

(1960) 12 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Miscellaneous (Election) Appeal No. 1 of 1960

Inder Lall Yugal Kishore

APPELLANT

Vs

Lal Singh Mukund Singh and Others

RESPONDENT

Date of Decision : 01-12-1960

Acts Referred:

Citizenship Act, 1955 — Section 10, 9

Constitution of India, 1950 — Article 5, 6, 9

Representation of the People Act, 1951 — Section 100(1), 100(2), 123, 123(4), 80

Citation : AIR 1961 Raj 122

Hon'ble Judges : Sarju Prasad, C.J;C.B. Bhargava, J

Bench : Division Bench

Advocate : B.B. Desai, for the Appellant; N.L. Jain, for the Respondent

Final Decision : Dismissed

Judgement

Sarjoo Prasad, C.J.—This is an appeal against the order of the Election Tribunal, Pratapgarh, dated 1-12-1959.

2. The election petition in this case u/s 80 of the Representation of the People Act, 1951 (Act No. XLIII of 1951 -- hereinafter referred to as "the Act") was filed on 23-4-1957 by the appellant Inder Lall, an elector in the Chittorgarh Constituency praying that the election of the respondent Shri Lal Singh to the Rajasthan Legislative Assembly should be annulled and declared void on account of illegal and corrupt practices which vitiated the election.

The elections in the various constituencies took place in February and March, 1957. There appear to have been three contesting candidates at the election. Shri Lal Singh, the first respondent, who was the successful candidate, secured 7372 votes; the second respondent Shri Lakshman Singh, the Maharasal Dungarpur, secured 7261 votes, while the third respondent Shri Chhoga Lal only 569 votes. The result of the election was declared on 11-3-1957, and notified in the Rajasthan Rajpatra on 14-3-1957, and Shri Lal Singh was returned.

3. The grounds on which the election has been challenged are mainly two-fold and have been enumerated in paragraph 4 of the election petition. Firstly, it is alleged that the respondent Shri Lal Singh procured or abetted or attempted to procure either by himself or by his agents or by other persons with his connivance or that of his agents the application by persons for ballot papers in the name of other persons, whether living or dead or nonexistent, or whose names appeared in the same ward for two different houses or persons who were not citizens of India but whose names all the same appeared in the electoral rolls; or even in name of fictitious persons.

Secondly, it was alleged that the said respondent, his agents and other persons with his connivance or that of his agents published such statements of facts which were false and which they either believed to be false or did not believe to be true, in relation to the personal character or conduct of the respondent No. 2 and in relation to his candidature, calculated to prejudice the prospects of the election of the second respondent, Shri Lakshman Singh. Details of the above allegations find mention in the lists marked A and B appended to the petition. List A has again been sub-divided into six different parts. We will deal with these details in their appropriate place.

4. The respondent Lal Singh traversed the allegations in his reply. The locus standi of the petitioner to present the election petition was also challenged, but the point has been found in his favour. It has been held that he was an elector of Chittorgarh Assembly Constituency residing in House No. 76, Ward No. 4. The point of locus standi has not been canvassed before us any further. The contesting respondent, however, seriously denied the allegations of corrupt practice made in the petition.

He asserted that neither the respondent nor anybody else to his knowledge or with his connivance committed any such corrupt practice. It was also stated that full particulars of the persons responsible for the corrupt practices alleged and the date and place of their commission were not mentioned as required by the law. The respondent claimed that the votes cast in his favour were all valid votes and the complaint in the election petition was baseless and the election of the respondent should be accordingly upheld.

5. The second respondent has supported the averments in the election petition, and said that the false statements made against him were widely circulated and explained to the masses in the whole constituency with the result that it materially affected the election of this respondent who lost only by a small margin of about 11 votes.

6. The respondent No. 3 did not put in appearance at all.

7. In the replication filed by the petitioner further particulars of the polling booths and the dates where and when the corrupt practices mentioned in Lists 1 to 6 under head "A" were committed were given. It was further averred that the votes which were cast in favour of the respondent No. 1 on behalf of persons

who were either dead or fictitious or non-existent or not entitled to vote were invalid and the Tribunal had jurisdiction to examine the ballot papers in order to see whether on these invalid votes the respondent Lal Singh was entitled to succeed or that the second respondent should be deemed to be duly elected.

8. The election petition was dismissed in the first instance because it was held by the Tribunal that the security deposit as required by Section 117 of the Act had not been validly made; but on appeal the order of the Tribunal was set aside and the petition was sent back for disposal according to law. The Tribunal after recording evidence in the case dismissed the election petition by its order under appeal. The Tribunal found substantially on both the points against the case of the petitioner.

The point, therefore, which has to be determined in this case is whether the petitioner has been able to establish the grounds on which the election of the first respondent is challenged. The burden of proof of the grounds set out by him lies upon the petitioner, and specially in a case of corrupt practice the burden lies heavier and has to be strictly discharged. Suspicion cannot take the place of proof. Let us, therefore, deal with the allegations in their order.

9. As pointed out earlier the first allegation is that the petitioner or his agent procured or abetted procurement of fictitious votes in the names of persons, whether living or dead or non-existent. Full details of the corrupt practices alleged are given in the list marked "A" attached to the petition. List A itself has been divided into six different lists. The first list contains the names of voters who were alleged to be already dead long before the date of election, i.e., 1-3-57.

The second list consists of names of persons who were alleged to have left India for Pakistan long before 5-3-1957, and had not returned to India till 9-3-1957. The third list is of names of voters who, according to the petitioner, had left the Chittorgarh Constituency long before 1-3-1957, and had gone to distant places like Bombay from where they never returned till 12-3-1957. The fourth list is of persons who applied twice for ballot papers in their own names or other persons fictitiously on different electoral numbers taking advantage of the Wrong, entries in the electoral rolls.

The fifth contains the names of persons who personified and applied for ballot papers in the names of certain persons who actually did not exist, having names wrongly recorded in the voters' list. The sixth and the last list is of voters who left India, in the year 1949 to reside permanently in Pakistan and were actually in Pakistan at the time of polling. The names of these persons were not deleted from, the electoral rolls, according to the petitioner and votes were wrongly received on their behalf.

10. At the outset it is submitted by the learned counsel for the respondent that the above recital in the petition being a recital of corrupt practice alleged to have been committed by the returned candidate or his election agent or by any other person, with the consent or connivance of the successful candidate or his agent,

it falls u/s 100, Sub-section (1)(b) of the Act; and since there was no evidence to establish that those votes were cast illegally at the instance of the contesting respondent or his agent, the petitioner's application should not be entertained on that ground.

The frame of the petition undoubtedly supports the contention; but in arguments before this Court the learned counsel for the petitioner has submitted that in case it is found that illegal or invalid votes were cast and the result of the election was materially affected thereby, on account of the reception of those invalid votes, the case would still fall u/s 100(1)(d)(iii) of the Act, even then it should be the duty of the Tribunal to declare the election of the returned candidate void.

The relevant provision requires that where the Tribunal is of opinion that the result of the election, in so far as it concerns a returned candidate, has been materially affected by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, the Tribunal should declare the election of the returned candidate void. The learned counsel for Shri Lal Singh, however, contends that he was not called upon to meet a new case under Clause (d) (iii) of Sub-section (1) of Section 100 of the Act, which was not made out specifically in the petition and the petitioner should not be allowed to change his case.

We do not feel inclined to entertain this contention of the respondent for the obvious reason that the relevant particulars have all been stated in the petition and the contesting respondent has not been taken by surprise in the matter. If, in fact, it is held that votes were improperly received in consequence of which the election of the petitioner was materially affected, it would be the statutory obligation of the Tribunal to declare the election void. We have, therefore, to see whether the allegations in regard to improper reception of votes as contained in those lists are actually correct.

11. We may point out that although the names of a number of persons have been included in those lists, the petitioner does not support his case in respect of all those persons, We may briefly indicate at this stage the names of persons in respect of whom the case has been actually pressed either before the Tribunal or before this Court as mentioned in the voters' list with their respective serial numbers. (His Lordship indicated the names of the persons and proceeded.).

These findings (against the petitioner, by the Tribunal-Ed) have been very seriously challenged by the petitioner, and we have been taken through the evidence on the record in support of the allegations made in the petition. We think it necessary to observe that we are not much impressed by some of the findings of the Tribunal, and generally speaking it appears to us that its appreciation of the evidence is more mechanical than analytical and at places even inconsistent.

The question, however, still remains as to whether, it would be desirable for us in appeal to interfere with those findings if we feel that they are otherwise

supported by certain broad features of the case. We would, therefore, refer to these broad features without attempting to encumber the judgment with a detailed discussion of the evidence in relation to each particular name as given in the various lists.

12. The petitioner does not claim that he had any personal knowledge of the alleged invalid votes having been cast at the polls. He says that he received information thereof from four persons, viz., Rahim Bux, Kesari Mal Pancholi, Khoob Chand Mundara, and Ishaq Mohammed. (His Lordship indicated and rejected their evidence and proceeded).

Thus we are left only with the evidence of the petitioner and since he does not claim any personal knowledge of the matter, the allegations made by him deserve to be thrown out on that ground alone.

13-14. It stands to reason that if the electoral roll contained the names of dead or non-existent persons or of persons who had left for Pakistan and settled down there, the other candidates or their agents or even the voters had plenty of opportunity of having the rolls corrected. On the other hand the contesting respondent has examined some of the Presiding Officers at the polls, who depose that the agents of the respondent Maharawal were present throughout the polling and no complaint was ever made that improper votes were being cast or that there was any case of false personation. (His Lordship indicated the evidence and proceeded).

In this state of the evidence we are inclined to accept the conclusion of the Tribunal that the petitioner has failed to establish that there was any reception of invalid votes or any such reception of invalid votes as to materially affect the result of the election and enable the Tribunal to declare the election void,

15. We have done so notwithstanding our inability to endorse some of the reasonings of the Tribunal on the point. We may pick out just a few instances to illustrate our meaning. (After narrating some instances his Lordship proceeded).

Then again in dealing with the case of Kulsum, widow of Lal Mohammed, we are not satisfied that the Tribunal has taken a correct view of the matter. The finding of the Tribunal on the evidence is that Kulsum, when she was a minor, went with her parents to Pakistan in the year 1953. Admittedly the parents had migrated to Pakistan at the time. She appears to have been married there to Lal Mohammed and returned with him under a Pakistani passport to India. Lal Mohammed is admittedly an Indian national residing in India.

It appears that later Kulsum obtained a certificate of Indian citizenship; but on the day when the General Elections took place she had not obtained any such certificate. The Tribunal, therefore, held that when she came to India on a Pakistani passport, it must be assumed that she was a Pakistani citizen, and it was on that account that she felt the necessity of acquiring Indian citizenship, which she admittedly acquired after the polls had taken place; accordingly she

had no right to vote at the polls.

Now admittedly she was a minor at the time when her parents migrated to Pakistan, She had, therefore, no volition in the matter, and it could not be said that she had willingly transferred her allegiance to the other country. It is not clear from the evidence whether before her marriage with Lal Mohammed she had attained majority or she was still a minor; because in that case the question may arise whether she did not acquire the domicile of her husband even if it is assumed that her domicile had changed on account of her parents' migration.

In our opinion, as held in *Mohammad Khan v. Government of Andhra Pradesh* AIR 1957 A p1047 the mere fact that a passport is given to a person, who is an Indian national, whether the passport is legal evidence or not cannot lead to any irresistible inference that the said person had voluntarily acquired the citizenship of a foreign State; for such a passport could also be issued to a citizen by birth or descent. That being so, we find it difficult to accept the observation of the Tribunal on the point.

We do not, however, feel called upon to finally determine the position because even if it is assumed that Kulsum was not entitled to vote the fact that she did so did not materially affect the result of the election. Besides the Tribunal appears to have confused what was required to be proved, if we may respectfully point out, under Clause (b) of Sub-section (1) of Section 100 of the Act and Clause (d) (iii) of that sub-section. Then again we are unable to understand how on the finding if Sakina was a Pakistani citizen, she could be entitled to vote if Mst. Kulsum for that reason was not so entitled.

Apparently the finding on the point appears to be somewhat inconsistent. It may not be a case of false personation, if Sakina actually voted in person; but it would be certainly a case of reception of invalid vote. Anyhow, we have referred to these broad instances only to show that the Tribunal has erred in certain instances; but on the whole we have already indicated our agreement with the conclusion of the Tribunal that there was no reception of invalid votes, which would affect materially the result of the election, and that, therefore, the election of the respondent could not be challenged on that ground.

16. We may now advert to the second ground taken by the petitioner, that is with reference to his allegation as to corrupt practice committed by the contesting respondent or his agent or by any other person with his consent or with that of his agent in publishing certain statement of fact which was false or believed to be false in relation to the personal character or conduct of the second respondent or in relation to his candidature, being a statement reasonably calculated to prejudice the prospect of the second respondent in his election.

This allegation of corrupt practice is said to fall under Sub-section (4) of Section 123 of the Act and is contained in paragraph 4(B) of the petition. Particulars thereof have been mentioned in List B appended to the petition, to which copies of the offending pamphlets or bulletins were also annexed, as part thereof. The

pamphlets bear the caption "Maharawal Dungarpur Ki yaha tasweer" (this is a penpicture of Maharawal Dungarpur) and evidently refer to the respondent No. 2, who was one of the contesting candidates at the election.

The case of the petitioner is that the respondent Shri Lal Singh and another candidate Shri Bhogi Lal Pandya or their agents with the connivance of Shri Lal Singh or the other candidate got printed the pamphlets in question at Navyug Press Chittorgarh on or about the 20th February, 1957, and subsequently at Sharda Press Chittorgarh on or about 25-2-1957, through the Publicity Secretary Nagar Congress Committee Chittorgarh, and published those pamphlets through the Publicity Secretary Nagar Congress Committee at Chittorgarh, Dungarpur and Aspur, and got the same widely circulated and distributed between the 20th of February to the 9th of March, 1957, 25th of February to 3rd of March, 1957, and 25th of February to 7th of March, 1957, respectively.

The petitioner contends that the said bulletins contained statements of facts in relation to the personal character or conduct of the respondent No. 2, which were false and must have been believed to be false by the persons responsible for their publication and were calculated to prejudice the prospects of the election of the respondent No. 2,

17. We have already pointed out that the allegations relate to corrupt practice within the meaning of Clause (4) of Section 123 of the Act. That clause runs as follows:

"The publication by a candidate or his agent or by any other person, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, or retirement from contest, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election".

The Explanation to the section, which defines "agent" is also important. It is as under:

"In this section the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate".

Section 100 of the Act, which deals with the grounds for declaring an election to be void is also material. The relevant parts of the section are as follows:

"(1) Subject to the provisions of Sub-section (2), if the Tribunal is of opinion-

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-

(ii) by any corrupt practice committed in the interests of the returned candidate by a person other than that candidate or his election agent or a person acting with the consent of such candidate or election agent, the Tribunal shall declare the election of the returned candidate to be void".

The effect of the above provisions is that if the corrupt practice alleged is found to have been committed by the returned candidate himself or his election agent or by any other person with his consent or that of his election agent the Tribunal can forthwith declare the election void.

Where, however, the alleged corrupt practice is found to have been committed by some other person in the interests of the returned candidate and the Tribunal is further of opinion that the result of the election in so far as it concerns the returned candidate has been materially affected, it is only then that it should declare the election to be void. This latter element of the result having been materially affected has to be proved where the corrupt practice is attributed to some other person and is committed in the interest of the returned candidate but without his knowledge or consent or that of his election agent.

Sub-section (2), however, provides for exceptions in those cases where in the opinion of the Tribunal, a returned candidate has been guilty by an agent other than his election agent of any corrupt practice. The burden to prove these exceptions will then be on the returned candidate, otherwise the guilt of the agent will make the candidate also liable and affect his election.

18. We may now examine in the above background to what extent the petitioner has established his case. Before we come to examine the contents of the pamphlets themselves, which are in identical terms, we may consider the evidence led by the parties on the question of printing and publication of the documents. The Tribunal appears to take exception to the vagueness of the allegations contained in the petition about the fact of publication and the persons responsible therefor.

It has observed that the petitioner has not definitely stated the places where these bulletins were circulated and distributed, the time when they were circulated and the persons who did so. Even in the replication filed by the petitioner, it is said, the particulars regarding the agents of respondent No. 1 and the places outside Chittor where those bulletins were distributed were not given, though in evidence the petitioner appears to have mentioned those details.

We do not think that the criticism is altogether justified. It is true that u/s 83 of the Act the particulars of the corrupt practice alleged and the persons responsible therefore should be given as accurately as possible, The law contemplates that as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice should be mentioned.

In this case, however, we feel that the material particulars have been given,

though all the names of the persons who may have gone about distributing the leaflets in the various localities were not mentioned. The responsibility for the publication has been assigned to the Publicity Secretary of the Nagar Congress Committee and those connected with the organisation which had sponsored the candidature of the respondent Lal Singh, namely the local Congress organisation.

Therefore, it cannot be said that u/s 83 of the Act the particulars mentioned in the petition were vague. In any case, it does not appear that the respondent has been in any manner prejudiced by not mentioning all the names of the persons responsible for the circulation of the pamphlets in the petition, nor does it appear that he insisted on further particulars.

19. (His Lordship reviewed the evidence and continued). For these reasons we must accept the allegation of the petitioner that the publication of the pamphlet was at the instance of the Nagar Congress Committee itself with a view to advance the interest of the contesting respondent at the election since his candidature had been sponsored by the organisation.

20. The Tribunal appears to be in error in thinking that express consent of the contesting respondent had to be proved before he could be held liable for the acts of the General Secretary of the District Congress Committee or the Publicity Secretary of the Nagar Congress Committee; and since there was no direct evidence on the point that Sugan Chand Jain was appointed an agent in writing by the respondent No. 1 or orally in the presence of any person, the Tribunal held that the said respondent could not be responsible for the acts of those persons,

This, in our opinion, is a complete misconception of the legal principle, and we regret to have to say that the Tribunal did not properly appreciate the decision, which was delivered by me as the Chief Justice of the High Court of Assam in *Nani Gopal Swami v. Abdul Hamid Choudhury*, AIR 1959 Assam 200 on which, as the Tribunal observes, both parties relied before it.

It was expressly pointed out in that case that an association of persons or a society or a political party or its permanent members, who set up a candidate, sponsor his cause, and work to promote his election, may be aptly called the agent of the candidate for election purposes. Thus the District Congress Committee Chittorgarh and the Nagar Congress Committee there with their Secretaries and Publicity Secretary were all agents of the contesting respondent Shri Lal Singh.

Therefore, it must be held that the publications in this case were by the agents of the respondent No. 1 and we cannot believe that the respondent No. 1 was unaware all along about the activities of Sugan Chand who was mainly responsible for the work of publicity on his behalf and in respect of his candidature. The law provides that in such cases unless any of the exceptions mentioned in Sub-section (2) of Section 100 of the Act are found to exist, the Tribunal should assume that the returned candidate was guilty of corrupt practice by his agent and declare the election void.

21. (His Lordship dealt with the comment made by the Tribunal on evidence, on this aspect of the case, and then proceeded). If, therefore, the case were to depend only upon this aspect of the matter we would have ventured to reverse the finding of the Tribunal in regard to the printing and publication of the offending pamphlets in question.

22. The more important point which, however, arises for consideration is whether the documents in question fall within the purview of Section 123, Clause (4) of the Act, so that their publication may constitute corrupt practice under the Act. As we have said the contents of the documents are identical. We may, therefore, reproduce the relevant portions thereof to see whether it can be urged that the pamphlets fall within the mischief of the law. It runs as under:

"Nagar Congress Committee Chittorgarh Maharawal Dungarpur ki vaba tasweer

1. Jantantra ka dushman?
2. Bharat ki azadi ka gala ghotane wale videshivon ke agent?
3. Bharat per Pakistani hamle ke shadyantra ke poshak aur sathi?
4. Rajasthan men rajaon ke zulmi raj ko lanewale?
5. Ramrajya ka nara dekar Hindu Muslim ekta. ko nasht karnewale?
6. Congress virodhivon ko paise ke bal per kharidnewale?

Gat chunav men Dungarpur se hazaron voton se shikast khaye huye Maharawal Dungarpur Shri Lakshman Singh Chittor ki janta ko gumrah karne aye hain. Pichhare huye Chittor zile ko sau varsh piche dhakelne aye hain. Sampradayik sanstha ki al men Chittor ke aman aur shanti ko mitane aye hain. Janta ki gadhi kamayi per sharab ke daur daure phailane aye hain. Raja maharajaon ke zulmon ko Rajasthaa men phirse tej karne aye hain. Hamlawar Pakistan, ko Kashmir ko bhent charhane aye hain. Pakistan aur Pakistan ke doston ka sath dekar Hindustan ko phir se gulam banane aye hain aur jo raja maharajaon ke dost aur kisan majdooron ke dushman hain aur jo bhooswamiyon ko gamin dilakar, kisan ka zamin dilakar, kisan ko zamin se bedakhil karna chahate hain aur phir se kisan ke shramka shoshan kar apne rag rang sajana chahate hain.

Isliye Congress Chittor ki janta se appeal karri hai ki ve Maharawal Dungarpur ke honsle past karne ke liye Congress ko vote de jisne azadi ki larayi men sir kataye jelon men gayi rajaon ke zulmon ke khilaf lari aur jagiri vegar se am janta ko rahat dilvayi.

* * * * * Prachar Mantri

Nagar Congress Committee, Chittorgarh".

23. There is no doubt that the object of the pamphlet is an appeal to voters to vote at the elections for the Congress candidate and to refrain from voting in favour of the Maharawal Dungarpur whose pen-portrait is given at the top. There

can also be no doubt that the intention of the publication was calculated to affect prejudicially the prospects of the election of the said Maharawal. The point, however, still remains whether the statements contained therein are statements of fact which are false and made in relation to the personal character or conduct of the candidate or in relation to his candidature.

The words "in relation to his candidature" occurring in Clause (4) of Section 123 of the Act have of course reference to his right or qualification to contest the election, to his withdrawal or retirement from contest, or his being a mere stooge of some other person, candidate, or party. It is not the case of either party that these statements can strictly be said to be in relation to the candidature of the respondent No. 2; but the contention of the learned counsel for the appellant is that the allegations made in the petition constitute statements of fact which are false statements made in relation to the personal character or conduct of the Maharawal of Dungarpur.

There is of course at times a very thin line of demarcation between the personal character or conduct of an individual and his conduct as a political being. Very often the personal character over- shadows the political career and conditions the same; and certain remarks, though bearing strictly on the political life of an individual, may be equally derogatory and disparaging to his personal character.

Nevertheless there is a line of demarcation, however thin it may be, between the two and for practical purposes it cannot be argued in every case that any strong denunciation of an individual's conduct as a political being must necessarily be regarded also as an attack on his personal character. Cases on the point would be only illustrative and the decision will always depend upon the language of the particular document which is under consideration.

Not much benefit, therefore, can be derived from the various decisions which have been cited at the Bar. In this case we find that none of the above allegations refer to the second respondent in his individual capacity or affect his personal character. They all refer to the Maharawal as one of those various persons of his class who as a body appear to be responsible in the opinion of the writer for the political mischiefs referred to in the statements.

Mr. Desai's argument is that when it is alleged that the Maharawal, respondent No. 2, was responsible for conspiring to foster the aggression of Pakistan on India, that he was trying to delude the public of Chittor and to put back the clock of progress or that he was trying to make a present of Kashmir to aggressive Pakistan, the allegations also affected seriously the personal character of the Maharawal.

We have given our anxious consideration to the matter and although we strongly condemn the language used in the pamphlets, yet we are unable to think that the pamphlets can be regarded as a direct attack upon the personal character, integrity or honesty of the Maharawal of Dungarpur, the second respondent himself. A general reading of the document shows that the attack upon him is as

a part of a bigger organisation of individuals who do not appear to be, as the writer thinks, well inclined towards the progress of the country or at any rate towards the policies of the Congress party which had primarily taken lead in the fight for freedom and to the development of the country both socially and politically.

It would be too much to pick out some of the instances in their isolation from the context and then proceed to build an argument on that hypothesis with a view to show that the personal character of the Maharawal himself was at stake. The whole tenor of the document has to be examined and it has to be seen whether the intention actually was to defame the private character of the Maharawal and to show him up as a man lacking in integrity or morality as a private individual or to set to ridicule his political views and affiliations.

Though of course taken as a political being he has been painted in an unfavourable light and the language used is most unfortunate and undesirable which naturally the Maharawal would resent. A political being has, however, to face criticism and cannot afford to be too sensitive if his political Views and affiliations come in for criticism. Criticism of his public activities even though ill-mannered, unfair or exaggerated does not come within the mischief of the law unless "the man underneath the politician" is attacked and his honour, integrity or veracity assailed. In Cockermouth Division case, (1901) 5 O'M and H 155 Darling J. observed as follows :

"Now it must be noted that what the Act forbids is this: you shall not make or publish any false statement of fact in relation to the personal character or conduct of such candidate; if you do, it is an illegal practice. It is not an offence to say something which may be severe about another person, nor which may be unjustifiable, nor which may be derogatory, unless it amounts to a false statement of fact in relation to the personal character or conduct of such candidate; and I think the Act says that there is a great distinction to be drawn between a false statement of fact, which affects the personal character or conduct of the candidate and a false statement of fact which deals with the political position or reputation or action of the candidate".

The reference to the personal character or conduct of the individual attacked must be explicit and derivable from the plain meaning of the words used in the document. For these reasons we are not inclined to accept the contention of the learned counsel for the appellant that the publication in question came within the mischief of Section 123(4) of the Act, and, therefore, the election should be declared void on that ground.

It is also important to remember that the Maharawal, respondent No. 2, himself has not appeared and has not given any evidence to show that his private character was in any manner assailed in the document in question or that the distribution of the leaflets affected his candidature. Statements affecting the candidature, as we have shown, must have a reference to the right or

qualification of the candidate to contest the election or, the factum of his candidature. Matters which are likely to affect the prospects of his election do not strictly come under that head.

24. On the whole, therefore, we are inclined to Dismiss the appeal, though not entirely for the reasons given by the Tribunal, We are not inclined to grant any costs to either party which they should be left to bear for themselves.

25. The appeal is accordingly dismissed and the parties shall bear their own costs.