

The Lakshmi
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the due date of the suit. In this case, no interest after the suit has been allowed by the trial Court and the plaintiff is not aggrieved on this account as no appeal or cross-objections have been filed in this Court. For reasons stated above, interest must be denied to the plaintiff, and issue No. 4 is decided against her. No other issue has been pressed, and no other point has been taken by the parties.

In the result, the appeal is partly allowed, and the decree passed by the trial Court is amended to the extent, that the defendant-appellant, and now the Life Insurance Corporation of India, is ordered to pay to the plaintiff the sum of Rs. 34,000 and also the proportionate costs of the suit and the appeal.

B.R.T.

P. C. PANDIT, J.—I agree.

CIVIL MISCELLANEOUS.

Before Bishan Narain and Inder Dev Dua, JJ.

RAM PHAL,—Appellant.

versus

BRAHAM PARKASH AND OTHERS,—Respondents.

F. A. O. 47-D of 1959

Representation of Peoples Act (XLIII of 1951)—Sections 99 and 123(7)—Notice to persons sought to be named—When to be issued—Right to cross-examine witnesses already examined—Whether accrues to the petitioner after the issue of such notice—Trial of election petitions—Matters to be kept in the forefront—Duty of the Tribunal stated—Doctrine of election agency—Whether different from Civil or Criminal Law of agency—Points of difference stated—Section 123(7)—Government Servant canvassing for votes—Whether constitutes corrupt practice on the part of the candidate—Promise by Home Minister with respect to a relief demanded by the tax-payers—Whether amounts to “undue influence.”

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Sept., 23rd.

Held, that notice to the persons, who are sought to be named as guilty of any corrupt practices under section 99 of the Representation of the People Act, 1951, should issue only at the conclusion of the trial and if the Tribunal chooses to examine some witnesses as Court witnesses, the trial should be deemed to conclude only after these witnesses have been examined and cross-examined. It may not strictly accord with the intention of the legislature in enacting Section 99 to issue such a notice at a stage when some of the witnesses have yet to be examined. But a notice which goes to a person for the purpose of showing cause before the conclusion of the trial, if at all, cannot be held to prejudice the petitioner is an election petition.

Held, that there is no provisions of law which confers a right to further cross-examine the witnesses whom the petitioner had already cross-examined at the trial of the petition. Under section 99, proviso (b), the right to cross-examine any witness, who has already been examined by the Tribunal and has given evidence against the person to whom show-cause notice has gone is conferred on him alone; no such right is conferred on the petitioner in an election petition.

Held, also that the Election Tribunals when dealing with serious questions of commission of corrupt practices are expected, during the course of trial to keep to the forefront in their mind the precise allegations in the pleadings and to see that no evidence outside them is brought on the record. Parties are undoubtedly there to safeguard their own interests but, as has often been said, an election petition is not only a private contest between the parties to it, but the whole Constituency is interested in its proper and fair trial and indeed it is also the duty of the Tribunal trying the election petition to be alert and vigilant when recording evidence so as to ensure that no evidence which is outside the pleadings and the issues happens to come on the record by sheer inadvertance.

Held, further that the doctrine of election agency is distinct from and wider than the Civil or Criminal Law of agency and in the former actual appointment is not necessary to prove. But at the same time in the absence of authorisation or ratification, the candidate must be proved to have either by himself or by his election agent or some

other acknowledged or fully authorised agent, employed the agent in question to act on his behalf or to have in some manner and to some extent put himself in his (the agent's) hand. In other words, he must entrust the agent with some important and vital or material part of the business of the election thus making common measure with him for the purpose of promoting his election. Employment in the business of election has of course not so far been defined with precision or distinctness; the question being one of degree to be determined on the facts and circumstances of each case. Once agency is established, then of course the candidate is liable for the foul play or corrupt practice of his agent notwithstanding even a direction of prohibition from him; such a prohibition merely by itself may not necessarily absolve or protect the candidate from the consequence of corrupt practices and illegal activities of his agent in the business of election. The reason for such a stringency in election matters is that if the candidates were to put forward agents to act for them and also to permit them to play foul without being responsible for it in the way of losing their seats, incalculable mischief would obviously arise.

Held, that merely because a Government servant has persuaded voters to cast their votes in favour of a particular candidate does not by itself bring his conduct within the mischief of section 123(7). It is the conduct of the candidate or his agent in obtaining or procuring or abetting or attempting to obtain or procure the assistance of a person in the service of the Government for the furtherance of the prospects of that candidate's election which is the gravament of this corrupt practice. Section 123(7) does not, as its language shows, purport to place any disability on the right of a citizen of this Republic, who may happen to be in the service of the Government, to persuade his friends, of his own volition, to vote for one of the candidates seeking election to the Parliament. This is a valuable right which every citizen possesses and is not as such hit by section 123(7), which merely invalidates an attempt on the part of a candidate to obtain or procure the services of a Government servant.

Held, that a promise made by the Home Minister with respect to a relief demanded by the tax-payers which is considered to be legitimate cannot possibly fall within the

definition of 'undue influence'. Proviso (b) to section 123(2) of the Representation of the People Act clearly states that a declaration of public policy or a promise of public action is not to be deemed to be interference on the part of the candidate or his agent or of any other person with the free exercise of an electoral right. In a welfare State, like ours, where the popularly elected representatives of the people hold reins of the Government and run the State administration solely for the general benefit of the people, it is only fit and proper that those in power actually and promptly react to the needs and demands of the people whose chosen representatives they profess to be. This basic and fundamental principle appears to underlie proviso (b) to section 123(2). The fact that the Minister favourably reacted to the just needs and demands of the people cannot possibly be construed to amount to a corrupt practice of undue influence.

First appeal from the order of Shri Kartar Singh. campbellpuri dated the 11th December, 1958, dismissing the election petition with costs and vacating the notices issued under section 99 of Representation of People Act.

Appellant by:—In person.

D. D. CHAWLA, B. C. MISRA, MAHARAJ KISHAN CHAWLA, AND L. R. GUPTA, ADVOCATES, for the Respondents.

JUDGMENT

DUA, J.—This appeal under section 116-A of the Representation of the People Act, 1951, arises out of an election petition filed by Shri Ram Phal, a voter, challenging the validity of the election of Shri Braham Parkash to the Parliament of India from the Delhi Sadar Constituency during the general elections held in 1957.

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It is common ground that during the general elections of 1957, six candidates contested the election to the Parliament from the Delhi Sadar Constituency, the polling of which took place on

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3rd of March, 1957. The results of the polling was as follows :—

	Shri Braham Parkash	...	63,848
Dua, J.	Shri Shyam Charan Gupta	...	48,248
	Shrimati Gurcharan Kaur	...	1,360
	Shri Hukam Chand	...	1,475
	Shri Tribhuvan Datt Bhuvanesh	...	925
	Shri Sodhi Pindi Dass	...	1,151

Shri Braham Parkash, as is obvious, came out successful and the present petition was filed by Shri Ram Phal, an Advocate of this Court, in his capacity of a voter in the constituency concerned. It is also common ground that Shri Ram Phal actually acted as polling agent of Shri Shyam Charan Gupta, the candidate who secured the next highest number of votes. In this petition, Shri Ram Phal impleaded as respondents all the six candidates who contested the election although according to law all of them were not necessary parties. Shri Braham Parkash was the only contesting respondent being respondent No. 1 and Shri Shyam Charan Gupta as respondent No. 2 put in a written statement on the merits supporting the petition. Shri Braham Parkash initially filed his written statement on 10th June, 1957, in which he raised quite a number of preliminary objections objecting to the competency of the election petition and also praying that allegations in various paragraphs of the petition be struck off on ground of vagueness and insufficiency of particulars. Respondent No. 6, Sodhi Pindi Das, filed a reply on the 18th June, 1957, which is virtually a reply to the written statement of Shri Braham Parkash rather than a reply to the petition filed by Shri Ram Phal. The Election Tribunal passed an

order on 18th June, 1957, on preliminary objections which arose out of the written statement of respondent No. 1 filed on 10th June, 1957, and immediately thereafter Mr. Radhey Lal Aggarwal, counsel for Ram Phal, petitioner, asked for time to consider the question of putting in an amended petition. An application seeking permission to amend the election petition along with the proposed amended petition was duly filed in the Tribunal and after hearing the objections of respondent No. 1, the proposed amendment was allowed on payment of costs which were duly paid by the petitioner.

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According to the amended petition, filed in the Tribunal in July, 1957, the election of respondent No. 1 was challenged on a number of grounds, the material ones for the purposes of this appeal being :—

(i) Publication by respondent No. 1 or his agent or by some other persons of statement of facts which were false and which he either believed to be false or did not believe to be true in relation to the personal character or conduct of respondent No. 2, the same being calculated reasonably to prejudice the prospects of the election of respondent No. 2 (paragraph 7 of the petition).

Amplifying this ground in paragraph 8, it is stated that on or about 1st March, 1957, posters were published in *Nagri* characters under the signatures of one Om Parkash Sharma, describing himself as Mantri, Yuvak Samaj, Sadar Bazar, Delhi, printed by Gupta Printing Press, which is situate at Esplanade Road, Delhi, and pasted in several places in the Delhi Sadar Constituency,

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containing amongst others, the following allegations against respondent No. 2 :—

- (a) Why does respondent No. 2 hold out as B.A. with Honours when he is only a Matriculate in English ?
- (b) Why has respondent No. 2 taken forcible possession of the R.S.S. godown ?
- (c) Why is it said that respondent No. 2 has swallowed a large amount of R.S.S. Funds ?
- (d) Why did respondent No. 2 go out of Delhi when his turn to proceed to Goa arrived on the excuse of some of his relatives being ill ?
- (e) Why has respondent No. 2 misappropriated the sale proceeds of a Jeep belonging to R.S.S. ?
- (f) Why did respondent No. 2 accuse the displaced persons after having come to Delhi of having destroyed the entire culture and language of Delhi in a speech delivered by him at a public meeting at Ghaziabad ?
- (g) Why should the public elect respondent No. 2, a worthless and cowardly person like respondent No. 2, to the Parliament?

These allegations, according to the petition, were meant to convey the following impressions :—

- (a) That respondent No. 2 is only a Matriculate in English and he still falsely holds out as B.A. with Honours;
- (b) That respondent No. 2 has actually taken forcible possession of R.S.S. godown;

- (c) That respondent No. 2 has actually swallowed a large number of R.S.S. funds;
- (d) That respondent No. 2 tried to evade proceeding to Goa when his turn arrived on the excuse of some of his relatives being ill;
- (e) That respondent No. 2 has actually misappropriated the sale proceeds of a Jeep belonging to R.S.S.;
- (f) That respondent No. 2 accused the displaced persons of having spoiled the entire culture and language of Delhi; and
- (g) That respondent No. 2 was a useless and cowardly person.

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These allegations are described to be quite false to the knowledge of respondent No. 1 or his agent or other persons who were responsible for the publication of the aforesaid posters and for circulation thereof by pasting them in conspicuous places upon the walls in different parts of the Delhi Sadar Constituency and elsewhere; these posters were published and circulated with the ulterior object of causing serious prejudice to the prospects of the election of respondent No. 2.

In paragraph 11, it is further averred that the aforesaid allegations were repeatedly published again and again by respondent No. 1 and/or his agent and/or other persons knowing the allegations to be false and published in Persian script over the signatures of the said Om Parkash Sharma and printed by Gupta Printing Press situate on

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Esplanade Road, Delhi. This publication, so continues the petition, was done with the consent of respondent No. 1, with the object of causing serious detriment and prejudice to the prospects of election of respondent No. 2 and in the interests of Shri Braham Parkash respondent No. 1 by Om Parkash Sharma who is and/or was a pseudonym for respondent No. 1 and the aforesaid posters were pasted in conspicuous places in the Delhi Sadar Constituency.

It is then asserted in paragraph 12 that the order for printing posters was given by the Delhi Pradesh Congress Committee and the bill was also made out in the name of the said Committee of which Shri Braham Parkash was the Vice-President.

It is then emphasized in paragraph 13 that the publication and prominent display, in thousands, of these posters in the whole of the Delhi Sadar Constituency directly damaged the reputation of respondent No. 2 and very materially and adversely affected the polling in favour of respondent No. 1, Shri Braham Parkash.

I have given in detail the allegations with respect to this corrupt practice because the petitioner-appellant, who argued the case in person before us, concentrated most on this ground.

(ii) The next corrupt practice which has been alleged by the petitioner consists of a speech delivered by Shri Gobind Ballabh Pant, Minister for Home Affairs, Central Government, on Friday, the 1st of March, 1957, at about 7 p.m. at a public meeting in Delhi. In this speech it is alleged that the traders of Delhi, most of whom carry on their

business and are voters in the Delhi Sadar Constituency, were addressed by the Home Minister, who, in the course of his speech, with a desire to help the Congress Party candidates in general and Shri Braham Parkash in particular, made a promise to the traders of Delhi that the Government would so amend the Sales Tax law with regard to cloth as to levy sales tax at the place of production and would also include it in the excise duty. It is further alleged that a Press note of this speech was published on Saturday, the 2nd of March, 1957, in 'The Hindustan Times'. This speech, according to the petition, was calculated to interfere with the free exercise of electoral right of vote by the traders of the Delhi Sadar Constituency and was further calculated to unduly influence the voters by this offer of gratification with the object of inducing the voters to vote for Shri Braham Parkash. This promise, it is further elaborated, did in fact interfere with the free exercise of electoral right of voters of this Constituency. It is then pleaded that Shri Gobind Ballabh Pant exercised undue influence with the knowledge and consent of Shri Braham Parkash and in his interest. In this connection it is further pleaded that on or about 1st of March, 1957, the Chief Commissioner of Delhi, a gazetted officer of the Government of India, with a view to render assistance to further prospects of Shri Braham Parkash's election, ordered the Commissioner of Sales Tax to issue a notification reducing the rate of sales tax from $6\frac{1}{4}$ per cent to 1 per cent, on jewellery made of gold and silver with effect from 1st March, 1957, and that a Press note embodying the above promise was actually issued by Shri D. D. Kapila, Sales Tax Commissioner, Delhi, on 4th March, 1957, giving effect to the above reduction from 1st of March. In order to connect the promise by the Home

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Minister and the gazette notification issued by the Sales Tax Commissioner, at the instance of the Chief Commissioner, Delhi, the petitioner has alleged that the Union Minister for Home Affairs spoke for the candidates of Parliamentary seats set up by the Congress Party and also spoke in particular for the candidature of Shri Braham Parkash. The petition continues that a meeting was organised by the Delhi Pradesh Congress Committee at the instance of Shri Braham Parkash and other Congress candidates in other Constituencies of the Parliament in order to enlist support for them, and the Home Minister at the request of Shri Braham Parkash and Shri Shiv Charan Gupta and with the intention of exercising undue influence over the voters in the interest of Shri Braham Parkash held out promises of amending the sales tax law. In the alternative it is alleged that the above promises were made in the interest of Shri Braham Parkash, and they materially affected the result of the election in so far as it concerned him. In this connection, it is also alleged that the aforesaid Government servants acted in a manner which was calculated to placate the gold and silver jewellery dealers in the Delhi Sadar Constituency which in fact furthered the prospects of Shri Braham Parkash's election. Shri Shiv Charan Gupta is also alleged to have approached the gold and silver ornaments and bullion merchants of Delhi requesting them to vote for Shri Braham Parkash, telling them that he would get the sales tax on silver and gold ornaments reduced by the Government. It is in this context that, according to the petitioner, Shri Braham Parkash and Shri Shiv Charan Gupta went to the Union Home Minister some time in the last week of February, 1957, and requested him to

reduce the sales tax in the interest of the election of the returned candidate.

(iii) The next charge of corrupt practice relates to Shri Gopi Nath Aman, Chairman of the Public Relations Committee of the Delhi Administration. It is alleged that Shri Gopi Nath Aman, who is a Government servant, canvassed and persuaded the voters to cast their votes in favour of Shri Braham Parkash and that for this reason Shri Braham Parkash should be held to have obtained or procured the services of the said Government servant for the furtherance of his election prospects. In this connection it is also expressly stated that on 24th February, 1957, Shri Gopi Nath Aman, unduly influenced the voters of Fayazgung, Tokriwalan and Patri Nahar of the Delhi Sadar Constituency.

(iv) It is then pleaded that ballot-boxes of some of the polling stations mentioned in paragraph 20 of the petition were defective in as much as they could be opened without breaking the green seals. This infirmity, according to the petitioner, amounted to non-compliance with the provisions of rule 18(2) of the Representation of the People (Conduct of Elections and Election Petition) Rules, 1956.

I have only mentioned the corrupt practices which have been argued and pressed before us by the petitioner-appellant leaving out those which do not concern us at this stage.

Shri Braham Parkash, in his written statement, controverted the petitioner's allegations and

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on the pleadings of the parties, the following issues were framed by the Election Tribunal for trial :—

1-A. Were corrupt practices as mentioned in section 123(4) committed by respondent No. 1 or his election agents or any other person with the consent of the returned candidate or his election agent in the manner stated in paragraphs 7 to 15-A of the petition ?

1-B. If the aforesaid corrupt practices are proved to have been committed by a person other than those described in issue No. 1-A, were they committed in the interest of the returned candidate and has the result of the election in so far as it concerns him been materially affected ?

2-A. Was the corrupt practice of undue influence [section 123(2)], committed by the returned candidate, respondent No. 1, or with his consent or the consent of his election agent consisting in the delivery of the speech at a public meeting in Delhi by the Hon'ble Mr. G. B. Pant in the manner described in paragraphs 16 to 18(a) and 18-B and 19(a) and 19-B ?

2-B. If consent is not proved, was the corrupt practice committed in the interest of the candidate and was the result of the election as regards him materially affected thereby ?

3-A. Was the corrupt practice of obtaining or procuring, etc., of any assistance from

persons in the service of the Government committed in furtherance of the prospects of respondent No. 1 [Section 123(1)] by the returned candidate or his election agents or any other person with the consent of either or both in the manner described in paragraphs 19(c) and 20 and 20-A ?

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3-B. If the said corrupt practice is proved to have been committed by a person other than mentioned, was it committed in the interest of the returned candidate and has the result of the election as regards him been materially affected ?

4-A. Was the corrupt practice of obtaining or procuring, etc., of any assistance from persons in the service of the Government committed for the furtherance of the prospects of respondent No. 1 [Section 123(1)], by the returned candidate or his election agents or any other person with the consent of either or both in the manner described in paragraphs 21, 22 and 22-A ?

4-B. If the said corrupt practice is proved to have been committed by a person other than those mentioned, was it committed in the interest of the returned candidate and has the result of the election as regards him been materially affected ?

5-A. Were the corrupt practices of bribery [Section 123(1)], committed by the returned candidate or his election agents or any other person with the

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consent of either or both in the manner described in paragraphs 23 and 23-A ?

- 5-B. If the said corrupt practices are proved to have been committed by a person other than mentioned before, were they committed in the interest of the returned candidate and was the result of the election as regards him materially affected thereby ?
6. Was the corrupt practice of obtaining or procuring the assistance of an alleged Government servant, namely, Shri Gopi Nath Aman, committed by respondent No. 1 ? e

(Note 1.—Shri Gopi Nath Aman, was a Government servant at the material time is denied and the petitioner is to prove his allegation.

(Note 2.—As the agent or other person mentioned in the opening sentence of paragraph 24 has not been specified any where, the petitioner will not be able to prove the commission of this corrupt practice by any agent or any other person).

Were rules 18(2), 56(iii)(d) of the Representation of the People (Conduct of Election and Election Petitions) Rules, 1956, not complied with at the election and was the result of the election as regards the returned candidate materially affected thereby ?

- 8-A. Was the corrupt practice of undue influence committed by the returned candidate by meeting out threats of injury to the voters of Gur-ki-mandi, Nabi Karim and Andha Mughal ? (Paragraph 26 of the election petition).
- 8-B. Was the corrupt practice of undue influence committed by respondent No. 1's election agent Shri Shiv Charan Das Gupta by threatening voters in the locality of Andha Mughal and Nabi Karim ? (Paragraph 27-A of the election petition).
- 8-C. Did Ch. Surat Singh and Shri R. N. Aggarwal exercise undue influence amounting to the commission of corrupt practice in Gur-ki-mandi on or about 22nd March, 1957, in the interest of the returned candidate and did the commission of this practice materially affect the result of the election as regards the returned candidate ? (Paragraph 27-A of the election petition).
- 8-D. Did Shri Mangal Dass commit the corrupt practice of undue influence by threatening voters in Andha Mughal in the interest of the returned candidate and was the result of the election as regards him materially affected ? (Paragraph 27-A of the election petition).
- 8-E. Did Shri Amar Nath Chawla commit the corrupt practice of undue influence by threatening voters in the locality of Nabi Karim in the interest of the returned candidate and was the result

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of the election as regards him materially affected ? (Paragraph 27-A of the election petition).

9. Was the corrupt practice of bribery committed by respondent No. 1 or by Shri Mangal Dass and Shri R. N. Aggarwal, with his consent as described in paragraphs 28 and 28-A of the petition ?

(Note.—Though it is not specifically mentioned, reading the two paragraphs together makes it clear that Mangal Dass and R. N. Aggarwal are alleged to have acted with the consent of the returned candidate. It is the interpretation which I place on the expression at the instance and on behalf of the said respondent No. 1, appearing in the paragraphs. The objection of this interpretation by respondent No. 1 is not accepted.)

The Election Tribunal, in a very lengthy judgment covering about 160 typed pages, negatived the petitioner's allegations about the commission of corrupt practices by or at the instance or with the consent of the returned candidate and dismissed the petition with costs.

Before us on appeal, the petitioner-appellant has expressly given up issues Nos. 8 and 9 and has also refrained from pressing issues 4 and 5. He has, however, concentrated his attack on the election principally on the basis of issue No. 1. The posters, which are the subject-matter of this issue, are Exhibit P. 1 (in Hindi) and Exhibit P. 2 (in Urdu), the subject-matter of both being similar. I may here state that in the petition and before the

Tribunal, Exhibit P. 3. another poster had also been relied upon for assailing the election but before us it has been conceded that this poster is wholly unhelpful to the petitioner-appellant, with the result that now we are only concerned with Exhibit P. 1 and Exhibit P. 2. It is common ground that these posters were printed at the Gupta Printing Press. The petitioner has attempted to show that the orders for the printing of these posters were in fact placed by Shri Brij Mohan, General Secretary of the Delhi Pradesh Congress Committee and that the name of Shri Om Parkash Sharma, Secretary, Yuvak Samaj, Sadar Bazar, Delhi, is a pseudonym for Shri Brij Mohan. In this connection it is necessary to turn to the election petition. In paragraph 11 of the petition, to which reference has already been made, Shri Om Parkash Sharma, who is said to be a member of the Congress Committee, is stated to be pseudonym for respondent No. 1. This being the case made out in the petition, I am afraid it is hardly permissible to the petitioner to change his front at the trial. This is the position he took both in the original as well as in the amended petition. Issue No. 1 also makes a specific reference to paragraphs 7 to 15A of the petition. In other words, the petitioner's case as contained in paragraph 11 of the petition is the subject-matter of this issue and according to the law of pleadings and procedure it is difficult to permit him to travel outside his pleadings and the issues. This would be all the more so in the case of election petitions because the standard of proof in such cases is, generally speaking, that of criminal trials which require strict proof of the charge as levelled in the petition. Elaborate arguments were, however, addressed in this Court as well as before the Tribunal that it was Shri Brij Mohan who placed the orders with the Gupta Printing

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Press and that he in fact handed over to the Press a manuscript in his own handwriting for the purposes of printing those posters. The petitioner in this connection also tried to make a serious grievance of the fact that he had originally applied to the Court to summon Shri Brij Mohan as his witness so that he may get specimen handwriting from him for the purpose of comparison with the manuscript which is said to have been recovered from the Printing Press on its search ordered by a Criminal Court, but the Tribunal did not enforce the attendance of Shri Brij Mohan for this purpose. This, so complains the petitioner, has prejudiced his case materially and has resulted in great injustice.

At this stage it is desirable to give the circumstances in which the alleged manuscript was recovered from the Gupta Printing Press. The appellant's case is that on or about 1st March, 1957, posters, like Exhibit P. 1 and Exhibit P. 2 were found pasted on the walls in the Delhi Sadar Constituency. On 1st April, 1957, a complaint was filed by Shri Shyam Charan Gupta, respondent No. 2, through Shri P. D. Bhargava and Shri Ram Phal Bansal, Advocates, in the Court of Shri R. L. Sharma, Magistrate, Delhi. It may be noted that Shri Ram Phal Bansal, Advocate, is the petitioner-appellant before us in the present election petition. In pursuance of this complaint, search warrants were secured under section 96 of the Code of Criminal Procedure for the recovery of posters, manuscripts and bills' counter-foils regarding the posters marked Exhibit P. 1 and Exhibit P. 2 on the present record, from the Gupta Printing Press. On the same day, the search was effected and two posters, one in Hindi and one in Urdu, along with

a bill book and two sheets of paper in Hindi, purporting to be in the handwriting of Shri Om Parkash Sharma, Secretary, Yuvak Samaj, Sadar Bazar, (marked Exhibit P. 9), in the present case), were recovered from the said Press, though it is asserted on behalf of Shri Braham Parkash that Shri Shyam Charan Gupta also got hold of some other documents not included in the search warrants, thus suggesting ulterior motive for the search warrants. The petitioner-appellant's case is that this manuscript is really in the handwriting of Shri Brij Mohan and that he had falsely mentioned Shri Om Parkash Sharma, Secretary, Yuvak Samaj, to be the author of Exhibit P. 1 and Exhibit P. 2. In order to support this version, reliance has been placed on the evidence to the effect that at the time of search that proprietor of the Press stated in answer to a question put by S. I. Tirath Ram (P. W. 4), that Shri Brij Mohan had delivered this manuscript to him. It is in this connection highly instructive to bear in mind that although the search had been effected on the 1st of April, 1957, no mention of Shri Brij Mohan being the author of the poster finds place either in the original petition or in the amended petition, in both of which Shri Om Parkash Sharma is stated to be a pseudonym for Shri Braham Parkash and not for Shri Brij Mohan. This fact, in my opinion, throws considerable doubt on the correctness of the position taken by the petitioner at the trial of the petition and before us on appeal. The suspicion is enhanced by the omission of the petitioner to put any question to P.W. 4, S.I. Tirath Ram, about Des Raj having told the former in answer to his question that Shri Brij Mohan had given that manuscript to him (Des Raj) for printing. It is also not without significance that no attempt was made to include Shri Brij Mohan as an accused in the

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criminal complaint after this alleged important information said to have been disclosed to Shri Shyam Charan Gupta during the search proceedings. The complaint initially lodged against Youti Parkash and Shri Om Parkash Sharma was never sought to be amended and indeed as I find from the record was not even seriously pursued. On this matter, however, I will have to say something a little later.

The appellant addressed lengthy arguments on the question that the Tribunal should have compelled Shri Brij Mohan to give his specimen handwriting so that the same could be compared with the manuscript, Exhibit P. 9. We find that originally Shri Ram Phal summoned Shri Brij Mohan, but after the witness had failed to appear on one or two hearings, the petitioner did not pursue the matter further and just left it at that. A little later, the petitioner applied for some witnesses to be examined as Court witnesses including Shri Brij Mohan but on this prayer being refused he omitted to summon Shri Brij Mohan again. After the petitioner's evidence had been closed and when the respondent had also practically concluded his evidence, an attempt was again made by the petitioner to secure the specimen handwriting of Shri Brij Mohan but this was opposed on behalf of the respondent, and in my opinion not without some justification, because it would have resulted in reopening the whole case.

At the close of the case the Tribunal issued notices to several persons including Shri Brij Mohan under section 99 of the Representation of the People Act, 1951, to show cause as to why they should not be named in the final order as persons guilty of having committed corrupt

practices. The petitioner again attempted to secure the specimen handwriting of Shri Brij Mohan, but the Tribunal felt that the latter could not be forced to give his handwriting. In my opinion, keeping in view the allegations in the petition, both original and amended, which were never sought to be further amended, it was scarcely permissible to the petitioner-appellant to put forward a new case—obviously outside the pleadings that the manuscript was in the handwriting of Shri Brij Mohan and that Shri Om Parkash Sharma was a pseudonym for Shri Brij Mohan and not for Shri Braham Parkash. Had this case been expressly pleaded in the petition perhaps something might have been possible to urge in support of the grievance that the Tribunal had adopted a somewhat stricter attitude than was called for.

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But since I have decided also to deal with this aspect of the case on the merits, I may dispose of the appellant's contention. His grievance is that the Tribunal should have compelled Shri Brij Mohan to give his specimen handwriting so that it could be got compared with Exhibit P. 9. As already observed, the appellant secured the orders of the Tribunal for the attendance of Shri Brij Mohan, but on the latter's failure to attend the Tribunal on the relevant date the appellant, for reasons best known to him, chose not to pursue the matter. Having thus failed to pursue his prayer for securing Shri Brij Mohan's specimen handwriting for any cogent and satisfactory—reasons—the reasons advanced by the appellant before us are far from convincing. I think the later refusal by the Tribunal, in the exercise of its judicial discretion, to force Shri Brij Mohan to give his specimen handwriting by coercive process,

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on the ground of undue delay, cannot be considered to be so unjudicial, arbitrary or perverse or even based on an erroneous view of well-recognised principal as to justify interference on appeal by this Court. It is true that the Tribunal holding an enquiry into the alleged commission of corrupt practices in the election process should liberally utilise the rules of procedure so as to make the investigation to them fully effective, because purity of election process in electing the citizens' representatives to the Parliament is the most essential and fundamental prerequisite—and indeed it is sine-qua-non-of a truly representative Government according to our Constitution the representative being the chain of communication between the citizens and those whom they have committed the exercise of power of Government; but at the same time, in a matter, like the present, a certain amount of discretion has been given to the Tribunal, as indeed it is given to all Courts and Judicial Tribunals—and in my opinion rightly—in coming to its conclusions on the circumstances of each individual case. In the case in hand, keeping in view all the circumstances disclosed on the record, I have not been able to persuade myself that the order of the Tribunal is such as demands interference on appeal. It is possible that sitting as an original Tribunal or Court I may have taken a different view, but that is not the test applicable when I am dealing with the same question in appeal. The appellant's contention assailing the decision of the Tribunal refusing to force Shri Brij Mohan to give his specimen handwriting is thus repelled.

Another point was sought to be made on behalf of the appellant which may also be disposed of at this stage. The appellant put forth another grievance with respect to the procedure adopted by

the learned Tribunal at the time when show cause notices were issued to certain persons including Shri Brij Mohan, under section 99 of the Representation of the People Act. It is contended that the Court also at that stage summoned certain witnesses as Court witnesses to depose on matters connected with the trial of the election petition. It is asserted that notice to Shri Brij Mohan and others to show cause under section 99 could only have been issued after the examination of the Court witnesses and that issue of show cause notice before the examination of the Court witnesses is contrary to law and is vitiated. In any case, it is alleged that it has prejudiced the petitioner-appellant in the trial of the election petition and necessary relief should be given by this Court.

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It appears that on 12th August, 1958, Shri Om Parkash Sharma and Shri Des Raj Gupta were summoned as Court witnesses and on the same day notices under section 99 to show cause were also issued to Shri Brij Mohan and others. On 9th September, 1958, Shri Des Raj Gupta was cross-examined and on 12th September, 1958, Shri Om Parkash Sharma. The persons, to whom show cause notices were issued, in exercise of their right as given by section 99, sought to cross-examine some of the witnesses who had already been examined by the Tribunal and had given evidence against these persons. The grievance of the appellant is that he should also have been given an opportunity to further cross-examine the witnesses whom these persons cross-examined and omission to give this opportunity to the appellant has resulted in failure of justice. It is thus prayed that either he should now be permitted to cross-examine these witnesses or their evidence should be ruled out of consideration.

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After giving my anxious thought to the contention advanced, it appears to me that the appellant is perhaps right in contending that notice to the persons who are sought to be named as guilty of any corrupt practices under section 99, should issue only at the conclusion of the trial and if the Tribunal chooses to examine some witnesses as Court witnesses, the trial should be deemed to conclude only after those witnesses have been examined and cross-examined, and it may not strictly accord with the intention of the legislature in enacting section 99 to issue such a notice at a stage when some of the witnesses have yet to be examined. But a notice which goes to a person for the purpose of showing cause before the conclusion of the trial, if at all, cannot be held to prejudice the petitioner in an election petition. It is thus difficult for me to appreciate the prejudice caused to the appellant on the ground of show cause notice having gone, before the technical conclusion of the trial, to the persons against whom the Tribunal felt a *prima facie* case of guilt of commission of corrupt practice made out.

In so far as the grievance with respect to an opportunity to further cross-examine the witnesses whom the appellant had already cross-examined at the trial of the petition is concerned, our attention has not been drawn to any provision of Law which confers such a right. Under section 99, proviso (b), the right to cross-examine any witness who has already been examined by the Tribunal and has given evidence against the person to whom show cause notice has gone is conferred on him alone ; no such right is conferred on a petitioner in an election petition. Had the legislature intended to confer on a petitioner in an election petition a further right to cross-examine the witnesses

whom he has already cross-examined, it would have been so expressly stated in this section. In the absence of such a provision I find it a little difficult to accede to the appellant's contention which I hereby unhesitatingly repel.

Now, coming to the material on the existing record, again I may repeat that it is a firmly established rule that no evidence can be looked at which is not covered by the pleadings and the issues. In the present case, as noticed earlier, the appellant had not pleaded that Shri Om Parkash Sharma was a pseudonym for Shri Brij Mohan, with the result that the evidence led in support of this new case can hardly be taken into account in support of issues Nos 1-A and 1-B, but the petitioner having brought this evidence on the record without any objection and the new case now developed before us having actually been permitted to be argued before the Tribunal, I would like in fairness to deal with the arguments on the merits as well. I may, however, state that the Election Tribunals when dealing with serious questions of commission of corrupt practices are expected, during the course of trial to keep to the forefront in their mind the precise allegations in the pleadings and to see that no evidence outside them is brought on the record. Parties are undoubtedly there to safeguard their own interests but, as has often been said, an election petition is not only a private contest between the parties to it, but the whole Constituency is interested in its proper and fair trial and indeed it is also the duty of the Tribunal trying the election petition to be alert and vigilant when recording evidence so as to ensure that no evidence which is outside the pleadings and the issues happens to come on the record by sheer inadvertance. In the instant case, the Tribunal as well as respondent No. 1 seem to have lost sight of the exact pleadings

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at the time when evidence with respect to Shri Om Parkash Sharma being a pseudonym for Shri Brij Mohan was brought on the record.

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The petitioner-appellant has in his attempt to prove Shri Brij Mohan's authorship of Exhibit P. 9 and the posters, Exhibit P. 1 and Exhibit P. 2, led evidence to establish that about 10/12 days before the pollings a meeting was held at the shop of Shri Gulzari Lal Chopra, Painter, where tea and refreshment was served to the guests at about 9 p.m. Shri Braham Parkash, Shri Shiv Charan Gupta, Shri Om Parkash Jain and Shri Brij Mohan are alleged also to be present at the meeting. According to the appellant's version, Shri Om Parkash Jain delivered a paper containing the subject-matter of a poster to Shri Shiv Charan Gupta who after seeing it asked Shri Om Parkash Jain to give it to Shri Brij Mohan with the remark that the latter was quite well up in such matters and he would get the poster printed and published. On reading he subject-matter, Shri Shiv Charan Gupta, appreciated it and advised its publication one or two days before the polling. In support of this version, Shri Vidhya Rattan Soni (P. W. 36), Shri Des Raj Bhatia (P. W. 37) and Dr. Ram Saran (P. W. 38), have been produced. This meeting was supposed to be of the *mohallawalas* convened for the purpose of enlisting support for Shri Braham Parkash. The version with respect to the poster as given by the above three witnesses is that when the meeting was dispersing and most of the invitees had practically departed, talk between Shri Shiv Charan Gupta and Shri Om Parkash Jain was overheard by them. The testimony of these witnesses appears to me to be most unimpressive and after going through their cross-examination I have no hesitation in rejecting as unreliable and unworthy of credence their version

about the alleged conversation between Shri Shiv Charan Gupta and Shri Om Parkash Jain with respect to the poster. As pointed by Shri Chawla, the names of these witnesses were not included in the first list of witnesses filed by the petitioner in September, 1957, though, according to P. W. 37, he had gone to the petitioner's office and informed him about this event 5/6 months before his evidence which would really come to some time in June or July, 1957. P. W. 36 had also disclosed this information to the petitioner in April or May, 1957. These witnesses are members of the Advisory Committee of Hari Mandir Bal Pathshala and have admittedly been taking legal advice from Shri Ram Phal in connection with the affairs of the institution. The unsatisfactory nature of their testimony suggests that they are merely trying to oblige the petitioner by deposing that they resorted to eavesdropping and actually overheard the alleged conversation between Shri Shiv Charan Gupta and Shri Om Parkash Jain. The story set up by them appears to me to be too clumsy to be believed and I do not find it possible to place any reliance on it. It may also be mentioned here that according to their version Shri Braham Parkash had no knowledge about the alleged conversation and their testimony also does not prove Exhibit P. 9 to be in the handwriting of Shri Brij Mohan. Incidentally it may be observed that Shri Shiv Charan Gupta and Shri Brij Mohan have categorically denied their presence in the alleged meeting. The learned Tribunal has discussed the value of the evidence of these witnesses on this part of the case and has in a fairly exhaustive discussion held them to be untrustworthy and their version to be a concoction, which was presumably concocted after the examination of Durga Parshad (P. W. 2). I fully endorse this conclusion of the Tribunal.

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The petitioner has next argued that keeping in view the fact that a bill on account of printing charges of the posters, Exhibit P. 1 and Exhibit P. 2, was actually issued by the Gupta Printing Press in favour of the Delhi Pradesh Congress Committee, it must be held that it was this Congress Committee which had placed order for their publication. In this connection, it is very strongly emphasised that the Gupta Printing Press had been publishing the entire literature for the Delhi Pradesh Congress Committee and that it was not possible for them to commit any mistake in sending the bill for these posters to the said Committee. It is further stressed that the bill had been sent in due course of business immediately after the publication of the posters and that it was only when fears arose that this publication was likely to be utilised for the purposes of setting aside Shri Braham Parkash's election that an attempt was made to put forward the plea that this bill had been sent by mistake to the Congress Committee. It is submitted that the evidence with respect to the payment of this bill by the Yuvak Samaj or by Shri Om Parkash Sharma is so scant, feeble and uninspiring that it must be discarded. It is thus sought to be concluded that this Court must hold, as a matter of fact, that the Delhi Pradesh Congress Committee did actually order printing of the posters in question. The next step, in the chain of arguments advanced by the appellant, is that Shri Brij Mohan being the General Secretary of the Delhi Pradesh Congress Committee and he having successfully foiled the attempt of the appellant to secure his (Shri Brij Mohan's) specimen handwriting should induce this Court to draw an inference that he was the person who actually gave the manuscript and got the posters printed and published.

As already observed, it is not possible for this Court to find as a positive fact that Shri Brij Mohan was the person whose manuscript Exhibit P. 9 is and who placed the order for printing of the two posters in question. The petitioner undoubtedly made initially an attempt to secure the admitted handwriting of Shri Brij Mohan but this matter was not pursued with the earnestness which it deserved. This may possibly be due to the fact that the petitioner was not sure in his own mind as to whether it was Shri Brij Mohan or some one else in whose handwriting Exhibit P. 9 in actual fact was. The circumstances that he did not include in the petition this precise plea even though on his own showing he had come to know of Shri Brij Mohan's complicity in this matter at the time of the search of the Gupta Printing Press does lend support to this possibility. It is also significant in this connection, as already observed, that in the criminal complaint filed by Shri Shyam Charan Gupta through Shri Ram Phal, Advocate, also Shri Brij Mohan was not sought to be made an accused person. But be that as it may, as already held by me, it is not possible for us to interfere with the order of the Tribunal in refusing a helping hand to the appellant in securing Shri Brij Mohan's admitted handwriting. The appellant has, however, drawn our attention to Exhibit P. W. 33/A and Exhibit P. W. 33/B which, according to him, have been proved by Dr. Suraj Bhan (P. W. 33), and it is contended that these documents clearly established that Exhibit P. 9 is in the handwriting of Shri Brij Mohan. It is argued that P. W. 33 had apparently been in correspondence with Shri Brij Mohan whom he had known for a considerable time and that these two documents being on the printed letter heads of 'The Praja Weekly' of which Shri Brij Mohan was admittedly the Editor, it should be held proved

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that these letters were actually written by Shri Brij Mohan himself. Shri Brij Mohan has denied that these letters were ever written by him and so have Khem Chand (R. W. 3) and Mahant Adhikari (R. W. 4). The appellant requested that we should compare the handwriting in Exhibit P. 9 with that in Exhibit P. W. 33/A and Exhibit P. W. 33/B and find out for ourselves whether or not they are all in the handwriting of the same person. In the first instance, I am not quite convinced that Exhibit P. W. 33/A and Exhibit P. W. 33/B are actually in the handwriting of Shri Brij Mohan. The appellant's argument merely suggest an equal possibility of these two documents being or not being in Shri Brij Mohan's handwriting. On appeal, as is well recognised, the onus is on the appellant to dislodge the conclusions of the first Court and not merely to show that the findings can with equal possibility be one way or the other. I am thus disinclined to reverse the determination of the Tribunal though I am not sure if I would have been prepared to differ had the decision of the Tribunal been the other way. This being the position, I do not think it will serve any useful purpose to make an attempt at comparison of Exhibit P. 9 with Exhibit P. W. 33/A and Exhibit P. W. 33/B. But this apart, even on looking at these documents, although there may, in my opinion, be some resemblance of certain letters in Exhibit P. 9 with those in Exhibit P. W. 33/A and Exhibit P. W. 33/B, I do not find it possible to say with certainty that all the three documents are in the handwriting of one and the same person. The petitioner having failed to substantiate the allegation that Exhibit P. 9 is in Shri Brij Mohan's handwriting the next question that Shri Brij Mohan being the General Secretary of the Delhi Pradesh Congress Committee must be deemed to be an agent of Shri Braham Parkash does not arise and

it is scarcely necessary in connection with the discussion on issues Nos. 1-A and 1-B to go into this matter. It is firmly established and has not been controverted before us that the doctrine of election agency is distinct from and wider than the civil or criminal law of agency and in the former actual appointment is not necessary to prove. But at the same time in the absence of authorisation or ratification, the candidate must be proved to have either by himself or by his election agent or some other acknowledged or fully authorised agent, employed the agent in question to act on his behalf or to have in some maner and to some extent put himself in his (the agent's) hand. In other words, he must entrust the agent with some important and vital or material part of the business of the election thus making common measure with him for the purpose of promoting his election. Employment in the business of election has of course not so far been defined with precision or distinctness; the question being one of degree to be determined on the facts and circumstances of each case. Once agency is established, then of course the candidate is liable for the foul play or corrupt practices of his agent notwithstanding even a direction of prohibition from him; such a prohibition merely by itself may not necessarily absolve or protect the candidate from the consequences of corrupt practices and illegal activities of his agent in the business of election. The reason for such a stringency in election matters is that if the candidates were to put forward agents to act for them and also to permit them to play foul without being responsible for it in the way of losing their seats incalculable mischief would obviously arise. On the record of the present case, however, there is no reliable data to conclude that Shri Brij Mohan was ever Shri Braham Parkash's agent in the matter of his election in the sense stated above.

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In the light of the test just stated, I may here deal with the contention raised before us on this part of the case in a little more detail. It is contended that Shri Brij Mohan should be deemed to be an agent of Shri Braham Parkash on a three-fold ground (a) that he actually attended a meeting called by Shri Hans Raj, Chief Electoral Officer, and there he represented the Delhi Pradesh Congress Committee of which party Shri Braham Parkash was the candidate in the election, (b) that he was the General Secretary of the Delhi Pradesh Congress Committee and as such must be deemed to be the agent of Shri Braham Parkash, the party candidate, and (c) that Shri Brij Mohan actually worked and canvassed for Shri Braham Parkash. In so far as the first ground is concerned, it is admitted that Shri Brij Mohan only attended one meeting convened by the Chief Electoral Officer when symbols were allotted to the various political parties who were to set up their candidates at the election. It is said that Shri Brij Mohan at that meeting gave a list of the Congress candidates. In my opinion, it is difficult to hold Shri Brij Mohan to be an agent of Shri Braham Parkash on this ground and indeed no cogent argument has been advanced before us inducing us to so hold. No law and no precedent or principle has been cited by the appellant. In so far as the second ground is concerned, it is true that there is a fairly serious conflict of opinions on the point, though there are some authorities, both English and Indian, which hold that a political party which sets up a candidate for election and actually canvasses for him to his knowledge and therefore with his implied consent, might well constitute the candidate's agent. In view of the conclusion to which I have already arrived that Shri Brij Mohan is not proved,

as a matter of fact, to have got the posters Exhibit P. 1 and Exhibit P. 2 printed and published, I do not consider it necessary to express any considered opinion on this point, though, as at present advised, it does seem to me to be more or less a question of fact to be determined in each case as to how far a particular individual has canvassed and acted in the interests of a candidate so as to bring him within the scope of the word 'agent' as contemplated by the law of election in this country, and while considering this question the fact that the candidate has been set up by a political party and the extent, nature and method of canvassing adopted by the party as also the extent and nature of collaboration between the party and the candidate may legitimately be taken into account. In so far as the third ground is concerned, again the evidence on this record is so flimsy and slender that I do not think it is possible to hold Shri Brij Mohan to be an agent of Shri Braham Parkash.

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The appellant having failed to establish positively that the posters, Ex. P. 1 and Ex. P. 2, were actually got printed and published by or at the instance of Shri Braham Parkash or his election agent or by Shri Brij Mohan, it is scarcely necessary to deal with the case as put forth on behalf of the successful candidate. I would, however, briefly discuss that case also, because it does tend to strengthen the conclusion at which I have already arrived. According to the respondent, some dissidents from Jan Sangh had as early as 1954 formed a separate organisation called the Democratic Front. In 1956 or there about this Democratic Front was dissolved and an organisation called Yuvak Samaj formed under the General Secretaryship of Shri Om Parkash Sharma; Shri Om

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Parkash Jain and Shri Phul Singh also being members of this organisation. It is emphasised that this Yuvak Samaj was formed so as to enlighten the people about the drawbacks and defects of Shri Shyam Charan Gupta. According to the appellant, however, this Yuvak Samaj is an imaginary body or a myth and the respondent or the Congress Party have merely sought to utilise this imaginary organisation for the purposes of committing corrupt practices in its name. It is true that on the evidence on the existing record it is not easy to come to a positive conclusion about the existence of any well-organised and popular organisation known by the name of Yuvak Samaj, at the same time this record is completely bare of any reliable or trust worthy material showing that the Yuvak Samaj is a wholly imaginary name of an organisation which does not in fact exist. It is a matter of common knowledge that whenever there is a rift in a political party, some of the more ambitious disgruntled members of such a party, not infrequently set up some kind of a rival organisation however insignificant its membership and however lacking it may be in solid foundations. Formation of such parties on the eve or in anticipation of elections to the legislatures has generally been observed to be the rule in this country. It is thus highly likely that the Democratic Front or the Yuvak Samaj partook of the character of a small organisation of the dissidents from Jan Sangh and they might well have tried to settle their scores with Shri Syam Charan Gupta by trying to discredit him in the eyes of the electorates at the psychological moment. But as already observed this version merely strengthens me in my conclusion that the appellant has failed to connect Ex. P. I. and Ex. P. 2 with Shri Braham Parkash or any one of his agents. It must in this connection be borne in

mind that it is always incumbent on a petitioner in an election petition to prove his allegations of commission of corrupt practices beyond the possibility of reasonable doubt so as to justify setting aside of an election.

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The appellant also laid some stress on the alternative case which Shri Braham Parkash had put forth with respect to these posters; the alternative case being that no such posters were actually published and that Shri Om Parkash Gupta, who had in fact got them printed returned the whole lot of them to Shri Shyam Charan Gupta, who had at one stage gone to the former and requested him to abstain from publishing them. It is argued that Shri Om Parkash Gupta's manuscript is not forthcoming and that this alternative case is a concoction or a fib put forth on behalf of Shri Braham Parkash which is suggestive of a guilty mind. The fact that two conflicting alternative versions have been given by the returned candidate, according to the appellant, shows that both are false and that the truth must be held to be that Shri Brij Mohan is the real author of the posters and that it was he who actually published them with the sole object of materially affecting the election of respondent No. 2. I do not find it possible to accede to this somewhat broad contention. Merely because the respondent has put forth two conflicting versions does not necessarily show that the appellant's allegations must be held to be true. It is undoubtedly a relevant factor to be taken into account in determining the question in issue but it does not necessarily lead to the conclusion canvassed by the appellant. It may at this stage be stated that the Tribunal actually accepted the plea that the posters had been got printed by Shri Om Parkash Gupta though the return of the posters to Shri Shyam Charan Gupta was negatived. The

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appellant has not been able successfully to assail the conclusion of the Tribunal that Shri Om Parkash Gupta got the posters printed, though even if this finding were to be considered to be erroneous it does not by any means follow that the posters were printed and published at the instance of the returned candidate or any one of his agents which fact has to be affirmatively established by the appellant; the standard of proof being like that of a criminal trial. This the appellant has, in my opinion, clearly failed to do. But then the appellant has very seriously contended that the return of posters to Shri Shyam Charan Gupta, having been negatived by the Tribunal the conclusion that they had been got printed by Shri Om Parkash Gupta deserves to be reversed. I do not agree. There is no rule of law that a witness must either be believed or disbelieved as a whole and no cogent reason has been shown why in so far as the printing of the posters is concerned the conclusion of the Tribunal should be reversed. As a result of the above discussion, I have no hesitation in agreeing with the Tribunal that the appellant has failed to establish the commission of corrupt practice which is the subject-matter of issue No. 1. In view of this finding it is hardly necessary to go into the question of the allegations contained in the impugned posters being true or false to the knowledge of its publisher or having been believed by him to be true.

The next charge on which the petitioner addressed us relates to the allegations of procuring the services of Shri Gopi Nath Aman, Chairman of the Public Relations Committee. It has been alleged that Shri Aman is a gazetted officer in the service of the Government and that the returned candidate procured his assistance for the furtherance of the prospects of his election. It is common

ground that Shri Aman is the Chairman of the Public Relations Committee and is drawing Rs. 1,000 per mensem, as salary. It is also agreed that his appointment has been gazetted with the result that he is a gazetted officer. The respondent has denied both that Shri Aman is in the service of the Government and that his services were procured or obtained by Shri Braham Parkash or his agents. In so far as the question of Shri Aman being in the service of the Government is concerned, the evidence of Shri A. D. Pandit (P.W. 39), who was the Chief Commissioner of Delhi at the relevant time, is very instructive. He has stated on oath that Shri Gopi Nath Aman has been the Chairman of the Public Relations Committee, since December, 1956, the Government of India having appointed him and the Government of India alone being competent to remove him from that post. He is being paid a salary of Rs. 1,000 per mensem from the consolidated funds of the Union of India and he presides over a Committee which is intended to advise the Government on matters of public relations generally. Shri Aman, according to this witness, is a full-time employed of the Government of India. Notification of his appointment in the Government Gazette has also been duly proved. Mr. Pandit's evidence, in my opinion, is clear and is sufficient for us to hold that Shri Gopi Nath Aman is in the service of the Government particularly when nothing substantial or convincing has been urged on behalf of the respondent as to why implicit reliance should not be placed on the testimony of Shri Pandit who is obviously best fitted to depose on the point in issue. The reasoning of the learned Tribunal in holding Shri Aman not to be a Government servant does not seem to me to be convincing and I do

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not find it easy to appreciate it. It has been observed that the nature of the work and functions assigned to the Public Relations Committee, of which Shri Aman is the Chairman, are nowhere specified and that therefore it is difficult for the Tribunal to consider Shri Aman to be a person in the service of the Government. Shri Aman, in the opinion of the learned Tribunal, appears to be more a servant of the public as he is to find out their grievances and place them before the Government. I am wholly unable to understand and appreciate this ingenious method of dealing with the question whether or not Shri Aman is a Government servant. I need hardly state that every Government servant is a servant of the public in this Democratic Republic and the distinction between a Government servant and a public servant drawn by the learned Tribunal on the facts and circumstances of this case is wholly misconceived and clearly not easy to appreciate. The decision of the Tribunal on this part of the case, therefore, deserves to be reversed and I accordingly hold that Shri Aman has been fully proved on this record to be in the service of the Government.

The question, however, remains whether on the present record it is established that Shri Braham Parkash obtained or procured the services of Shri Gopi Nath Aman. Some evidence has been led to prove that Shri Aman canvassed for votes for the Congress candidates including Shri Braham Parkash and indeed some witnesses have gone to the length of deposing that Shri Aman canvassed certain voters in the company of Shri Braham Parkash. At this stage it is relevant to refer to the election petition where all that is pleaded is that Shri Gopi Nath Aman, who is a Government servant, canvassed and persuaded voters to cast their votes in favour of Shri Braham

Parkash and that for this reason Shri Braham Parkash should be held to have obtained or procured the services of the said Government servant for the furtherance of his election prospects. This allegation is further elaborated by alleging that on 26th February, 1957, Shri Gopi Nath Aman unduly influenced the voters of Fayazgung, Tokriwalan and Patri Nahar of the Delhi Sadar Constituency. It is thus obvious that the only ground, on which the corrupt practice, as contemplated by section 123(7), is stated in the petition to have been committed is that Shri Gopi Nath Aman, a Government servant, canvassed and persuaded the voters to cast their votes in favour of Shri Braham Parkash. In my opinion, merely because a Government servant has persuaded voters to cast their votes in favour of a particular candidate does not by itself bring his conduct within the mischief of section 123(7), because it is the conduct of the candidate or his agent in obtaining or procuring or abetting or attempting to obtain or procure the assistance of a person in the service of the Government for the furtherance of the prospects of that candidate's election which is the gravamen of this corrupt practice. The allegations in the petition, even if taken to be correct, do not lead to the irresistible inference that Shri Braham Parkash obtained or procured Shri Aman's services. Section 123(7) does not, as its language shows, purport to place any disability on the right of a citizen of this Republic who may happen to be in the service of the Government, to persuade his friends, of his own volition, to vote for one of the candidates seeking election to the Parliament. This is a valuable right which, in my opinion, every citizen possesses and is not as such hit by section 123(7) which merely invalidates an attempt on the part of a candidate to obtain or procure the

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services of a Government servant. It is true that the policy of our law seems to be clearly to keep Government servants aloof from politics and also to protect them from being imposed upon by those with influence or in position of authority and power, but the question with which we are at the present stage concerned is whether mere canvassing by a Government servant would by itself attract the provisions of section 123(7). In my opinion it does not. The onus of proving corrupt practices is always on those who assert their commission and the commission of such practices has to be established by unimpeachable evidence. Undoubtedly, the evidence in support thereof need not be direct and it may be merely circumstantial and inferential but such circumstantial evidence and inferences deducible therefrom must be strong enough to lead to the only reasonable conclusion of the commission of corrupt practices as alleged. No conjectures or surmises however attractive or even plausible can replace proof and if two equally reasonable conclusions or inferences are open, one guilty and the other innocent, the latter is, generally speaking, allowed to prevail.

During the trial evidence was sought to be led, and it appears that it was led without any objection, that Shri Aman addressed certain meetings and also on one occasion was seen carrying a national flag in a procession which was taken in support of the Congress candidates. The allegations in regard to the procession and public meetings not being in the petition could, in my opinion, hardly be permitted to be substantiated or developed at the time of the trial. But assuming that evidence to be admissible, in my opinion, it is so extremely unprecise, general and vague in so far as the corrupt practice as contemplated by section 123(7) is concerned that I am constrained

to find it to be wholly inadequate to justify a positive conclusion that Shri Braham Parkash had obtained or procured the services of Shri Gopi Nath Aman so as to invalidate his election.

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In the view that I have taken it is scarcely necessary to notice or deal with the authorities cited by the appellant that Shri Aman should be considered to be in the service of the Government. Three rulings to which the learned counsel for the respondent made a reference need not detain us because all of them are distinguishable on facts. These authorities, however, are *Kishore Chandra Deo Bhanj v. Raghunath Misra and others* (1), *Mehta Gordhandas Girdhari Lal v. Chavada Akbar Dalumiyani and others* (2), and *Nyalchand-Virchand Sheth v. Vithalbhair-Ranchhodbhai Patel and others* (3).

This brings me to the charge of corrupt practice imputed to Shri Govind Ballabh Pant, Home Minister, Shri A. D. Pandit, Chief Commissioner, Delhi, and Shri D. D. Kapila, Sales Tax Commissioner. The appellant's case is that Shri G. B. Pant, Minister for Home Affairs, Central Government, on 1st of March, 1957, at about 7 p.m. delivered a speech at a public meeting in Delhi in which, with a desire to help the Congress Party candidates in general and Shri Braham Parkash in particular, he made a promise to the traders of Delhi that the Government would so amend the Sales Tax law with regard to cloth as to levy sales tax at the place of production and would also include this tax in the excise duty. A Press note of this speech, according to the petitioner-appellant,

(1) XIX E.L.R. (S.C.) 1.

(2) VII E.L.R. 374.

(3) IX E.L.R. 451.

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was published on Saturday, the 2nd March, 1957, in 'The Hindustan Times' under the heading 'Pant's Assurance to Traders' stating as follows :—

By a Staff Correspondent

"Pandit Pant said in Delhi on Friday evening that the Government would realise the sales tax at the place of production and it will be included in the excise duty. Pandit Pant, who was addressing an election meeting in support of Mr. Radha Raman, Congress Candidate, in Chandni Chowk, assured the Traders of Delhi that the Government would try to meet their legitimate demands."

This speech, according to the petitioner, was calculated to interfere with the free exercise of electoral right of vote by the traders of the Delhi Sadar Constituency and was further calculated to unduly influence the voters by this offer of gratification with the object of inducing the voters to vote for Shri Braham Parkash. The Chief Commissioner, Delhi, also according to the appellant, on 1st March, 1957, ordered the Commissioner of Sales Tax to issue a notification reducing the rate of sales tax from 6½ per cent to 1 per cent on jewellery made of gold and silver with effect from 1st March, 1957, and that a Press note embodying the above promise was actually issued by Shri D. D. Kapila, Sales Tax Commissioner, Delhi, on 4th March, 1957, giving effect to the above notification as ordered by the Chief Commissioner. According to the allegations in the petition, Shri Braham Parkash and Shri Shiv Charan Gupta had approached the Home Minister to help them in the election in dispute and with that object the Delhi Pradesh Congress Committee organised a meeting which was addressed by Shri Pant. The appellant

in his arguments before us, to begin with, tried to bring the aforesaid allegations within the definition both of bribery and undue influence but a little later he restricted his contention only to undue influence. 'Undue influence' as defined in section 123, of the Representation of the People Act, 1951, is in the following terms :—

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“123. *Corrupt practices.*—The following shall be deemed to be corrupt practices for the purposes of this Act :—

* * * * *
* * * * *
* * * * *

“(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person, with the free exercise of any electoral right:

Provided that—

- (a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—
- (i) threatens any candidate, or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and excommunication or expulsion from any caste or community; or
 - (ii) 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

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will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with free exercise of the electoral right of such candidate or elector within the meaning of this clause ;

“(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.”

I have not been able to understand how a promise made by the Home Minister with respect to a relief demanded by the tax payers which is considered to be legitimate can possibly fall within the definition of ‘undue influence’. In order to appreciate the scope of ‘undue influence’, as used in the Representation of the People Act, and to get at the intention of the legislature, it is helpful to refer to proviso (b) to section 123(2) which has been reproduced above. A declaration of public policy or a promise of public action is not to be deemed to be interference on the part of the candidate or his agent or of any other person with the free exercise of an electoral right. If the legislature, in its wisdom, expressly ruled out and excluded any such promise of public action from the definition of the words ‘undue influence’, I fail to see how the promise held out by Shri Pant can fall within the four corners of section 123(2). I equally fail to see how the relief given by the Chief Commissioner or by the Sales Tax Commissioner can, on any reasonable construction of the definition of the words ‘undue influence’, be considered to be hit by it.

In a welfare State, like ours, where the popularly elected representatives of the people hold the reins of the Government and run the State administration solely for the general benefit of the people, it is only fit and proper that those in power actually and promptly react to the needs and demands of the people whose chosen representatives they profess to be. This basic and fundamental principle appears to me to underlie proviso (b) to section 123(2). If the Home Minister in 1957 felt that a provision of law imposing tax on certain commodities was in fact too harsh and called for relaxation in pursuance of the legitimate demands of the tax-payers concerned, then I fail to see how the fact that the Minister concerned favourably reacted to the just needs and demands of the people can possibly be construed to amount to a corrupt practice of undue influence. This public action may have influenced some voters in their decision as to for whom they should vote but it can hardly be described to be undue influence. The appellant, however, contends that if such a conduct is likely to influence the voters, then it is most unjust and unfair on the part of the party in power to give relief at a psychological moment which is calculated to put the other candidates at a disadvantage. I may state here that the Election Tribunals and this Court are not concerned with the policy of the law. We have to see what the statute says and if the facts on the present record do not fall within the four corners of the statutory definition of undue influence, the charge of corrupt practice of undue influence must fail. In this connection one has to keep in view the rule that an election contest is unlike a suit under the ordinary law of the land and no equitable consideration arises in the trial of such a contest. It is a special proceeding under the Representation of the People

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Act and is governed by the provisions of the said Act. As observed in *Jagan Nath v. Jaswant Singh and others* (1), an election contest is not an action at law or a suit in equity; it is a purely statutory proceeding unknown to the common law. This being the position, the Tribunal or this Court on appeal is not entitled to travel outside the statutory provisions.

The appellant has not been able to bring to our notice any authority which, in similar circumstances, construed the relief in the matter of taxation to amount to corrupt practice, and there is no material on the present record which could bring the speech of Shri G. B. Pant within the four corners of section 123(2). There is not a scintilla of evidence establishing undue interference on the part of Shri Pant or even an attempt to interfere whether directly or indirectly with the free exercise of electoral right. There is no threat and no inducement without which obviously no plea of undue influence can possibly be established; and I find it extremely difficult to spell out any attempt to corrupt the voters, from the promise and the action which merely gives to the citizens, what is justly due to them, in the form of relief from unjust and inequitable taxation. Merely to ask for votes for the Congress Party candidates or even for Shri Braham Parkash (assuming the reliable evidence to this effect with which I find it difficult to agree) would also not by itself amount to any interference or attempt to interfere with the free exercise of the right to vote which can be struck down as violative of section 123(2).

These were the only points on which the parties addressed us on appeal. In so far as issue

(1) A.I.R. 1954 S.C. 210.

No. 7 is concerned, the appellant, after making a lukewarm attempt to address us, ultimately dropped the challenge. This issue also thus need not be discussed. I have, therefore, in the light of the above discussion, no hesitation in agreeing with the final conclusion of the learned Tribunal and in dismissing the appeal and holding that the election of Shri Braham Parkash has not been shown to be tainted with any infirmity justifying interference with the result of his election.

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The appellant in the end contended that there was no case for burdening him with the costs of the election petition. In any case, he submitted that the sum of Rs. 1,000, fixed by the Tribunal is far too excessive. It has been contended that the respondent had taken various pleas on which he has completely failed and that the petitioner-appellant had filed this petition purely from altruistic motives and in public interest with the sole object of ensuring purity of elections. On the material on the present record, I find it a little difficult to hold that the petitioner-appellant had been inspired solely by altruistic motives and that he was exclusively or even mainly concerned with the purity of the election. It is too obvious on the record of this case that the appellant had come forward in the interests of Shri Shyam Charan Gupta, respondent No. 2, who deliberately, for reasons best known to him, kept himself in the background and was satisfied with being arrayed as one of the respondents. He was not a necessary party but he actually supported the petitioner in the trial and even in this appeal his counsel enthusiastically addressed us in support of the appeal. The petitioner-appellant's interest in this election contest is so clear on the present record that it is idle to contend that he is a disinterested and an

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impartial voter, who has taken the pains in fighting out this election petition purely for the purposes of ensuring purity of elections.

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The question of awarding costs is, generally speaking a matter left to the discretion of the Court and unless such discretion has been exercised arbitrarily or contrary to the well-recognised principles, I do not think it is open to the Court of appeal to interfere with it. It is true that the sum of Rs. 1,000 appears to be somewhat excessive and Braham Parkash has also failed to establish some of his pleas in defence, but I do not think I can on this ground alone interfere on appeal with the order of costs.

In so far as the costs of this appeal are concerned, here again I do not find any cogent reason why costs should not follow the event. This is the general rule and no substantial ground has been made out for departing from it. The appellant must, therefore, pay the costs of the returned candidate which we fix at Rs. 300 only.

Before concluding I think I must make a reference to the criminal complaint which was filed on behalf of Shri Shyam Charan Gupta through Shri Ram Phal as his Advocate. It appears to me that the complaint was filed purely or at least mainly with the object of securing certain documents from the Gupta Printing Press and there was no real and genuine intention of prosecuting the complaint to its logical end. After securing Exhibit P. 9, I find that the criminal case was not pursued with any earnestness and the record of the case was called in the Election Tribunal and nobody seems to have bothered to see as to what was happening to the criminal complaint.

neither the criminal Court from which the case had been called nor the complainant nor the learned Tribunal seem to have cared to advert to the fact that this complaint had virtually been stayed indefinitely because the record of this case had been summoned in the Tribunal. The machinery of criminal Courts, in my opinion, is not intended to be utilised for any ulterior purposes except for the purpose of bringing the guilty person to trial. In the present case, it appears to me that in all probability the complaint was used as a handy machinery merely for securing the search warrants and getting hold of certain documents which may prove helpful in the trial of this election Petition. This, in my view, is hardly a proper and fair use of the machinery of criminal justice. It is lamentable that even the learned Tribunal did not pay proper attention to the question as to for how long the record of the criminal case was necessary to be kept in the Tribunal so that it may not remain there for any unnecessary and avoidable length of time. But since there is nothing that can be effectively done now, I need not pursue this matter any further.

For the reasons given above, this appeal fails and is hereby dismissed with costs which we fix at Rs. 300.

BISHAN NARAIN, J.—I agree.

K.S.K. . . .

APPELLATE CIVIL.

Before Tek Chand and P. C. Pandit, JJ.

HIRA LAL AND ANOTHER,—Appellants.

versus

STATE OF PUNJAB,—Respondent.

Regular First Appeal No. 132 of 1954

Fatal Accidents Act (XIII of 1855)—Section 1-A—
Scope of—Determination of quantum of damages—Principles as to stated—Proof that the deceased was actually

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Sept. 27th