provides that no election in either Houses of Parliament shall be called in question except by an election petition presented to such

authority and in such a manner as may be provided for by or under any law made by the appropriate legislature. Section 80 of the Representation of People Act, 1951, clearly provides that no election shall be called in question except by an election petition presented in accordance with the provisions of this part. Section 81 deals with the presentation of the petition and Section 82 about the parties to the petition. Section 83 deals with the contents of the petition and Section 84 deals with the relief that may be claimed by the petitioner. Section 97 deals with recriminatory petitions and the procedure is prescribed therein. When a declaration is sought by a petitioner that he himself or any other candidate should have been duly elected, virtually it becomes an election petition as he has to deposit the security referred to in Sections 117 and 118 respectively of the Representation of People Act, 1951. Section 100 deals with the grounds for declaring the election to be void. Clause (d) (iv) of this Section deals with any non-compliance with the provisions of the Constitution or of the Representation of the People Act or any rules or orders made there under.

19. The allegations made in additional pleas A, B and C, are fully covered under this clause. It is not in dispute that none of the aforesaid grounds are covered by the election petition and an amendment sought to that effect has been refused by my order dated 8-7-1971.

20. Now the question that arises is, whether the respondent No.6 could be allowed to raise such pleas which should have formed the subject of an election petition, but have not been incorporated therein. In my opinion, this is not legally permissible. For example, a petition fails on the ground on which it is made and if any of the respondents raised a new ground of charge or corrupt practice in his written statement which is not included already in the election petition, neither it stands to reason nor is it allowed by the provisions of the Representation of the People Act that any election of a successful candidate can be declared void (not on the grounds on which the petition fails, but on the ground of corrupt practice or contravention of certain rules under the Representation of the People Act, raised by the respondent), and in this case, for instance, the respondent No.6 has herself, for the reasons best known to her, did not choose to file an election petition, and so she cannot be allowed such a relief.

21. It is pertinent to note that an election contest is not an action at law or a suit in equity but it is a purely statutory proceeding unknown to the common law and the statutory requirements of the Election law must be strictly observed. It is again true

that while the success of the candidate succeeding at an election should not be lightly interfered with and an election petition must strictly conform to the requirements of law, but the purity of the election process has to be safeguarded and it must be seen that people are not elected by flagrant breaches of law or corrupt practices. It is also further noteworthy that the respondent No. 6 in my view cannot raise those pleas which virtually turn her written statement in an election petition when she could have filed one in time but failed to do so by raising especially those issues about which there is no basis in the election petition itself. Order 8, Rule 2 of the Code of Civil Procedure in this case does not help her and Sri Dwivedi has not been able to point out any legal authority at the Bar whereby respondent No.6 could be considered to be legally competent to raise such pleas anew as have been raised now in spite of the fact that there is no basis for them in the election petition and they are covered under Section 100(d) (iv) of the Act.

22. I am, therefore, clearly of the opinion that the pleas raised by respondent No. 6 (vide A, B, C) cannot be allowed to form the basis of an issue and consequently, issues 13, 14 and 15 are struck off, and the aforesaid issues are decided accordingly.

23. (Dated 12-10-1971) :- This is an election petition under Section 81 of the Representation of the People Act, 1951 (hereinafter called the Act), by Sri Bharatendra Singh, a voter of Rajnandgaon Parliamentary (Lok Sabha) Constituency, against respondent No.1. Sri Ram Sahai Pandey, who was got elected by a majority of about one lakh of votes. All the six respondents had contested the election.

24. The validity of the election of the respondent No.1 has been challenged by the petitioner on various grounds viz, that the symbol allotted to the respondent No.1. "calf and cow" was a religious symbol as cow is worshipped in this constituency and is considered as 'Gau Mata' and 'Laxmi', and the ceremonies relating to her worship are detailed in paragraph 3 of the election petition. It is also alleged that the respondent No.1 has been guilty of corrupt practice under Section 123(3) of the Act. It is further alleged, that the respondent No.1 had addressed, a public meeting on 25-2-71 at Khairagarh in connection with his election, in which he had made an appeal to the gathering there that if they failed to give vote for Gau Mata, they would be committing sin and go to hell, and that is a corrupt practice under Section 123 (2)(a) (ii) of the Act. An allegation has also been made in paragraph 5 of the election petition that the respondent No.1 has been guilty of corrupt practice under Section 123(4) of

the Act as he had made a statement which was false in relation to the candidature of the respondent No.6, and the contents of such a false statement said to have been made are contained in Annexure-II. It is also alleged that one Bhagwandas Sahu of village Anjora, Tahsil Rajnandgaon, district Durg, with the consent of respondent No.1 and his election agents had procured a jeep car, registration No.ORG 999, for the purpose of conveyance of the voters in the prohibited area of the polling booth No.25 at Kopedih in Khairagarh Tahsil on 1-3-71, i. e. on the date of poll, and thus he has been guilty of corrupt practice under Section 123(5) of the Act. It has also been alleged that by the improper reception of votes as detailed in paragraph 8, and annexure-4, of the petition, as also due to violation of Section 22 of the Act, as alleged in paragraph 9 of the petition and annexure-5 appended to it, and on account of the distribution of electoral chits to the voters during the poll, all this, has materially affected the result of the election. The petitioner has prayed that the election of the respondent No.1 be declared void and respondent No.6 be declared to have been duly elected from this constituency.

25. The respondent No.1 contested the election petition and averred on the grounds inter alia that the symbol of "calf and cow" is not a religious symbol even though a cow is looked with respect and reverence on account of her economic utility, and this symbol was allotted by the Election Commission of India to the Indian National Congress (Ruling), and the decision of the Election Commission in this matter was final, and hence he denied the commission of any corrupt practice under Section 123(3) of the Act, as alleged. He also denied the allegations made in Annexure-1 to the petition, and the commission of corrupt practice under Section 123(2)(a) (ii) of the Act as alleged in the petition. He further denied having made any statement as detailed in Annexure-2 to the petition, and also the fact that he ever gave any consent to one Bhagwandas Sahu for hiring of jeep for the purpose of transporting voters. He also denied the fact that he had appointed any polling agent. The other allegations made in paragraphs 7, 8, 9 and 10 of the election petition were also denied.

26. The following issues were framed on the pleadings of the parties.

Issues

- (1) Is 'calf and cow' a religious symbol within the meaning of Section 123(3) of the Representation at the People Act, 1951, and if so, what is its effect?
- (2) Did respondent No.1 induce the electors that if they failed to put seal on

'calf and cow' symbol for the purpose of his election, they will commit sin and suffer in hell?

(3) Did respondent No.1 make a false statement as detailed in paragraph 5 and annexure-2 of the petition?

(4) Did Bhagwandas Sahu of village Anjora, tahsil Rajnandgaon, district Durg, procure jeep (registration No.ORG 999) for the purpose of conveyance of the electors on 1-3-1971 with the consent of the respondent No.1 and his election agents to prohibited area of polling booth No.25 of Kopedih, and as such has he committed a corrupt practice under Section 123(3) of the R.P. Act?

(5) Was there an improper reception of the votes as detailed in para 8 and annexure-4 of the petition and has it materially affected the result of the election?

(6) Was there violation of Section 22 of the R.P Act as alleged in paragraph 9 and Annexure-5 of the petition and with what effect?

(7) Did respondent No.1 get distributed through his agents in the constituency during the Poll, elector-chits as alleged in para 10 and annexure-6 of the petition and what is its effect?

(8) (a) Did respondent No.7 get published and circulated annexure No.7 as alleged in paragraph 12 and annexure-7 of the petition and what is its effect?

(b) Does this allegation suffer from lack of material particulars?

(9) Is the affidavit filed by the petitioner not in the prescribed form and also not according to law?

(10) Is the verification of the petition not proper?

(11) Has the petitioner not complied with the provisions of Section 81(1) and (3) of the R.P Act and if so, is the petition liable to be dismissed?

(12) Is respondent No.6 entitled to special costs?

(13) Does the election of the respondent No.1 become void on account of contravention of the provisions of the Constitution, the R.P. Act and the rules made there under as detailed in para A of the additional pleadings and has it materially affected the result of the election?

(14) Did the allegation made in para B of the additional pleas regarding the amended rule 56 of the Conduct of Election Rules 1971, is covered under Section 100 (d) (iv) of the R P. Act, and if so, what is its effect?

(15) Did an allegation made by respondent No.6 in para C of his additional pleas is covered under the provisions of Section 100 (d)(iv) of the R.P. Act, and if so, has it materially affected the result of the election?

(16) To what relief, if any, the petitioner is entitled to?

27. Only respondents 1 and 6 contested the election petition, while respondents 2 to 5 remained ex parte, and respondent No.7 was discharged during the interlocutory stage.

28. Out of the issues framed in the case, Issues 8 (a), 8(b), 13, 14 and 15 were struck off, while issues 9, 10 and 11 were decided vide my order dated 9-7-1971 passed during the interlocutory stage.

29. Now I take up issues 1 to 7, 12 and 16 and my findings on them are as given below.

30. Issue No.1:-

This issue is based on the averments made by the petitioner in paragraph 3 of the petition. In brief it says that the Parliamentary constituency in question consisted of 8 assembly constituencies and it is mainly populated by Hindus. Among the Hindus also, the main population is of Gaharas, i. e. Gavaras, Yadavas and Ahirs (care-takers of milk giving animals), and this caste of Gaharas was about one-fifth of the total electors in the constituency which can be safely said to be to the tune of 1.5 lakhs. These electors worship cow and calf and they treat them as their religious symbol. It is also alleged that they also worship this symbol on paper as their 'Gau Mata' and 'Laxmi'. It is further alleged that from the cow-dung (Gobar), Goverdhan is made by the people in public as well as private places, and the ceremony, as referred to in the petition is as follows:-

"From the cow-dung (Gai-ka-gobar) religious symbol of 'Gobardhan' is created by the people in a public place and also in private places. Then 'Gobardhan' is worshipped and cow and calf, after 'Sohai' ceremony are brought adjacent to the 'Gobardhan', and then front leg-toes of the cow and calf are touched on the 'Gobardhan', and the cow and calf are then worshipped and fed with 'Khichadi' (a preparation of rice and pulse) and then the remaining 'Khichadi' is eaten by the people attending the ceremony as the 'Prasad'. Usually Goat and Cocks are also sacrificed before the cow and calf for fulfilling the faith of prosperity. After this, by beat of village drums, the cow and calf are allowed to run away and then the religious function ends with a followed group and Solo dances by the

'Gahara' Hindus. The dances are also continued on the following days."

It is further alleged that the respondent No.1 had known that cow and calf are worshipped by a majority of the electors in this constituency and that being their religious symbol, and he having used it in his election propaganda, has committed corrupt practice under Section 123(3) of the Act.

31. The respondent No.1 has denied these allegations and averred that 'cow and calf symbol is not religious in our country, and more particularly in the constituency in question. He further said that 'cow and calf are respected on account of their economic utility and not on any religious basis. He further alleged that the symbol of calf and cow was given to the Indian National Congress and he being an official candidate for the same, he contested the election on that symbol. Thus in brief he denied the commission of the corrupt practice alleged against him. Section 123(3) of the Act says:- ". The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or to refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of or appeal to religious symbols or the use of; or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate" is a corrupt practice. The corrupt practice alleged against the respondent No.1 is regarding the use of religious symbol and an appeal made on this basis. The petitioner, in support of these allegations, has relied on the documentary as well as oral evidence. The petitioner has examined himself as P.W.1, Bhanwarlal (P.W.2), Vidyabhushan Thakur (P.W.6) Paltan (P.W.8), Ramanand Shukla (P.W.10), Bishahuprasad (P.W.11), Khemantsingh (P.W.12), Bishalram (P.W.14), Murlidhar (P.W.15) Bhurvaram Jadhav (P.W.16), Pandit Shambhunath Shastri (P.W.17), Kedarnath (P.W.18) and Sri Maniklal Gupta, Advocate (P.W.19) to prove this issue. The respondent No.1, on the other hand, for controverting the charge levelled against him, has examined himself as R.W.1, and four other witnesses.

32. Sri V. K.S Choudhari, the learned counsel for the petitioner, has taken me through the relevant portions of the evidence and invited my attention to pages 336 and 481 of the issue of 'Kalyan' (Ex. P-3) and to the Encyclopedia of Religion and Ethics, Vol. I, page 507 and Vol 6, page 731, and also Encyclopedia Britanica, at page 984. While making a reference to Chapter X 'Shlok' 21 of the Geeta, he contended that cow is not

only the basis of our economy in India but she has a greater religious importance also. It is worshipped in the constituency for its holiness and considered as sacred, for their subsists a feeling in the minds of the people that she would help her worshipper to cross the river of death (Vaitarni) safely and take him straight to heaven. He also laid emphasis on the evidence on record as well as on the religious books; on the evidence led that there are 84 deities which have their abode in a cow, representing 84 Gods in her, and strenuously argued that for the aforesaid reason, it is all the more a religious symbol and the respondent No.1 having made use of the same in furtherance of his election, he is guilty of corrupt practice which is covered by Section 123(3) of the Act. In support of his contentions Sri Choudhary relied on the rulings reported in *Shubhnath v. Ram Narain*,² *Ramnarain Prasad v. Subnath*,³ *Ramanbhai v. Dabhi Ajit Kumar*,⁴ *Ramanbhai v. Ajit Kumar*⁵ *Narbada Prasad v. Chhaganlal*,⁶ *Manubhai v. Popatlal*,⁷ and *Kanti Prasad v. Purshottamdas*⁸

33. Sri J.P. Dwivedi, the learned counsel for the respondent No.6 has also supported the case of the petitioner. He invited my attention to Shlokas 28 and 31 of the Mahabharat, at pages 5635 and 5709 as also at p.6348, and also to 'Ramcharit Manas', pages 157, 159 and 165, and Bhagwat Maha Puran etc., and submitted that Hindus believe in deification of a cow. She is Goddess. In the constituency in question. Hindus worship her and this is proved by the evidence on record with the result that 'calf and cow' is a religious symbol and the respondent No.1 having made use of the same is guilty of the corrupt practice under Section 123 of the Act.

34. Sri Dharmadhikari, on the other hand, has contended that 'calf and cow' is an election symbol and it is not a religious symbol. He made a distinction in Ex. P. 13 an election symbol, and Ex.P-2, the photograph of a cow, where it is shown that there is abode of 84 deities in her. He stressed that Ex. P-13 cannot, by any stretch of imagination, show holiness or sacredness of a cow and the symbol of 'calf and cow' being allotted to the party to which the respondent No.1 belongs, and he having made its use, cannot be found guilty of the corrupt practice as alleged against him. He also submitted that cow is respected because of its economic utility and the petitioner has not proved beyond a reasonable doubt that the cow is worshipped in the constituency in question as the evidence on record is conflicting on the point. He has also cited rulings in support of his contentions reported in *Karansingh v. Jamunasingh*;⁹ *Jamuna Prasad v. Lachhiram*,¹⁰ *K.C. Sharma v. Rishab Kumar*,¹¹ *Bhagirath v. Rishabh Kumar*¹² *Bhagirath v. Rishabh Kumar*¹³ *Jagdev Singh v. Pratap Singh*,¹⁴ *Ramanbhai v.*

Dabhi Ajit Kumar,¹⁵ and *Sheopal Singh v. Ram Pratap*,¹⁶ In order to appreciate the contentions raised by both the learned counsel before me, it will be proper to refer to some of the rulings on the point under discussion and then to discuss the evidence with a view to see whether an offence of corrupt practice as alleged in the election petition is made out, as required by law.

35. In AIR 1960 SC 148 which was an appeal from the decision of the Patna High Court, reported in AIR 1960 Patna 566, the returned candidate was an Adivasi, belonging to the Ho community. The electors in this constituency largely belonged to Adivasi community. The symbol chosen by the party was a 'Cock', recognized by the Election Commission, and the question was, whether a 'cock' was a religious symbol. Their Lordships of the SC keening in view the ceremonies performed by the Adivais while worshipping their important deities used 'cock' for such ceremonies, held that on the facts of that case, 'cock' was not a religious symbol though it was an instrument for the worship of their deities, and it was further held that on the basis of the pamphlet in question an appeal was made on the basis of religion.

36. In AIR 1965 SC 669 which was an appeal from the decision of the Gujarat High Court reported in AIR 1963 Gujarat 315, their Lordships of the SC wherein the question was whether 'Star' (Dhruv) was a religious symbol, answered the question in negative and observed as follows:-

"A reference to prophets or religions or to deities venerated in a religion or to their qualities and deeds does not necessarily amount to an appeal to the religious sentiment of the electorate. Something more has to be shown for this purpose. If for instance, the illiterate, the orthodox or the fanatical electors are told that their religion would be in danger or they will suffer miseries or calamities unless they cast their vote for a particular candidate, that would be quite clearly an appeal to the religious sentiment of the people. Similarly, if they are told that the wrath of God or of a deity will visit them if they do not exercise their franchise in a particular way or if they are told that they will receive the blessings of God or a deity if they vote in a particular way, that would be an appeal to the religious sentiment. Similarly, if they are told that they should cast their votes for a particular candidate whose election symbol is associated with a particular religion just as the 'Cross' is with Christianity, that will be using a religious symbol for obtaining votes. But where, as in the case of the Hindu

religion it is not possible to associate a particular symbol with religion the use of a symbol even when it is associated with some deity, cannot without something more, be regarded as a corrupt practice within the meaning of subsection (3) of Section 123 of the Act. For instance, a particular object or a plant, a bird or an animal associated with a deity is used in such a way as to show that votes are being solicited in the name of that deity or as would indicate that the displeasure of that deity would be incurred if a voter does not react favorably to that appeal, it may be possible to say that this amounts to making an appeal in the name of religion. But the symbol standing by itself cannot be regarded as an appeal in the name of religion."

[Underlining is mine]

37. In *Lachhiram v. Jamuna Prasad Mukhariya*,¹⁷ the Tribunal of which I was also a member, decided that though the cow is an object of reverence amongst the Hindus, it is not a symbol of Hindu religion, and an appeal to save the cow is not, therefore, an appeal on the ground of religion or caste. Sri Chaudhary, referring to this decision has made a distinction that it is true that the cow is not a symbol of Hindu religion as a 'Cross' in Christianity, but cow is a religious symbol taking in view the observations made by Their Lordships in the rulings which I will refer to now, AIR 1969 SC 395; *Manubhai v. Popatlal*,¹⁸ the question under consideration was not that of the use of cow as a religious symbol, but in each of these cases, there was exhortation to the electors that unless they voted in a particular manner, they would be guilty of committing the sin of 'Gau-Hatya' which amounts to an attempt to induce voters to believe that unless they voted as exhorted they would become the objects of divine displeasure or spiritual censure, falling within the mischief of Section 123(2)(a) (ii) of the Act. The relevant observations of Their Lordships, which I have already referred to above, are as under:-

"It is not necessary to enlarge upon the fact that cow is venerated in our country by the vast majority of the people and that they believe not only in its utility but its holiness."

38. In 15 Ele LR 370 : AIR 1959 Allahabad 427 the question for decision was, whether a portrait of 'Mahatma Gandhi' was a national symbol. Their Lordships of the Allahabad High Court, while dealing with the definition of a symbol, as well as what

should be the National symbol, observed as follows:-

"It appears to us that, in considering the main question whether the portrait of Mahatma Gandhi is a national symbol or not, the meaning of the word 'symbol', which can appropriately be applied, is only that under which it must appear that this portrait represents something national by some natural fitness and that it would also be an emblem. If there is no fitness at all between what the portrait actually is and what it represents, it would be very difficult to hold that it is a national symbol"

39. In AIR 1960 Madhya Pradesh 27 : (15 Ele LR 370 at p.376) : AIR 1959 Allahabad 427 their Lordships of this Court held that an appeal to vote for the candidate to protect the mother-cow is not an appeal on the ground of religion, and they also referred to a ruling reported. In *Lachhiram v. Jamuna Parasad Mukhariya* ¹⁹

40. In AIR 1965 SC 183, the question came up before their Lordships of the SC to the effect whether 'OM' flag was a religious symbol or does it in any way symbolizes religion. Their Lordships in paragraph 10 of their judgment have made the following observations which have a great bearing on the question under discussion:-

"The expression 'Om' - is respected by the Hindus generally and has a special significance in the Hindu scriptures. It is recited at the commencement of the recitations of the Hindu religious works. Macdonell in his 'A' Practical Sankrit Dictionary' states that 'Om' is the sacred syllable used in vocations, at the commencement of prayers, at the beginning and of Vedic recitations, and as a respectful salutation: it is a subject of many mystical speculations. In the Sanskrit-English Dictionary by Monier-William, it is said that 'Om' is a sacred exclamation which may be uttered at the beginning and end of a reading of the Vedas or previously to any prayers; it is also regarded as a particle of auspicious salutation. But it is difficult to regard 'Om' which is a preliminary to an incantation or to religious books, as having religious significance. 'Om', it may be admitted, is regarded as having high spiritual or mystical efficacy; it is used at the commencement of the recitations of religious prayers. But the attribute of spiritual significance will not necessarily impart to its use on a flag the character of a religious symbol in the context in which the expression religious symbol occurs in the section with which we are concerned. A symbol stands for or represents something material or abstract in order to be a religious symbol.

There must be a visible representation of a thing or concept which is religious. To 'Om' high spiritual or mystical efficacy is undoubtedly ascribed: but its use on a flag does not symbolize religion or any thing religious."

(The underlining is mine).

41. The petitioner, in paragraph 4 of his statement has deposed that Rajnandgaon Parliamentary constituency is mostly populated by Adivasis and Hindus and Yadavas who are the inhabitants of this constituency and are known as Gaharas and cow is mostly kept by the inhabitants of this constituency. In paragraph 5 of his statement, he has stated that he considers cow as a 'Gau Mata' and 'Laxmi', and has referred to the two ceremonies which take place in this constituency. One is that the tail of a cow is given in the hand of a dying person with an idea that he would go to heaven and at least save him from going to hell. In paragraph 6 of his statement, he has referred to the second ceremony which, according to him, generally takes place on the Laxmi-pujan day (Dipawali). The people of the locality prepare a Gobardhan from the cow-dung and they worship both, Gobardhan as well as the cow, put on a neckless (Sohai) on her neck, and also sacrifice goats and hens before the cow and feed her with Khichadi (mixed rice and pulse) and whatever remains out of it, is distributed as Prasad. Gaharas put on clothes of different colours and do dancing etc. He has also said in paragraph 5 of his statement that he has got a photograph of a cow, which is Ex. P-2, and he worships the same at his house. He has also deposed that the deities 'Bramha', 'Vishnu' and 'Mahesh' prevail in her and he has filed a copy of the issue of Kalyan, Ex. P-3. I will first discuss the question of relevance and evidentiary value of Ex. P-2 in the context of the point at issue.

42. Ex.P-2 is a photograph of a cow where she has been shown the abode of 84 deities (dewatas) and a Rakshas standing there with a view to kill her. The other witnesses of the petitioner have also more or less deposed in the same manner, and it is not necessary to set out their evidence. Now the question arises, whether Ex.P-2 has anything to do with an election symbol which is Ex. P-13 on record. It is true that had Ex.P-2 been the election symbol it may have been a religious symbol, but the question here is whether there is anything in Ex.P-13 which suggests that the 'calf and cow' is being shown either as a sacred or holy, and unless that is done, an election symbol by itself in my view will not be a religious symbol. So, this sort of evidence that Ex.P-2 shows abode of 84 Devatas in a cow, has nothing to do with an election symbol which is merely a cow standing and calf milking. I, therefore, hold this part of the evidence

is of no value to prove the corrupt practice alleged against the respondent No.1.

43. Now, the question that comes next is about the two ceremonies, i. e. (i) worship of a cow on the Gobardhan day as well as (ii) handing over of tail of a cow in the hands of a dying person and whether on that account the symbol of 'calf and cow' can be construed as a religious symbol. It is noteworthy that the evidence as regards the puja (worship) of Gobardhan as given by the petitioner varies in mode which he has mentioned in the petition. It also varies from whatever has been described by his own witnesses and there is no uniformity in the version of the witnesses.

44. Bhanwarlal (P.W.2) has only said that people in Chhattisgarh area worship cow like their mother and its effect was that most of the people voted for 'calf and cow' symbol. In paragraph 4 he stated that people, especially Gaharas worship cow on the Diwali day. Firstly, he has not said as to how the cow is worshipped, and simply worshipping of a cow like a mother will not make a religious symbol of an ordinary election symbol depicting 'calf and cow'. It is true that a mother deserves as much respect as possible on earth, but by respecting mother or worshipping her, she will not be a religious symbol. In paragraph 3 of the petition, the petitioner has said that a majority of the Gaharas is about more than one-fifth of the total electors in the Rajnandgaon Parliamentary constituency and it is up to the tune of 1.5 lakhs but the petitioner either by oral or by documentary evidence has not proved this fact. It is true that 90% of the population of Durg district consists of Hindus and this is what the Durg District Gazetteer, Vol. A, page 55, shows. It does not mean that it consists of one-fifth or so of the total population of Gaharas who worship the cow on the Diwali day. It is further noteworthy that this Gazetteer does not mention prevalence of this custom in this district. At page 87 of this book, the subject of 'cattle' is dealt with, but it also nowhere mentions about the custom of worship of the cow, being prevalent in any of the castes inhabiting this district. Had this custom been so popular and prevalent in this constituency, there appears no reason why it should not have found place there.

45. Sri Vijayalala Oswal (R.W.3) who is an Advocate, and a resident of Khairagarh, on the other hand, has deposed that there is no custom in this constituency to worship a cow, and moreover, the Gaharas, according to him, in Rajnandgaon Parliamentary Constituency hardly consist of 1 or 2 houses in each village. It was, therefore, easy to produce the best evidence in this respect showing thereby that this kind of electors in

this constituency consisted of one-fifth of the total population by documentary evidence but for the reasons best known to the petitioner, he has not been able to do so.

46. Vidya Bhushan Thakur (P.W.6), a rival contesting candidate of respondent No.1, has deposed in para 5 of his statement that this constituency is mostly populated by Gaharas, Chhatris and Gonds and on the Diwali festival day, cow is generally worshipped and the festival is known as Pola. He has also stated that the farmers also worship their bullocks on this occasion and they hold a race of the bullocks. He has further said that the bullocks are worshipped because they are of greater utility to the farmers and the cow is worshipped with a feeling that God predominates in her. In paragraph 18 of his statement, he has gone to such a length in order to support the case of the petitioner that he has stated that there is no economic value of a cow, but there is a need due to religious requirements. All the products that a cow is able to give us is on religious grounds, i. e. milk, cow-dung, gow-mutra (urine) and its progeny. As regards worship of the cow, he has said that at the time of the worship of a cow. Chandan or Gulal is put on her forehead. This shows that he gives a different version as regards the worship of a cow on a Diwali day. In paragraph 19, he has admitted that on the Desehara day, weapons are worshipped and on Nagpanchami day Nag (Snake) is worshipped and on the Vad-Savitri day. Bad tree is worshipped, but according to him, there is a difference between a cow worship and a Bad tree worship. His evidence, therefore, is not worthy of credence.

47. Paltan (P.W.8) in paragraph 1 of his deposition has stated that a special worship of a cow takes place on the Diwali day where the cows are collected at a fixed place in a village, then Arti is done and thus cows are worshipped. Khichadi as prepared and cow is fed with some portion of it and the rest is distributed amongst the villagers as Prasad. The cow is considered equal to God and is thus worshipped. According to him, the Durg district is mostly populated by Sahus who are Hindus and all the Hindus worship the cow. In paragraph 3, he has said that in the month of Shravan, Pola festival is held and the bullocks are worshipped and the villagers conduct a race of the bullocks. He has differentiated between the worship of a cow with that of a bullock and says that the bullock is worshipped on account of its economic utility while cow is worshipped because of religious reverence attached to her. In paragraph 4 again, he has said that a cow is the Avtar of earth (Prithvi) and he has also referred to a Shlok in Ramayan which read as under:-

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It means that God only comes to this earth for the service of those categories which are mentioned in the Shloka. He has not mentioned anything about the Gobardhan Puja along with the worship of a cow as deposed to by other witnesses, though with some variations. If the cow is taken as an Avatar of earth, it is difficult to believe that the cow is a Goddess. He appears to be an interested witness and his evidence is of no consequence.

48. Ramanand Shukla (P.W.10) in para 1 of his deposition has stated that this constituency is mostly populated by Hindus, and then comes Adivasis and the third community is that of Gaharas. He has not mentioned definitely as to what is the total strength of the Gahara population in this constituency. In para 2, he stated that the cow is worshipped generally on the next day of Diwali and she is given a bath on this day. The Gaharas are called and then they worship the cow, prepare Khichadi and give it to the cow and whatever remains is distributed as Prasad. In para 3, he further says that they treat cow as mother, Laxmi and Goddess. In para 6, he has referred to the ceremony which takes place when one is dying by giving the tail of a cow in the hands of that dying person, so that he may pass the river of death (Baitarani) safely. In paragraph 9, he has deposed that on the Gobardhan day, at one place, which is generally called Gothan, about 3 to 4 seers of cow-dung is collected at one place and then it is crushed by cows first and then by the other animals. His evidence is also of no help and suffers from the same infirmity as is noticed in case of the other witnesses as aforesaid.

49. Bishahuprasad (P.W.11), in para 1 of his deposition has stated that cows are worshipped on the Diwali day in his constituency, first in the individual houses and then they are taken to the Gothan where all the people gather and worship them. Out of the cowdung, a statute of Ganesh and Gauri are prepared and then they are worshipped along with the calf and then the cows are let off and then the people enjoy dance etc. He has further stated in para 2 that the cow is Goddess and repeated the story what the other witnesses said regarding giving the tail of cow in the hands of a dying man. In para 4 he has again said that though all the cattle of the village including she- buffaloes and bullocks are brought to the Gothan, the worship is

confined to cows, calves and bullocks only.

50. It is clear from the evidence of this witness, as also from that of the other witnesses, that everyone of them has given a different version regarding the worship of a cow on the Diwali day or on the next day of Diwali. If this day was confined to the worship of cow in particular, it does not seem reasonable why every witness should give a different way of her worship.

51. Khamantsingh (P.W.12), in para 1 of his deposition has said that cow is worshipped generally at Gothan on the Kartik Purnima day; Khichadi is prepared and cow is fed with it and the remaining Khichadi is distributed amongst the people as Prasad. There is also a Sahada Deo Statue installed there. Cow-dung is collected there and the cows collected there go over it and then it is used for Tika on the forehead of the people collected there. In para 7 he admitted that on the Laxmi Pujan day, silver, rupees, grains, Bahi Khatas etc. are worshipped. Cows as well as other wealth, both are considered as Laxmi. Now, it is quite clear from his statement that his story of worship of a cow is altogether different. He has brought in the Sahada Deo at the Gothan. It appears that if Sahada Deo is installed there, the people worship the Sahada Deo and the people collected there may be feeding the cattle and enjoying in their own manner.

52. Bishalram (P.W.14) is a Yadav by caste. He is not in a position to say as to which caste of the people is greater in number in his constituency. As regards the worship of a cow, he has stated in para 2 that they prepare Gobardhan from cow-dung and cow is made to stand there and then Arati is performed and thereafter, they put rice as well as flowers on their forehead and after the Puja and Arati, they touch their feet and then put flower- necklace as well as Sohail Mala on their necks. In para 4, he has referred to the handing over of the tail of a cow in the hand of a dying person. In para 6 he says that on the festival of Pola, in Chhattisgarh, bullocks are worshipped because they are considered as Laxmi. In para 8 again, he has stated that by Gobardhan, he means a hillock of cow-dung and they worship the same. It is apparent from his statement, as aforesaid, that his story of the worship of a cow is also different from that deposed to by other witnesses as discussed above.

53. Pandit Shambhunath Shastri (P.W.17) is an expert witness, produced on behalf of the petitioner. He has deposed that in Atharva Ved, Pratham Khanda, Chapter IX, 7th Sukta, page 528, cow is termed as Goddess in Mantra No.1, and similarly, in Gau

Upanishad, cow is taken as Goddess and Yagyavalka Smriti says, if one gives a cow in charity he goes to heaven. In Mahabharat which is the premier Puran, cow is termed as a Goddess and he has similarly mentioned other texts where cow is known as Goddess. In para 10 of his statement, he has stated that cow is a religious symbol. In para 12, he has said that in Garud Puran, it is written that by giving the tail of a cow in the hand of a dying person, he can safely cross the river of death (Baitarni) and go to heaven. He has admitted in para 14 of his statement that goat is also mentioned as God in Atharva Ved at page 512, Sukta 5. He has further admitted that it has been mentioned in Yagyavalka Smriti at page 71, Shlok 209, that if a person serves the patient or makes gift of Shaiya Dan, he is also equally entitled to go to heaven. He has also admitted that the Shlok that he had cited from Agni Puran was from Chikitsa Puran and not from Dharma Puran. He has also admitted that in this book, there is also a mention of worshipping elephants and the panch kavya is mainly intended for cure. He has further said that from the economic point of view, the cow is a property but not from the point of view of religion. He has admitted that at page 5709 of Mahabharat book, it is written in Hindi translation that cow is a valuable thing but according to him, it is not correctly translated. In para 15, he has said that he has read Geeta and according to it, God prevails in all and in everything. He has also deposed that according to Hindu Shastra, we worship water, fire, earth etc. and sun is also worshipped as God. It needs no emphasis that cow is a domestic animal and is an object of great veneration. It is equally true that cow is called 'Gau Mata' and the reason for the same is obvious as her milk is a perfect food and it feeds children as well as adults. Its progeny in the form of bullocks is very useful for cultivation and transport purposes, and constitutes animal wealth in the economy of our country. Hindus are specially grateful people and everything that is useful to them as a whole, they love and worship in one form or the other, e. g. pen and inkpot, Bahi Khatas, weapons, horse, elephant and other things. But it does not mean that because a cow is simply called 'Gau Mata', it is a religious symbol. The statement of this witness does not prove that, for the purpose of election, a cow is worshipped according to the dictates of Vedas and Shastras in this constituency. The question again boils down to the fact whether 'calf and cow' is a religious symbol for the inhabitants of this constituency, and this I will discuss later on.

54. Sri Maniklal Gupta (P.W19) has not said anything with respect to the worship of a cow on the Diwali day or on the next day, but in para 9 he has only said that he worships a cow and believes that Gods reside in her and people of Chhattisgarh at the

time of death of a person, give her tail in the hands of a dying person so that he may cross the river of death (Baitarni) safely.

55. Respondent No.1 has only said that cow, according to him is a useful animal for the benefit of the society and that is why she is respected with a sense of gratitude and as regards the custom, said to be prevailing in the Chhattisgarh area of worshipping a cow, he has no idea about it, and naturally so, as he was new to the constituency. Thus, his evidence on this account, is of no help.

56. Sri Vijaylal Oswal (R.W.3), in para 4 of his statement has deposed that there is no custom in the constituency to worship cows, but the entire cattle are worshipped on the second day of Diwali. In every village, there is a fixed place where Sinhada Dev is already installed and in the evening, all the village people gather there with all their cattle which includes cows, bullocks, buffaloes, she-buffaloes, and they also build a small hillock out of the cow-dung which is known as Gobardhan. Thereafter, a calf is chosen out of the herd and that is allowed to cross the Gobardhan and then the entire village cattle cross the Gobardhan. This is the entire ceremony which is performed on that day. This worship does not really mean the worship of a cow but it is worship of a Nandi which is a token of bullock. In para 8 again, he has deposed that cow is regarded as not a sacred animal, but it is looked upon with respect and there may be a slight difference in respect given to a cow and to a she-buffalo. A cow is not worshipped amongst Hindus. In para 15 he has said again about the Gobardhan Puja as follows:-

"I celebrate Diwali at my house and also attend the Gobardhan Puja the next day in my village Dabka. All the cows of the village are collected on that day at Gothan and the witness also states voluntarily that other cattle also are collected there. Neither the idol of Ganeshji nor that of Gauri are prepared at the time of Gobardhan Puja. 'Suhai' (sort of a necklace) is put on the neck of all the cattle collected there".

57. Sheokumar Tiwari (R.W.5) who lives at Khairagarh from his birth, in para 4 of his statement has deposed that nobody worships the cow daily by way of an Arati, but on the other hand, if the cow goes in one's field for grazing purposes, the owner of the field or the land, beats her by danda and takes her to cattle-pound. The cow is sold and

purchased and on the Diwali day and thereafter, people perform puja of their wealth in whatever form they may possess it, i. e. cows, bullocks, she-buffaloes etc. and they are animal wealth to the cultivators.

58. It is proper to write something about the animal worship. In the Encyclopedia of Religion and Ethics, Vol. I, page 507, it runs as follows:-

"The origin of the Hindu respect for the cow is an unsolved problem. Unlike Egypt, it is clear that India developed a respect for the animal in historic times. Of actual worship there is little to record; but the panch-gavya, or five products of the cow, are important factors in exorcism and magic; as a means of annulling an unlucky horoscope, re-birth from a cow is simulated; the pious Hindu touches the tail of a cow at the moment of dissolution, and believes that it will carry him across the river of death; just as, in the last re-incarnation before the assumption of the human form, the cow receives the spirit and brings it across the river Vaitarni, which bounds the lower world. Cattle festivals are celebrated in Nepal and Central India, but their object seems to be mainly magical".

59. In Encyclopedia Britannica, Vol. I, page 984, under the heading 'Animal Worship', the following passage is worth citation:-

"Most mammals, birds and reptiles figure, in one way or another, in the religious and magical symbolism of mankind, some (e.g. serpents) more frequently than others. But whereas animals play a large role in the ritual practice of many primitive religions and in the symbolism of some of the more highly developed (e.g. Hinduism) actual worship of animals as incarnation or representation of the divine being or power are extremely rare".

60. In order to prove a custom, it is necessary, in addition to the other requirements, that it must be certain. One of the petitioner's witnesses has said that Gaharas only in this constituency worship cows and there is no definite evidence to show that what is the percentage of Gaharas amongst the electors in this entire constituency. Worshipping of a cow, if it at all exists, as discussed above, does not show any uniform system, and moreover, from the evidence on record, it is not certain in what way the worship is performed, as each witness has given his own version, and they differ among one another. It is pertinent to note that no Baiga of the village was called

to prove that there exists a custom of worshipping a cow in this constituency and that too, in what form. It is true that a cow is held in veneration by the Hindus, but this fact alone will not make the election symbol of 'calf and cow' a religious symbol. Sri Thakur, the learned counsel for the petitioner, has made all efforts to procure all the religious text books available to show that cow is worshipped from hoary past. It may be so, but the question is, that his attribute of spiritual significance, if there is such a one, does not necessarily impart to its use on a flag the character of a religious symbol in the context in which the expression religious symbol occurs in Section 123(3). The view of the question that I have taken in this case, does not require discussion of the texts of the other religious books cited before me.

61. There is no doubt that the witnesses for the petitioner have said that at the time of one's death, the tail of a cow is given in the hands of a dying person with an idea that he may cross the river of death (Baitarni). It may be so, but the question again arises is, whether on the election symbol, there is a visible representation of a thing or concept which is religious. In order to make it a religious symbol, as symbol stands for something material or abstract, as their Lordships of the SC have observed in AIR 1965 SC 183 the answer is in the negative. People on Diwali day worship their Bahi Khatas. Rajputs worship their weapons, and similarly other things are worshipped in one form or the other by some of the communities, but these things by themselves will not be taken as religious symbols. It is, therefore, clear that an election symbol of 'calf and cow' by itself will not be a religious symbol unless these characteristics or attributes which go to make it a religious symbol are present there. Then again, everything that is holy or sacred will not be a religious symbol unless there is something on the election symbol to point out to this effect. The election symbol of 'calf and cow', as it stands, does not point out anything about its Godliness or holiness. Unless that is there it would not make such a symbol a religious symbol. It is clear from the above discussion that the standard of proof required for a corrupt practice to be proved is lacking in this case as a custom which should be required to be proved with certainty is not there, and the evidence on record is neither satisfactory nor convincing. It is further clear, that the respondent No.1, by merely saying that he had been allotted a symbol of 'calf and cow', and that the electors should vote for the same, is not covered within the mischief of Section 123(3) of the Act. I therefore, hold that the petitioner has not been able to prove this issue satisfactorily, and I answer the same in favor of the respondent No.1.

62. Issue No.2: This issue is based on the allegation made by the petitioner in paragraph 4 of his petition, read with Annexure-No.1. It is proper to set out the relevant portion which is said to be a corrupt practice under Section 123(2) (a) (ii) of the Act :-

Section 123(2) (a) (ii) deals with corrupt practice or undue influence. It means any direct or indirect interference or attempt to interfere on the part of the candidate or his agent or any other person with the consent of the candidate or his election agent with the free exercise of any electoral right. There are Provisos added to this section. The petitioner has alleged that the respondent No.1 is guilty of the corrupt practice contained in Section 123(2) (a) (ii) which, as per the first Proviso says that without prejudice to the generality of the provisions of this clause, any such person, as is referred to therein, who induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to be interfering with the free exercise of the electoral right of such a candidate or elector within the meaning of this clause.

63. The case of the petitioner depends only on the oral evidence, and he has examined, in order to support this allegation, himself as P.W.1, Vidyabhushan Thakur (respondent No.5 P.W.6), Murlidhar Jha (P.W.15), Bhanwarram Jadhav (P.W.16), Kedarnath (P.W.18) and Maniklal Gupta, Advocate (P.W.19). The respondent No.1 has denied this allegation on two counts, firstly that he had not said or uttered the words in question attributed to him and secondly, the allegation made in annexure-I does not constitute a corrupt practice. He has also examined, in support of his case, himself as R.W.1, Ramsahai Agarwal (R.W.2), Sri Vijailal Oswal, Advocate (R.W.3), Sri Balbhirsingh Khanuja (R.W.4) and Sri Sheokumar Tiwaril (R.W.5).

64. Sri R.K. Thakur, the learned counsel for the petitioner, has taken me through the relevant evidence in the petition, and contended that the witnesses produced on behalf of the petitioner, are independent witnesses and it is admitted that the respondent No.1 did address an election meeting on 25-2-1971 at Khairagarh, and there is no effective cross-examination to show that the witnesses had any animus against the respondent No.1 with the result that the corrupt practice alleged by the petitioner against the respondent No.2 is proved.

65. Sri Y.S. Dharmadhikari, the learned counsel for respondent No.1, on the other hand, urged that in Annexure-I, there is no suggestion to the effect that respondent No.1 had said that in case the voters did not give vote for him, they would be guilty of 'Gau-hatya'. He also stressed that the respondent No.1 was new to the constituency; he had no influence there, and the statement alleged to be made by him, must be from a person, who, in the matter of religion, either carried some great influence on the voters or who has wide reputation for learning and piety, and that being not the case with the appellant, corrupt practice as alleged against him has not been proved. He further strenuously argued that the evidence led by the petitioner is not reliable; it varies in sequence of the persons who had addressed the alleged meeting along with the petitioner, as well as regarding the version of the respondent No.1 attributed to him, which forms the main part of this issue. In support, he has cited the rulings in *Ram Dial v. Sant Lal*,²⁰ and *Mast Ram v. Harnam Singh Sethi*,²¹

66. Having heard the learned counsel on both sides and after giving my careful consideration to the contentions raised before me, I am clearly of the view that the corrupt practice alleged by the petitioner, which forms the basis of this issue, has not been proved, for the reasons I presently show.

67. It is not in dispute that Sri Ram Sahai Pandey, respondent No.1, was allotted the symbol of 'calf and cow' by the Election Commission of India. It is also not in dispute that he had addressed a public meeting on 25-2-71 at Khairagarh at about 8.30 p. m. as a part of his election campaign. It is also not in dispute that the respondent No. 1 was new to the constituency as he is a resident of Bombay and it was for the first time that he contested the mid-term Parliamentary election from this constituency. It is also further not in dispute that the sitting member of this constituency was Rani Padmawati, respondent No.6.

68. Two questions arise for decision:

- (i) whether the respondent No.1 had used the offending words contained in Annexure-I to the petition, and secondly,
- (ii) if so, do they constitute a corrupt practice falling within the mischief of Section 123(2) (a) (ii) ?

69. The petitioner, in para 7 of his statement, while narrating all what the respondent No.1 had said in the meeting, gave out that the respondent also said that in case he was elected he would do so and so for this constituency, and further, he also exhorted the audience by saying that his symbol was 'calf and cow' and in case they would not vote for the cow which is his symbol, they would be committing a sin and go to hell. The petitioner in para 9 of the statement, has admitted that respondent No.1 had addressed meetings at different places and he has also given the names of the places, but he does not remember their dates, and also said that he did not attend any of those meetings. In para 25, he admitted that in this meeting persons of all castes were present. The witnesses in the case have given different versions about the number of persons present at the meeting, varying from 2000 to 4000, but we can very safely say that the number may be in the neighborhood of 2500 to 3000. In para 26, marked as R-3 to R-4, the petitioner has said.

"If anyone of you does not put the seal on the symbol of 'cow and calf', you would go to hell."

In para 24, he has admitted that he contacted Sri M.L. Gupta (P.W.19) and Shir Vidyabhushan Thakur (P.W.6) for collection of some material as he wanted to file the election petition. Sri M.L. Gupta was a counting agent for respondent No.6 and from his evidence it is clear that he is an interested witness, which matter I will discuss later. In para 20, he has deposed that the respondent No.1 spoke for about an hour in the meeting and thereafter, the meeting dispersed, which appears to be untrue. It is in the evidence that 4 persons spoke in the meeting of 25-2-1971. Sri Agarwal (R.W.2) introduced respondent No.1, and thereafter Sri Vijailal Oswal (R.W.3) spoke and then respondent No.1, and the last speaker was Sri Sheokumar Tiwari (R.W.5). He has admitted that he did not make any note of the speech of the respondent No.1 nor did he make any complaint to anyone else about what he had said in the meeting.

70. It is true that it may not be possible to remember every word of the offending speech given by the respondent No.1 at the aforesaid meeting, but if the gist of what he said fell within the ambit of Section 123(2) (a) (ii) of the Act, it would be enough. But this witness has come to depose only what has been beneficial to the petitioner, and in my view, for the reasons I presently show, he is not a reliable witness, and it is difficult in the circumstances to believe that he was at all present at the meeting addressed by respondent No.1 on 25-2-1971. It is pertinent to note that Khairagarh

was the capital seat of the erstwhile State of Khairagarh. The respondent No. 6 was an elected Member of Parliament after the last election. The gathering present at the meeting was a mixed one. It is also not in dispute that the respondent No.1 had addressed at other places also. The respondent No.1 had also contested the two previous elections and he was not a new candidate for the mid-term Parliamentary election. In the natural course of things, it does not seem probable that he would utter the prohibited words, shown in Annexure-1, attributed to him, when there is no allegation that he repeated the same in his other election meetings also. If he had really said those words in this meeting, there appears no reason why he should not have repeated them in his other election meetings also. It is also worthy of note that the petitioner or any of his witnesses did not care to look into the local newspapers on the next day of his speech, regarding publication of his speech given on the previous day. It is further noteworthy that 'undue influence' is not only a corrupt practice under the Representation of the People Act, 1951, but it is also an offence under Section 171(c) of the Penal Code. See also Section 508 of the Penal Code. When the petitioner was so much interested to maintain purity of the election and had made efforts to collect the material whatever possible for filing his election petition, he did not care to lodge a report that undue influence was exercised, nor did he tell it to anybody that the respondent No.1 had uttered offending statement at his election speech on 25-2-1971, and in the circumstances that the respondent No.1 was new to the constituency and not known to the people there. One thing is clear, that in case the respondent No.1 had really said the offending words in his speech attributed to him, they would have surely found place in the newspaper the next day, as is the common experience, and particularly when the rival contesting candidate, Sri Vidyabhushan Thakur (P.W.6) was present on the occasion. Considering the evidence of the petitioner as a whole, read along with the other evidence on record, I do not consider it sufficient and wholly dependable.

71. Sri Vidyabhushan Thakur CP.W.6) is respondent No.5 in this case. He was a rival candidate of respondent No. 1 and had contested the election on the ticket of C.P.I. (M). In para 2 of his statement he has deposed regarding the speech of the respondent made at the public meeting during the election on 25-2-1971 which is as follows:-

"You have voted so many times for Rajas and Ranis, with the result that there has been no progress in your constituency. I will see that this constituency develops so far as agriculture, railway lines, irrigation and electricity and other

facilities are concerned. He also said that my symbol is 'cow and calf', which is also a symbol of your 'Gaumata' and 'Laxmi' and so you should vote for it, failing which you would go to hell." It is pertinent to note that he has used the word 'Laxmi' which has not been used in Ann. 1 of the petition, and moreover, he has not used the word 'sin'. In para 6 of his deposition, he has said that after hearing the speech of respondent No.1, he fell in a predicament and similar was the case of his 1000 workers who had accompanied him for his election propaganda and had also attended that meeting. He also deposed that he did address his workers and counseled them that it was not a correct attitude to get perturbed by the respondent No.1's speech; there was no question of Dharma Sankat involved, but even then the workers continued to be in predicament and were not convinced. It is a contradictory statement that on the one hand he says that after hearing the respondent No.1's exhorting speech he fell in Dharma Sankat, and on the other hand, he chose to address his own workers by saying that their attitude of mind was not correct. It is further strange that about 1200 workers (mazdoors) came on that day to Khairagarh for his election work, and according to him, he had addressed several corner meetings, but he is not in a position to say even the names of 10 or 12 of such of his workers who were his sympathisers. It is true that he may not know the names of all of them, but it is difficult to believe that if they were his sympathizers and had taken so much pains for him to come down to Khairagarh from outside, he should not know the name of even one or two out of them. He has also not told correctly the sequence in which the public meeting was addressed by different persons nor what respondent No.1 had said before and after the offending portion of his speech, which is attributed to him. He too did not care to read any local daily newspaper the next day after the speech of respondent No.1, on 25-2-1971, to find out if the speech in question was reported therein. He has admitted that he had issued bulletins for the purpose of his election propaganda and it is further surprising that he did not make any mention in them about the speech, and much less about the offending part of the speech of the respondent No.1. He also admitted in para. 20 of his deposition that he did not raise any protest in the meeting when the respondent No.1 uttered the offending words attributed to him, though in the same breath he says that he did discuss this matter with his labourers who had gathered under a tree, numbering about 600 to 700, after respondent No.1's speech was over. His evidence, to me, appears to be of no help in decision of the issue and cannot be relied on.

72. Murlidhar Jha (P.W.15) appears to be a chance witness. He has deposed in para 2 of his deposition that on 25-2-1971, he was at Khairagarh and was there because he could not get the Bus. His statement as to what respondent No.1 said in his speech on 25-2-1971 at Khairagarh is as follows:-

"I am a resident of Bombay and I have been allotted the symbol of 'cow and calf' by Smt. Indira Gandhi. He said that I would get the road built and get a railway line and also get the lands of the Rani Sahiba distributed. I will get Chhindhari Bandh built up for irrigation purposes. He further said that if you do not vote for cow and calf symbol, you would commit sin."

After hearing the speech for about 10 to 15 minutes, he left for his village on foot. It is significant to note that he also happened to see Vidyabhushan Thakur (P.W.6) and two to three hundred workers around him. It is rather strange that he also saw his workers, but how could it be possible unless he knew them. On the other hand, he denies having seen Sri Vijailal Oswal (R.W.3) who was very much present there at the meeting. It is clear that he is not telling the truth. He is also not in a position to tell the sequence of the speech of respondent No.1, and further he himself has admitted in para 6 that the place of that meeting was away from the route to his village, but still he went there as he found that the Bazar was closed. It is really surprising that when he did go to the meeting, he did not stay there for long but only for 10 to 15 minutes as he says, and then left the place. He has not mentioned anything being said by the respondent No.1 in his speech about 'calf and cow', though much importance to that part of the speech has been attached by the petitioner. Surprisingly enough it is not understood how the petitioner came to know that this witness had attended the meeting when he has not said anything about it. His statement is apparently not worthy of reliance.

73. Bhurwaram Yadav (P.W.16) has deposed in paragraph 2 that the respondent No.1 had said that 'Cow' is 'Laxmi' and Autar of Goddess, and you will have to vote for this symbol or else you would commit a sin. These words clearly do not form part of the contents of Ann. 1. He too had seen not only Vidyabhushan Thakur (P.W.6) but also his two to three hundred workers. He also heard them saying that they would vote for the cow as they worshipped her. He too is a witness of the type who has come to depose that he had seen the witnesses cited by the petitioner, at the meeting, but had

not noticed those of the respondent No.1, viz., Vijailal Oswal and Sheokumar Tiwari, who were also present at the meeting. Furthermore, he does not remember the date of his birth nor of his marriage, nor the date of birth of his son. He also does not know the date of the important functions held at Khairagarh, but still claims to remember 25-2-1971 as the date when the respondent No.1 had addressed the public meeting at Khairagarh during the election campaign. He says he does not even know whether the month of January consists of 30 or 31 days. It is difficult to rely on this type of witness, and his evidence does not inspire confidence.

74. Kedarnath (P.W.18) also appears to be a chance witness. In para 2 of his deposition, he has stated that he had gone to Khairagarh on that day to leave his son and nephew in the school and he was told that there was a meeting and so he attended the same. He further deposed that the respondent No.1 had said in the meeting:-

"Don't forget 'cow and calf, Cow is Devata. If you do not vote for cow and calf, you would commit a sin."

He has not attributed to the respondent No.1 the use of the words - "You would go to hell if you do not vote for the cow." He was a polling agent of respondent No.6 and has deposed to have informed one Kishan who was also a polling agent of respondent No.6 about the offensive part of the respondent No.1's speech, but Kishan has not come into the witness-box. This witness also does not know English Calendar months and also does not know how many days are there in each English month, but he remembers 25-2-1971, and the reason offered by him for it, is unconvincing. This witness sails in the same boat as some of the foregoing witnesses, and is unworthy of credence.

75. Sri Maniklal Gupta (P.W.19) is an Advocate, practicing at Khairagarh. He was the counting supervisor for respondent No.6. He has deposed that he was present at the meeting of 25-2-1971 addressed by respondent No.1, and according to him, the respondent No.1 had said:-

"My symbol is cow and calf, which is a religious symbol and you consider it as 'Gau Mata' and 'Laxmi', and so you should vote for it, and in case you do not vote for the same, you would go to hell." It passes one's imagination if the respondent No.1, who has had fought elections previously also, would ever say

in his election speech that cow and calf is a religious symbol, and then exhort people to vote for him on that account. The gist of what respondent No.1 spoke at the meeting as given by this witness, substantially differs from what has been mentioned in the Annexure No.1. He has admitted in para 11 that he was a worker of the S.S.P. at Khairagarh and in the mid-term Parliamentary elections, S.S.P. had contested the election along with the Congress (O), and especially when his party was opposing the election of the respondent No.1. He being a practicing Advocate and also a worker of the S.S.P., amazingly enough, did not even make a report about the offensive speech to his partymen, knowing full well that asking for a vote on the basis of religion was improper. In paragraph 15, he goes a step ahead and says that the respondent No.1 had said regarding the cow and calf as follows:-

"Cow is your mother and Laxmi. Gods reside in her. If you do not vote for her, you will commit sin and go to hell."

He is obviously an interested witness, and whatever he has deposed is not the subject-matter of Annexure No.1. In para, 17, he has deposed that he did not tell the petitioner when he met him regarding the speech of the respondent No.1. It sounds strange. When the petitioner was collecting material for filing his election petition, even then, the petitioner may have known that this witness was present at the meeting, and he too should not have failed to tell him about it when it is said that the respondent No.1 had exhorted the audience at the meeting to vote for the 'calf and cow' symbol failing which they would commit a sin and go to hell. It was such an important item of the speech, if it was really so, which should not have escaped the notice of an Advocate, and still he did not mention it.

76. On the other hand, respondent No.1's evidence seems to be reliable. He has clearly stated that it is wrong to say that he had made such an objectionable statement in his speech of 25-2-1971 at Khairagarh which has been shown in Ann. 1. It is clearly concocted, motivated and false. In para 9 of his deposition, he has also denied whatever the petitioner's witnesses have said about the offending part of his speech. He emphatically stated that he did not make that type of statement. In para 19 he again said, that he did not use the words, in his speech in question, asking the voters to put their seals on the symbol of " 'Gau Mata' and calf." He has also deposed in para 40 that he did not say at all that cow is 'Gau Mata' and 'Laxmi' Don't forget it, and if you do not vote for her, you would go to hell. He has admitted to have said that 'calf and

cow' being his symbol for election, voters should cast their votes for the same.

77. Sri Ramsahai Agarwal (R.W.2) was the President of the Municipality there at the relevant time and he has clearly stated that it was false to say that the respondent No.1 had said in the meeting in question that "cow and calf" was a religious symbol and if they did not vote for the same, they would go to hell.

78. Sri Vijailal Oswal (R. W. 3) is also a practising Advocate of Khairagarh. He was also M.L.A. from Congress. He too was one of the supporters of the respondent No.6. It is true that he worked for respondent No.1, but the way he has given his evidence before me. I feel that confidence can be safely placed on his testimony. In para, 6 of his deposition, he has very clearly stated that the respondent No.1 did not say in the meeting that 'Cow being 'Gau Mata', if they did not put their seal on that symbol, they would commit a sin and go to hell"

79. Sri Balbhirsingh Khanuja (R.W.4) is also a practising Advocate at Rajnandgaon and in addition he was also a journalist at the relevant time, and worked as a representative of the daily newspaper Nai Duniya. He has also deposed that he was present at the meeting addressed by the respondent No.1. In paragraph 4 he has deposed that it is not correct to say that respondent No.1 had said in the meeting in question that cow was Gau mata and if they did not vote for her, they would commit a sin. He made notes of his speech and had also sent them to the Press, but the speech was not published for the reasons mentioned by him in paragraph 13 of his deposition, because, according to him, it was a repetition of his speech.

80. Sri Shivkumar Tiwari (R.W.5) who was also present at the meeting has deposed that the respondent No.1 did not say any offending words as have been attributed to him in the speech in question.

81. Now taking into consideration, the pleadings in the case, the various conflicting versions put forward by the petitioner's witnesses, as also by the petitioner himself, as already discussed above, coupled with the fact that the testimony of witnesses for the petitioner is interested, as they were endeavoring somehow to support the charge against the respondent No.1, the only conclusion to which I can arrive at is that the charge of this corrupt practice has not been proved and the respondent No.1 did not make any such offending statement in his speech as is imputed to him, vide Ann. 1.

82. As regards the law on the subject, it is very clear that had the offending part of the speech been proved to have been made by the respondent No.1 at the relevant meeting, he would certainly have been found guilty of corrupt practice as denned in Section 123(2) (a) (ii) of the Act. See AIR 1969 SC 395; AIR 1969 SC 734 and AIR 1969 SC 851. It is true that the ruling cited by Sri Dharmadhikari under this head happened to cover a case where a religious head or a religious leader had issued an appeal for exercising vote in a particular manner. But Section 123(2) (a) (ii) read with the first Proviso is very clear to the effect that where any candidate or his agent or any other person, with the consent of the candidate or his election agent, induces or attempts to induce an elector that he will become or be rendered an object of divine displeasure or spiritual censure, he would be deemed to interfere with the free electoral right of an elector. It is true that a person who induces or attempts to induce, should be a person of some standing in the society; he should be capable of exercising spiritual undue influence. In the instant case, respondent No.1 was a new candidate at election for this constituency and he was not so placed nor blessed so as to be able to exercise spiritual undue influence on the electorate in this constituency, and moreover, there is also no evidence on record to this effect as has already been discussed above. It is not necessary to discuss here this aspect of the question in detail, in view of my finding that the petitioner has failed to prove that the respondent No.1 had exhorted the audience in the meeting of 25-2-1971 at Khairagarh during his election campaign as has been alleged in Annexure No.1 of the petition. It needs no mention that corrupt practice is in the nature of a quasi criminal charge, and the standard of proof required to prove the same is similar to the one required for proving a criminal charge, and then, it should be proved beyond a reasonable doubt. The evidence tendered by the petitioner on this issue not only falls far short of this standard, but in my view it has been procured for the purpose. The natural result is, that issue No.2 is answered in favor of the respondent No. 1 and against the petitioner.

83. Issue No.3:- This issue relates to a false statement said to be made by the respondent No.1 and is detailed in para 5 of the petition and Ann 2. Sri Thakur, learned counsel for the petitioner, has not pressed this issue and hence it is decided against the petitioner and in favor of the respondent No.1.

84. Issue No. 4:- The allegation concerning this issue is contained in paragraph 6 of the petition. It is alleged that one Bhagwandas Sahu of village Anjora had procured

with the consent of the respondent No.1 and his election agents, a jeep with registration No.ORG 999 for the purposes of conveyance of the electors to the polling booth No.25 of Kopedih on 1-3-1971. This is denied by the respondent No.1, alleging that he did not know Bhagwandas Sahu nor did he ever authorise him to do so. He also averred that he did not appoint any person as his election agent.

85. The petitioner has examined one witness, Ranudan Oswal (P.W.3) to prove this issue. He has stated that one driver named Amirkhan, had brought 9 voters in this jeep at about 1 p.m. to the polling booth of Kopedih. He also again brought for the second time 8 women and 1 man named Bhagwandas Sahu, and left them in the prohibited area, i.e., within 100ft, of the polling booth. He has further stated that on making an enquiry from the driver, he came to know that one Kishorilal Shukla, Advocate, had sent him. He filed Ex. P-5 before the polling officer, but he does not remember who had written out the same. He simply signed it. It is pertinent to note that in Ex. P-5, there is no mention of the fact that Sri Shukla had sent the jeep with the driver. This witness has not been able to assign any reason for such an omission. It is also worthy of note that he did not tell anything about it to the petitioner. It is rather strange how the petitioner came to know about it. The respondent No.1 in para 9 (a) of his deposition has, on the other hand, deposed that he does not know Bhagwandas Sahu of village Anjora, and he did not engage any jeep with registration No. ORG 999 for the purpose of conveyance of the voters on 1-3-1971. He also deposed that he did not authorise Sri Shukla for procuring any such vehicle for the conveyance of the voters. He has further deposed that he did not know any driver by name Amir Khan and he too was not authorised for the purpose. In para 36 he further said that Sri Kishorilal Shukla, M.L.A. was not his agent and he did not send the jeep as alleged.

86. Hiring or procuring, whether on payment or otherwise, of any vehicle or vessel for the conveyance of an elector to and from any polling station with the consent of a candidate or his agent or by any other person with the consent of a candidate or his election agent, is a corrupt practice under Section 123(5) of the Act

87. Sri Thakur has contended before me that Sri Kishorilal Shukla has not been examined by the respondent No.1 and it was not necessary for the petitioner to prove the contract of hiring of the vehicle, and in support, he has relied on the ruling reported in *Balwan Singh v. Lakshmi Narain*²² It is true that in proving corrupt practice like this, it is not necessary for the petitioner to prove the contract of hire of

the vehicle, but the fact of hiring has got to be proved, and this is what the SC has observed in the aforesaid ruling. The petitioner has neither by his own statement nor by the statement of Ranudan Oswal (P.W.3) has proved that the jeep in question was either hired or was procured by respondent No.1 or his agent. There is also no evidence to prove that the respondent No.1 had consented for the same. Ranudan himself even does not know who had written the report, Ex. P-5, to this effect. He had only signed the same. He himself admitted that he did not complain about this incident to anybody else at the polling station except when he came to Rajnandgaon. Further, there is no evidence if the persons who were at all brought there in the jeep were the electors. For proving a corrupt practice of this type, the burden of proof is on the petitioner, and it is for him to prove that the voters were carried in the manner alleged by him in the petition. This type of charge is a quasi criminal charge in nature and must be established beyond a reasonable doubt. Here there is not only lack in the standard of proof required to sustain the charge, but in reality, there is no satisfactory evidence at all to prove the same. It was not necessary for the respondent No.1 to summon either Sri Shukla or the driver, Amirkhan, and this kind of statement by Ranudan (P.W.3) that Amirkhan had told him that Sri Shukla had sent the jeep is of no evidentiary value. It is also noteworthy that this witness was the polling agent and polling supervisor of respondent No. 6 and is an interested witness. The result therefore is that this issue is decided in favor of the respondent No.1 and against the petitioner.

88. Issue No.5 :- The basis for this issue is contained in para. 8 of the election petition and Ann. 4, and the allegation is that there was an improper reception of votes which has materially affected the result of the election.

89. The petitioner in order to prove this issue has examined two witnesses, Bhanwarlal (P.W.2) and Maniklal Gupta (P.W.19). Bhanwarlal was the counting agent of the respondent No.6 at this election. Ex.P-4 was written by the brother of this witness and he has simply signed the same. According to him, he found two ballot papers wrapped with each other. He also deposed that he found several ballot papers on which ink of different colors existed. The evidence of this witness is of no consequence when para 6 of his deposition is minutely perused. He has admitted in Ex.P-4 and Ann. 4-E, that both appear similar so far as handwriting is concerned, and he made no complaint in writing regarding the use of different ink on the ballot papers as aforesaid. He has also admitted that he did not make any note of the ballot papers of different inks in one

bundle. Similar is the case of Maniklal Gupta (P.W.19). He has deposed that during the counting of ballot papers, he found 63 ballot papers which were not signed by the presiding officer, and he had filed an objection which is Ex.P-17, and the order passed by the Assistant Returning Officer is Ex. P-18. The Returning Officer accepted them as genuine. He has also deposed that some of the ballot-papers at the time of the counting bore seals in different inks but he did not file any objection. In para 16 he further states that he did not make any note as to how many ballot papers were in different inks for each constituency. On the other hand, respondent No. 1, in para 9 (c) of his statement has deposed that he won the election by a majority of 98,970 votes and he did not get any complaint that any of the ballot papers were either unsigned or bundled together or there was any unauthorised ink on them.

90. In order to prove that there was improper reception, refusal or rejection of any vote, or reception of any vote which was void, it was required to be proved under Section 100 of the Act that the result of the election so far as it concerns the returned candidate has been materially affected. Their Lordships of the Supreme Court, in the ruling reported in *Vashit Narain Sharma v. Dev Chandra*,²³ have observed that it is impossible to accept ipse dixit of all witnesses coming from one side or the other that all or some of the votes should have gone to one or the other on some supposed or imaginary ground. The question is one of fact and has to be proved by the positive evidence. It was of course a case under Section 101(c) of the Act. Our case is covered by Section 100(d) (iii) of the Act. There is no satisfactory evidence to prove this allegation as alleged by the petitioner in para 8 of his petition, and furthermore, respondent No.1 has won by such an overwhelming majority of votes, that there is no effect on his election, even assuming that 63 votes or thereabout were rendered invalid. The result is, that this issue is decided in favor of the respondent No.1 and against the petitioner.

91. Issue No.6:- This issue is based on the allegation contained in paragraph 9 of the petition and Annexure 5. The allegation is that names of several electors were deleted from the voter's list without giving them any reasonable opportunity of being heard, and thereby, there was a violation of Section 22 of the Act

92. In order to prove this issue, the petitioner has examined two witnesses, Suganchand Jain (P.W.4) and Hiralal (P.W.5). Suganchand Jain has deposed that he had gone for voting at the mid-term parliamentary election and when the polling

officer took out the list, his name was no doubt there but it was crossed, and so the latter did not allow him to vote, and his report is Ex.P-6. His evidence is of no consequence as there is no evidence to show that he was at all a voter in the previous list. He had not taken any true copy of the same nor he filed any. Similar is the case of Hiralal (P.W.5) who also has not filed any copy of the electoral roll to show that his name was there in the voters' list for parliamentary elections of 1967. He has also admitted that he did not mention in his report. Ex. P-7 that he had voted during the election held in the year 1967 and he cannot assign any reason for such an omission. He has also admitted that he took no further steps in the matter except of filing Ex. P-7. He also admitted that he does not know how the petitioner got Ex. P-7.

93. Section 22 of the Act deals with the correction of the entries in the electoral rolls. Its proviso says that before taking any action on any ground under clause (a) or clause (b) or any action under clause (c) that a person concerned has ceased to be ordinarily a resident in the constituency or that he otherwise is not entitled to be registered in the electoral roll of that constituency, the Electoral Registration Officer shall give that person a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him. Section 15 deals with the Electoral rolls for every constituency and Section 19 deals with the conditions of registration. It is true, as aforesaid, that under Section 22 of the Act, the persons concerned have to be given a reasonable opportunity of being heard, i.e. when the electoral registration officer either of his own motion or on an application is satisfied after such an enquiry as he thinks fit, that any entry in the electoral roll of the constituency is, as found in clauses (a), (b) or (c) of the section. There is no evidence in this petition to prove that any of these two witnesses were at all the electors in the constituency as alleged by them. Consequently, this issue is decided against the petitioner and in favor of the respondent No.1.

94. Issue No.7:- This issue was based on the basis of an allegation made in paragraph 10 of the petition and Ann 6. In order to prove this issue, the petitioner has examined Chintaharansingh (P.W.7), Tablusingh (P.W.9), Purangir (P.W.13), Durgasingh (P.W.20) and Ram Autar (P.W.21), Chintaharansingh (P.W.7) was an agent of the respondent No.6 at Baldeopur. He has deposed that the voters at this polling booth who were standing in line had chits with them bearing the name of respondent No.1 and he had made a report of this to the polling officer vide Exhs.P-10 and P-11. This witness has passed his Higher Secondary School Examination and he was asked in

para 3 of his deposition as to who was the writer of Ex. P-10, and even though 5 minutes were given to him, he could not give any reply, and ultimately said that he was unable to give any answer. He could not even read the contents of Ex. P-10 which were in English. It is further noteworthy that the chits were lying beneath the table of the polling officer. His evidence being that of an interested person is of no consequence. Moreover, there is also no evidence whether it was the respondent No.1 or any of his workers who were responsible for having asked the voters to carry such chits with them, which were issued by him 3 or 4 days before the election for the purpose they were meant. Similar is the case of Tablusingh (P.W.9). He also made a report to the polling officer vide Ex.P-12, Ex.P-12 is also written in English and if Exs.P-10 and P-12 are seen, it is apparent to a naked eye also that they appear to have been written by the same person. This witness states that he does not understand English and the writer of Ex.P-12 was one school master whom he did not know. He has also admitted in para 3 of his deposition, when questioned by the court, that the presiding officer did not himself see the chits but he brought those to his notice. No polling officer is examined to show that the voters were bringing such chits inside the polling booth. From all this, it appears to be a got up affair. Purangir's (P.W-13) evidence is also of no credence. He was a polling agent of respondent No.6 at Belgaon polling station. According to him, at about 2.30, respondent No.6's son, i.e. Rajkumar came there and collected 4 or 5 chits from beneath the table of the polling officer and gave them to him. This witness does not remember to whom Ex.P-15 was given and by whom, and who had written the same. He also does not know the contents of Ex. P-15 and he did not also care to read the same. He has also admitted that he did not make any complaint until such time that the son of the respondent No.6, Rajkumar, came there. He has further admitted that he did but do anything of the kind except that he put his signatures. There is no evidence to show that the voters at all had approached in the polling booth with such chits, if at all any chits of this type were found. All this does not in any way indicate that the respondent No.1 or any of his workers were responsible for the same, if it was at all true.

95. Duragsingh (P.W.20) also sails in the same boat and he too is an interested witness as he was the polling agent of respondent No.6 at Shivpuri polling booth. He had so much interest that he of his own accord brought one chit like Exs.P-22 and P-23. He also deposed that he signed a written complaint which is Ex. P-21. He has been in the service of the son of the respondent No.5 for 6 or 7 years and previous to that, he was in the service of respondent No.6 as an agricultural servant. He has admitted that he

did not write the complaint himself as he could not write such complaints. He has not been able to tell even a single voter who had brought such chits. As observed by me earlier, it appears to be a clear case of made up affair.

96. The evidence produced by the petitioner to prove this allegation is useless and not at all worthy of reliance. As a result, this issue is decided in favor of the respondent No.1 and against the petitioner.

97. Issue No.12:- The respondent No.6 has not mentioned in his written statement as to why she deserves the grant of special costs. Sri Dwivedi, learned counsel on her behalf has also not pointed out as to why the respondent No.6 is entitled to special costs. For awarding special costs, the court is required to see, amongst other things, if the claim or defense is false or vexatious to the knowledge of the party concerned. In the instant case, the petitioner filed this petition as a voter and prayed that the respondent No.6 should be declared as elected in place of respondent No.1. The respondent No.6 has supported the case of the petitioner. I do not see any reason why the respondent No.6 is entitled to any special costs. The issue, therefore, is answered against the respondent No.6.

98. From the aforesaid discussion, the petitioner having not proved the corrupt practices alleged against the respondent No.1, he is not entitled to any relief, and the result is, that his election petition is dismissed with costs. The respondent No.1 shall receive his costs from the petitioner, and this he will be entitled to get from the security amount deposited by the petitioner. Counsel's fee, Rs. 500/- (five hundred).

Election petition dismissed.

Cases Referred.

1. AIR 1955 SC 610
2. 1. AIR 1960 SC 148
3. AIR 1960 Pat 566
4. AIR 1965 SC 669
5. AIR 1963 Guj 315
6. AIR 1969 SC 395
7. AIR 1969 SC 734

8. AIR 1969 SC 851
9. 15 Ele LR 370: AIR 1959 All 427; AIR 1960 SC 148
10. AIR 1954 SC 686
11. AIR 1960 Mad Pra 27
12. AIR 1964 Mad Pra I
13. 1965 Doabia's Ele. Cases 208
14. AIR 1965 SC 183
15. AIR 1965 SC 669
16. AIR 1965 SC 677
17. (1954) 9 Ele LR 149 (Ele. Tri.- Gwalior)
18. AIR 1969 SC 734 and AIR 1969 SC 851
19. (1954) 9 Ele LR 149 (Ele.Tri - Gwalior) See also AIR 1964 Madh. Pra.1
20. AIR 1959 SC 855
21. (1953) 7 Ele LR 301
22. 1960 SCR 91: (AIR 1960 SC 770)
23. AIR 1954 SC 513