

BOMBAY HIGH COURT

Dattatraya Narayan Patil

Vs.

Dattatraya Krishnaji Khanvilkar

A.F.O.D. No. 369 of 1963. against decision of Member, Election Tribunal and Dist. J., Alibagh
in Ele. Petn. No. 32 of 1962

(Tambe and Kantawala, JJ.)

02.09.1963

JUDGMENT

Tambe, J.

1. This is an appeal under Section 116-A of the Representation of the People Act, 1951 (hereinafter referred to as the Act). In the General Election of Members to the Maharashtra Legislative Assembly from the Alibag Constituency of the Kolaba District, the appellant-petitioner D.N. Patil the first respondent, D.K Khanvilkar, and the second and third respondents were the contesting candidates. The appellant who belongs to the Peasants and Workers Party was a candidate in the said Election on behalf of the Samyukta Maharashtra Samiti; the first respondent was a candidate on behalf of the Congress Party; respondent No. 2 was a candidate put up by the Praja Socialist Party, and the third respondent was a candidate put up by the Bharatiya Jan Singh. The candidature of the appellant and the first respondent was announced sometime in August 1961; the polling took place on 22nd February, 1962, and the results were declared on 28th February, 1962. The first respondent was declared elected at the Election as a result of the counting of votes. The votes secured by the respective candidate were as follows :

- (1). Petitioner (Appellant) .. 13,494
- (2). Respondent No. 1 .. 18,762
- (3). Respondent No. 2 .. 2,651
- (4). Respondent No. 3 .. 1,586

After the declaration of the result, the result has been duly declared in the Maharashtra Government Gazette.

2. On 4th July, 1962 the petitioner-appellant filed an Election Petition challenging the election of

the first respondent on various grounds, inter alia, on the ground that the first respondent, who was the Publisher Printer and Editor of a Weekly Newspaper "Nirdhar", had during the election period, published articles, editorials and news items containing false statements of Fact relating to the personal character and conduct of the petitioner, and thereby committed corrupt practices within the meaning of Sub-Section (4) of Section 123 of the Act. The particulars of the alleged false statements were given by the petitioner in Schedule A of the Election Petition. The relief claimed by the petitioner in the Election Petition was two-fold. Firstly, he prayed that the election of the first respondent be declared void, and the second relief claimed by him was that the petitioner may be declared to have been elected. The petitioner having prayed that he be declared elected, the first respondent being entitled under the provisions of Section 97 of the Act to file recrimination had also filed recrimination against the petitioner, alleging therein various corrupt practices, committed by the petitioner. The Election Tribunal held that the corrupt practices alleged either by the petitioner or by the first respondent were not proved. As regards the other allegations contained in the petition also the Tribunal held that they were not proved. In the result the Tribunal dismissed the Election Petition as well as the Recrimination Application. The petitioner has appealed against the judgment of the Election Tribunal dismissing his election petition. The first respondent has also filed cross objections challenging the rejection of his Recrimination Application by the Tribunal.

3. Though various grounds have been raised in the appeal, Mr. Kamerkar, learned Counsel appearing for the appellant-petitioner to the Election Petition, has only pressed the appellant's contentions in respect of the corrupt practices alleged to have been committed by the first respondent by certain publications, The other grounds have not been pressed by Mr. Kamerkar before us. Mr. Kotwal, learned counsel for the first respondent, has not pressed the cross-objections filed by his first respondent. No arguments have been advanced before us by Counsel appearing for the second respondent. He has only stated that the second respondent supports the arguments of Mr. Kamerkar. The third respondent did not put in appearance. In this appeal, we are concerned only with certain publications in the issues of "Nirdhar" ***** of 29th September, 1961, 17th Nov., 1961, 1st December, 1961, 8th December, 1961, 22nd December, 1961, 2nd February, 1962 and 9th February, 1962.

4. Before we refer to these publications, to which our attention has been drawn by Mr. Kamerkar, it would be convenient to refer to the provisions of Sub-Section (4) of Section 123 of the Act, under which, it has been contended, the said publications fall. Analysing the provisions of Sub-Section (4) of Section 123, it is apparent that to bring the case under this Sub-Section the petitioner must prove (1) that there was publication by a candidate or his agent or by any other person with the consent of the candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, (2) that the false statement is in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate and (3) that it is a statement reasonable calculated to prejudice the prospect of that candidate's election. The provisions of this section have been

elaborately considered by a Division Bench of this Court in *Sudhir Laxman Hendre v. Shripat Amrit Dange*¹, We do not, therefore, consider it necessary to go over the same ground again. Suffice it to say that with respect we concur in the propositions laid down by this. Court in this case, and which have been well summarized in the placitum in the following terms :

"In order to come within the ambit of the term 'corrupt practices' under Section 123(4) of the Representation of the People Act, 1951, there must be a false statement of fact by a candidate or his agent which is made in relation to the personal character or conduct of any other candidate. Adverse criticism however

¹61 Bom LR 500

severe however undignified or ill mannered, however regrettable it might be in the interests of purity and decency of public life in relation to the political views, position reputation or action of a candidate will not bring it within the mischief of the statute. The Court in such matter cannot judge these statements in the light of their decency or desirability in so far as they are political statements not calculated to attack the personal character or conduct of any rival candidate. What is objectionable is a false statement of fact and not a false statement of opinion however unfounded or however unjustified. It is only when the person beneath the politician is sought to be assailed and his honor, integrity and veracity are challenged and such a statement is fake that it can be said that a false statement of fact about his personal character and conduct is made; and once it is established that such a statement was made, the question whether there was malice or not is immaterial. In ascertaining the true nature of the statement made, the Court must take into consideration all the surrounding circumstances including the occasion when it was published or made, the person against whom it was made, the person publishing it or making it, the audience or readers to whom it is addressed as also the precautions or care taken by the publisher verify the truth or otherwise of the statement challenged."

The expression "personal character or conduct" has been explained by their Lordships of the Supreme Court in *T.K. Gangi Reddy v. M.C. Anjaneya Reddy*². in the following words :

"The words 'personal character or conduct' are so clear that they do not require further elucidation or definition. The character of a person may ordinarily be equaled with his mental or moral nature. Conduct connotes a person's actions or behavior."

As regards the burden of proving the corrupt practice within the meaning of Sub-Section (4) of Section 123 of the Act, their Lordships in the same decision at page 268 observed :

"Burden of proof has two distinct meanings. viz., (i) the burden of proof as a matter of law and pleading, and (ii) the burden of proof as a matter of adducing evidence. Section 101 deals with the former and Section 102 with the latter. The first remains constant and the second shifts. In file present case, the burden of proof, in the first sense, certainly lies on the first respondent (the petitioner who had filed an Election petition, alleging corrupt

practice); but he has examined himself and has specifically stated in the evidence that he has neither committed the murder nor has he been guilty of any violent acts in his political career. He has placed before the Court the circumstances, namely, the situation created by the murder of Narayanaswamy and the possible impact of that murder on the poll which was scheduled to take place in a few days thereafter, indicating thereby a clear motive on the part of the appellant to make false allegations against him. A Court of first instance or an appellate Court is entitled to accept his evidence. If so, the onus shifts on the appellant to prove those circumstances, if any, to dislodge the assertions of the first respondent. The appellant has failed to put before the Court any facts to establish either that the first respondent did in fact commit the

²²² Ele LR 261, at page 266 (SC)

murder or any other acts of violence in the past or to give any other circumstances which made him *bona fide* believe that he was so guilty. In the circumstances, the Court is entitled to say that the burden of proving the necessary facts had been discharged by the first respondent."

From the aforesaid observations of their Lordships, it is clear that the burden of proving that the impugned allegations of facts are false lies on the petitioner, and that burden is discharged by the petitioner by examining himself and denying the alleged facts said to have been committed by him, and if the evidence of the petitioner is in the circumstances, accepted by the Court, then the burden shifts on to the person publishing the statements to prove that the alleged facts are true, or to prove some other circumstances which made him *bona fide* believe in those facts. In the light of the aforesaid observations the impugned publications will have now to be examined.

5. It is not in dispute that the publisher, namely, the first respondent was a candidate at the Election. It is also not in dispute that the publications were made after the candidature of the petitioner and the first respondent had been announced. The first respondent, as already stated, was the publisher, Printer and Editor of the Weekly "Nirdhar" which he published at Alibag, the Headquarter of the Kolaba District. It is also not in dispute that the newspaper published by the first respondent has considerable circulation in the Alibag Taluka, and therefore, it is not disputed that the persons addressed by these articles in the newspapers were the voters in the Alibag Constituency. In view of this admitted position, the points that will fall for consideration are : (1) whether the publication contained false statements of facts ? (2) whether these false statements of fact relate to the personal character or conduct of the petitioner ? and (3) if the findings on the aforesaid two issues in respect of any statement is in the affirmative, whether the said statements are such as can reasonably be calculated to prejudice the prospects of the petitioner's election ?

6. The petitioner has examined himself in relation to all these publications and has on oath stated in the witness box that the allegations are false. His evidence in this respect has been accepted by the Tribunal. (Then after referring to the various publications and discussing whether they related to the personal character of the petitioner (Paras 7 to 27) the judgment proceeds) :

28. For the reasons stated above, in our opinion the petitioner has been able to establish that the first respondent has published two false statements of fact relating to the personal character and conduct of the petitioner. Chronologically stated the first statement is one appearing in the issue of Nirdhar of date 17-11-1961; and that statement is that he offered to the villagers of Talavali and Navkhar to conduct their cases free in the event they agreed to vote for him. The second statement is contained in the issue of Nirdhar of date 22nd December 1961 (Ex. 84). It is a news item appearing at page 3 under the heading wherein it has been insinuated that the petitioner was in village Chinchoti on 18th November, 1961 and instigated some of the Samiti people to assault some congress-workers, and some Congress workers including a woman were consequently assaulted with sticks by the Samiti people on 19th November, 1961.

29. The next question that has to be considered is whether these false statements of fact are statements reasonably calculated to prejudice the prospects of the petitioner's Election within the meaning of Sub-Section (4) of Section 123 of the Act. Mr. Kamerkar, in the first instance, contends that Sub-Section (4) of Section 123 enacts an absolute bar. If there is a publication of false statements of fact in relation to the personal character or conduct of a candidate with the intention or design of prejudicing the prospects of that candidate's Election, then the Court must hold that the publication is hit by the provisions of Section 123(4) of the Act. In this connection, Mr. Kamerkar also brought to our notice the provisions of Section 100(1)(d)(ii) of the Act. He also referred us to certain observations in *Amir Chand v. Smt. Sucheta Kriplani*³, (at p. 237) (Ele. Tri. Delhi). We find it difficult to accept the contention of Mr. Kamrekar that Sub-Section (4) of Section 123 contains any such absolute bar. To so hold would render the concluding clause of Sub-Section (4) "being a statement reasonably calculated to prejudice the prospects of that candidate's election" superfluous. If the intention of the Legislature had been as is contended for by Mr. Kamerkar, there would have been no necessity for the Legislature to incorporate the said concluding clause in Sub-Section (4). On the examination of the other provisions of Section 123, it would be seen that so far as the establishment of corrupt practices of bribery, undue influence, an appeal by candidate or his agent or by any other person with the consent of a candidate or his election agent to prove or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to, religious symbols or the use of, or appeal to, national flag or the national emblem . . etc. . ., or the corrupt practice of promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India or the hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent, for the conveyance of any elector etc., or the corrupt practice of obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent, any assistance for the furtherance of the prospects of that candidate's election from any person in the service of the Government is concerned, the corrupt practice gets established on proving the existence of these facts as prescribed in Sub-Sections (1), (2), (3), (3A), (5), (6) and (7) of this section, and nothing more is required to be established. But so far as the corrupt practice contained in Sub-Section (4) is concerned, the Legislature has added a further clause which is

contained in the concluding part of Sub-Section (4) of Section 123. Comparing the provisions of Section 100(1)(d)(ii) with Sub-Section (4) of Section 123 also does not take the case of the petitioner any further. It has to be noticed that the said provision does not define 'corrupt practice', but prescribes fire grounds for declaring an election to be void, and the relevant provision provides that subject to be the provisions of Sub-Section (2), if the Tribunal is of opinion that result of the election, in so far as it concerns a returned candidate, has been materially affected, by any corrupt practice, committed in the interests of the returned candidate by an agent other than his election agent the Tribunal shall declare the election of the returned candidate to be void. It would be seen that the said provision deals with a case where a corrupt practice has been committed by a person other a candidate or the election agent of the candidate without the consent or knowledge or concurrence of the candidate or his election agent. Obvious, the candidate or his election agent not being privy to the commission of the corrupt practice, the legislature requires that mere proof of commission of corrupt practice is not sufficient to set aside an election. It must further be positively established by evidence that the result of the election in so far as it concerns a returned candidate has been materially affected. In other words, what the Legislature has said is that in such a case mere proof that the publication is reasonably calculated to prejudice the prospects of

³18 Ele LR 209

that candidate is not sufficient. It must also be positively established that the result of the election has, in fact, been materially affected. The clause is of no assistance in ascertaining what is a corrupt practice or what ingredients are required to be established to enable the Court to hold that a corrupt practice has been committed. No doubt, the following observations in 18 Ele LR 209 at p. 237 (Ele. Tri. Delhi), on which reliance is placed by Mr. Kamerkar, viz.,

"Coming to the last ingredient that the publication was reasonably calculated to prejudice the election, the argument of Shri Joshi as stated above, was that it is for the Tribunal to calculate now, whether the news which was contradicted, was calculated to prejudice the election. This argument obviously cannot be treated as a right argument. The words "reasonably calculated" manifestly show that one who got the news published gave it with the express desire and calculation that it would improve the prospects of the respondent."

Help the appellant in his contention that what the Court has to consider is the intention, desire or the design of the publisher at the time of the publication, in considering whether the publication at reasonably calculated to prejudice the prospects of that candidate. With respect, it is not possible for us to agree with this view. Had the Legislature intended that the deciding factor should be the intention of the publisher and not the view which the Court would take in the circumstances of the case, the Legislature would have used the words "intended" or "designed" instead of using the word "calculated" in this clause. The difference between the two words has been pointed out by a Division Bench of this Court in *Emperor v. A.A. Alwe*⁴, It is true that the question which fell for consideration was not the construction of Sub-Section (4) of Section 123 of the Act, but related to the construction of Section 16(1)(b) of the Trade Disputes Act, relating

to strike which was illegal, and which provided that a strike is illegal, if it is designed or calculated to inflict severe, general and prolonged hardship upon the community and thereby to compel the Government to take or abstain from taking any particular course of action. Considering the meaning of the two expressions "designed" and "calculated", the learned Chief Justice observed at p. 897 (of Bom LR) :

"In my opinion, the word 'designed' is equivalent to 'Planned'. The section does not say by whom the design is to be formed : but I take it, that must be by the person responsible for the strike On the other hand, the word 'calculated' seems to me to be directed to probable consequences which may be expected to follow from the strike, apart from what was in the minds of those responsible. In order to show that the strike was calculated to have the effect referred to in Sub-Section (1)(b), I think the Court must hold, having regard to the nature of "the strike and the circumstances prevailing at the date of the instigation or other acts specified in Section 17, that the natural and probable consequences of the strike will be to inflict such severes general and prolonged hardship upon the community that either the Government of India or the local Government may reasonably be expected in consequence thereof to be compelled to take or abstain from taking any particular course of action."

In our opinion therefore, the Legislature having in its wisdom used the expression

⁴³⁷ Bom LR 892

"calculated" and not "designed" or "intended" it would be reasonable to hold that what is provided in Sub-Section (4) is that the publication of false statement fact relating to the personal character or conduct must be such as would in the estimation of the Court, having regard to the nature of the publication, evidence tendered in Court and the surrounding circumstances have its natural and probate consequence of prejudicing the prospects of the candidate relating to whose personal character or conduct the publication has been made. Considering the case from another angle also lends support to the conclusion to which we have come. In publishing certain items, a publisher may not intend or would not think that the prospects of the candidate would be prejudiced. There may be cases where the publisher may not even be aware that a publication has been made in his paper. Some person may inadvertently put something in a newspaper published by a candidate which would effect the personal character or conduct of a candidate. In these circumstances, it cannot be said that the publisher did intend to prejudice the prospects of the candidate. But nonetheless the result might be so. Did the Legislature, in such cases intend that the election should not be set aside ? In our opinion, in defining corrupt practice, the emphasis is not so much on the intention of a publisher of a false statement of fact relating to the personal character or conduct of a candidate, but the emphasis is on the probable consequence of prejudicing the prospects of the candidate by such a publication. This appears to be the intention having regard to the basic principles that the election should be a free election and that the election of a person who has secured the highest number of votes at the poll should not be disturbed without a good and just cause. What ever be the intention of a publisher if the natural

and probable consequences of the publication of a false statement relating to the personal character or conduct be of prejudicing the minds of the voters the election cannot be said to be a free one. If on the other hand, the reasonable and probable consequences are not likely to be so and yet the election has to be set aside merely because the publisher intended it to be so the verdict given by the voters would be set at naught without just cause. In our opinion, therefore, the first contention raised by Mr. Kamerkar should fail.

30. In the alternative Mr. Kamerkar argues that even assuming that it is for the Court to estimate the reasonable and possible consequences of the publication. and the intention of design of the publisher is of little consequence, the only factors that could be taken into consideration by the Court are the occasion on which the publication was made the persons to whom it is addressed, and the person who publishes. If the occasion of the publication is the election time, if the persons addressed are the voters, and if the publisher is a candidate at the election or his election agent or some other person with the connivance of the candidate or his election agent, then the Court must hold that the publication was reasonably calculated to prejudice the prospects of that candidate. In the instant case, the publications were made after the candidature of the appellant and the first respondent were announced. The publisher is respondent No. 1 himself. The persons addressed are the residents of Alibag taluka amongst whom the paper has circulation; the voters are therefore addressed. These facts having been established, according to Mr. Kamerkar, we must hold that the publication was reasonably calculated to prejudice the prospects of the appellant. Mr. Kamerkar also has referred us to the following decision : (1) *Bhimrao v. Ankush Rao*⁵, *Abdul Rahiman Khan v. Radha Krushna Biswas Roy*⁶, and (3) *Inder Lal v. Lal Singh*⁷. where elections have been set aside on proof of facts that false

⁵22 Ele LR 385 (Bom)

⁷ AIR 1962 SC 1156 (1159)

⁶19 Ele LR 278 : AIR 1959 Ori 188

statements relating to the personal character or conduct of a candidate has been published. He also referred us to the decision in *Abdul Sattar Mohamed Hussain v. Badri Narayan Bansilal*⁸. The argument is virtually the first argument in a different garb. In short, the argument is that merely on a proof that a false statement of fact relating to the personal character or conduct of a candidate is published by a candidate or his election agent or with his consent after the candidature has been announced, the election must be set aside. We have already discussed that, in our opinion, establishing those facts alone is by itself not sufficient, but the publication, in the circumstances of the case must be, in the estimation of the Court, such as to have the probable and reasonable consequence of prejudicing the prospects of that candidate. It is indeed true that the circumstances mentioned by Mr. Kamerkar are relevant circumstances which have to be taken into account. They are the basic facts. If they do not exist the question of ascertaining the consequences the publication does not arise. It is only when these basic facts are established that the Court is called upon to form its opinion, be whether the publication is such that its effect reasonably would be to prejudice the prospects of the candidate. All the circumstances that would have a bearing on the decision of the issue would, in our opinion, be therefore relevant in considering the issue. What the Court has to decide in short is what would, in the circumstances of the case, be the effect of the impact of the publication left on the minds of the voters at the

time they vote. Would it be such as would prejudice the voters against the candidate relating to whom the publication has been made ? It the result of the inquiry would be that such would be the case, then the publication would be such which could be reasonably calculated to prejudice the prospects of the candidate. If on the other hand, the conclusion reached would be that the effect of the impact would not and could not be of such a nature in the circumstances of the case, then, the finding will have to be that the publication is not such which can be reasonably calculated to prejudice the prospects of the candidate. In other words, the Court has to determine what would be effect of the impact of the publication left on the minds of the voters at the time of casting their votes. The circumstances which would have a bearing on the determination of this question would, in our opinion, be the relevant circumstances for the decision of this issue. The Court would, in the first instance, ask the question what is the reaction on the candidate himself of the publication. Does he think that it is likely to prejudice his prospects or does he not think so ? Has he published any contradiction ? What is the reaction of his election agent and the supporters of the candidate ? What have they done in this matter ? What is the proximity of the date of the publication to the date of election ? What is the nature of the allegations contained in the publication ? It is indeed true that the Court would not blindly accept the candidate's or his election agent's evidence that it affected or prejudiced his prospects, or blindly accept the statement of the publisher that it did not prejudice the prospects of the candidate relating to whom the publication has been made. They would, in the circumstances, be admissions in their own favor. But the admission or the statement of the candidate relating to whom the publication has been made, or the conduct of the candidate or his election agent which would go to show that he or his election agent did not consider the statement to be such as was likely to affect his prospects at the election, would certainly be relevant factors, it being an admission against his interest or conduct which would amount to such an admission. Similarly, the statement of the publisher that it did affect the prospects of the candidate would be relevant because it is an admission made against his own interest. All these circumstances, to which we have made reference, will be

⁸⁶³ Bom LR 563

material and relevant considerations, and in our opinion, the Court will be justified in taking these circumstances into account in deciding the issue as to whether a particular publication, would reasonably be calculated to prejudice the prospects of that candidate.

31. The decisions to which our attention was drawn by Mr. Kamerkar render little assistance to him, inasmuch as the question which we have to consider was either not raised or did not fall for consideration. In 22 Ele LR 385 (Bom), the date of Election was 2-2-1958, and the impugned publication was on the eve of the Election, i.e., 1-2-1958. That being the position, there could be no doubt that the publication would reasonably be estimated to have adversely affected the prospects of the candidate relating to whom the publication was made. Similar was the case in AIR 1962 Supreme Court 1156. The facts are not given in the Supreme Court decision, but that is a decision on appeal from the decision of the Rajasthan High Court, and the facts of the case have been stated in *Inder Lall Yugal Kishore v. Lal Singh Mukund Singh*⁹, It would be seen that in that case also, the publication was continued right up to the eve of the date of election. It may

however be observed that the observations to which our attention was drawn by Mr. Kamekar lend, to some extent, support to the view taken by us. In paragraph 12 of the report Their Lordships of the Supreme Court observed :

"(12) But the position with regard to the private or personal character of the candidate is very different. Circulation of false statements about the private or personal character of the candidate during the period preceding elections is likely to work against the freedom of election itself inasmuch as the effect created by false statements cannot be met by denials in proper time and so the Constituency has to be protected against the circulation of such false statements which are likely to affect the voting of the electors. That is why it is for the protection of the Constituency against acts which would be fatal to the freedom of election that the statute provides for the inclusion of the circulation of false statements concerning the private character of a candidate amongst corrupt practices. Dissemination of false statements about the personal character of a candidate thus constitutes a corrupt practice."

Thus it would be seen that the object of the provision is to protect the constituency against circulation of false statements about the private and personal character of the candidate during the period preceding election in such manner as to leave no opportunity to the other side to meet it by denials in proper time. That indicates that the proximity of the date of publication to the date of election would be a relevant consideration in considering whether the publication is such as would reasonably be calculated to prejudice the prospects of that candidate.

32. It is indeed true that there is a gap of about 3 weeks between the date of publication and the date of poll in 19 Ele LR 278 , but the question as to the true import of the meaning of the last clause of Sub-Section (4) of Section 123 of the Act was not raised in that case.

33. The decision in 63 Bom LR 563 is distinguishable on facts. The question that fell for consideration in that decision was how the Court should determine whether a mark is a

⁹ All 1961 Raj 122

counterfeit mark or not. In considering the question whether the accused was guilty of offences under Sections 482, 483, 485 and 486 of the Indian Penal Code, it was observed that the test to be applied by the Court is not by keeping the mark and the counterfeit mark together and ascertain whether the two marks are identical, but consider the question whether an unwary purchaser would be deceived in the matter of purchasing goods by the counterfeit mark, and this issue has to be decided without any aid or opinion of the witnesses. The decision, in our opinion, is not an authority for holding that in every case where the Court has to estimate a probable consequence of an act it cannot take into consideration the evidence, relevant to the determination of that issue.

34. We have already referred to the circumstances which, in our opinion, are relevant for the

decision of the issue with which we are concerned, namely, whether the two false publications are such as can reasonably be calculated to prejudice the prospects of the candidate at the election. Now the date of the election is 22nd February, 1962. The dates of these two publications are 17th November, 1961 and 22nd December, 1961. The publications are three or two months prior to the date of the election. Having regard to the considerable lapse of time between the date of the publication and the date of the election and the nature of the publications, it is difficult to assume that it was likely that these publications had left any effect on the minds of the voters influencing them at the time when they went to the poll, Further it is not in dispute that the petitioner was from time to time publishing articles in the newspaper edited and published by his brother Prabhakar. Similarly it is not in dispute that from time to time Prabhakar also was publishing articles, contradictions and also carrying on election propaganda on behalf of the petitioner in his paper 'Nava Krishival'. Exhs. 166 and 100 can be referred to as illustrations wherein the petitioner himself has published contradictions about the news appearing in "Nirdhar" relating to him. Exh. 166 deals with the stands of the petitioner in the matter of Khar Lands Act of Alibag taluka and Exh 100 is a speech of the petitioner published, challenging the publication that the petitioner had any hand in getting for himself Rs. 22,000/- expended on the Sambri murder case. There is not a single publication either by the petitioner or his brother Prabhakar, who was also his election agent, relating to the two publications which we have held as false statements of fact relating to the personal character of the petitioner. The omission on the part of the petitioner to publish contradictions in the matter of these two publications when he and his election agent had ample opportunity and means of doing so, in our opinion reasonably leads to an Inference that even the petitioner or his election agent did not consider these two statements to be such as would reasonably prejudice his prospects at the election. In their examination-in-chief, neither the petitioner nor his election agent Prabhakar has anywhere stated that these publications in the Nirdhar had any adverse effect on his election. It is indeed true that during the course of the cross-examination, in para 28 of his deposition he has stated that the statement published in Nirdhar and referred to by him prejudiced his prospects at the election. But then this statement is also vague and does not particularise any publication. We have already discussed that except the aforesaid two articles the other publications in Nirdhar either related to his public conduct or related to persons, other than the petitioner. There is no categorical statement by the petitioner that these two statements had any prejudicial effect on his election. Apart from it the effect of the aforesaid statement in paragraph 28 of the cross-examination in our opinion is also considerably watered down by the admissions subsequently made by the petitioner during the course of his cross-examination. In paragraph 30 of his deposition the petitioner admits that on 20-1-1962 he had addressed a meeting at, Chikhali and he found that there was a general support for him amongst the voters. He also admits in the same paragraph that on 18-2-1962 he had addressed a meeting at Alibag and it was attended by about 2500 persons and he found that the whole of Alibag town was moved by the propaganda made by Samiti. Later in the same paragraph the petitioner admits that in the issue of "Nava Krishival" of 19-2-1962 a letter written by his election agent of date 16-2-1962 was published. The heading of the letter is "Do not get irritated by the goondaism of the Congress" and the letter concludes "the

defeat of the Congress is certain; and the Congresswallas are trying to collect material for an Election petition". When the conclusions mentioned in that letter were put to the petitioner the petitioner admitted that till the date of the letter the prediction about the result was correct. There are certain other admissions also, but it is not necessary to reproduce all of them here. It would be seen from these admissions that both the petitioner and his election agent and brother Prabhakar till about 4 to 6 days before the date of election were sure that the prospects of the petitioner at the election were bright and had not in any manner been prejudiced by the articles appearing in Nirdhar prior to that date. The analysis of the failure of the petitioner has also been given by the petitioner's brother in Exh. 117 in the issue of "Nava Krishival" of date 5-3-1962 published soon after the declaration of the result, and in the analysis the cause given for the failure at the election is the show of power and wealth made by the Congress party two days before the election. In our opinion, therefore, having regard to the nature of the two statements, having regard to the dates of publication of these statements, and the date of the election, the omission on the part of the petitioner or his election agent to contradict these two statements, and the admissions made by the petitioner, it is not possible to hold that the two statements are such as would reasonably be calculated to prejudice the prospects of the petitioner at the election. In the circumstances, we have no hesitation in holding that the election was a free election and was not vitiated by the alleged corrupt practices.

35. For the reasons stated above, in our opinion, no interference with the decision of the Tribunal is called for. In the result, the appeal fails and is dismissed. The cross-objections are not pressed and hence no order on the cross-objections. In the circumstances, there will be no order as to costs in the appeal and in the cross-objections.

Appeal dismissed.