
(1960) 04 CAL CK 0014
In the Calcutta High Court
Case No : C.R. No"s. 969 to 971 of 1960

Nirmal Kumar Sikdar

APPELLANT

Vs

Chief Electoral Officer and Others

RESPONDENT

Date of Decision : 29-04-1960

Acts Referred:

Constitution of India, 1950 — Article 226, 25, 326, 329
Representation of the People (Preparation of Electoral Rolls) Rules, 1950 — Rule 27A
Representation of the People Act, 1950 — Section 28

Citation : AIR 1961 Cal 289

Hon'ble Judges : D.N. Sinha, J

Bench : Single Bench

Advocate : S. Chaudhury, S.K. Acharyya, S.K. Ray, Manash Nath Ray, Manindra Nath Chakrabarty, Benoy Kumar Sarkar, P.M. Dutt and H. Dev Barman, for the Appellant; C.K. Daphtary, Solicitor General, (for Nos. 2 and 3), R.H. Dhebar, Amiya Kumar Mookherjee, S.M. Bose, General, N.C. Chakrabarty and P.S. Basu, (for Nos. 1, 4 and 5), for the Respondent

Final Decision : Dismissed

Judgement

D.N. Sinha, J.—These are three applications which have been heard together and will be disposed of by one judgment. They are all directed against the ensuing by-election in the South West Calcutta Parliamentary Constituency, which has been fixed to be held on the 1st May 1960. In the first matter, viz., C. R. 969 of 1960, the petitioner is Nirmal Kumar Sikdar residing at 64 Satyen Roy Road, Behala. He claims to be a voter duly entered in the electoral Rolls of the said constituency. The applicant in the second application, viz., C. R. No. 970 of 1960, is Sm. Angur Poroj, also residing at No. 64 Satyen Roy Road, Behala, she being the sister of the petitioner in the first application. She also claims to be a voter duly entered in the electoral Rolls of said constituency. She is a Hindu lady and states that she is a "pardanashin" woman and it is against her religion to be photographed at all, I shall presently enumerate how the question of being photographed arises. In the third application, viz., C. R. No. 971 of 1960, the petitioner is Sm.

Jaibunnessa residing at Bustee No. Q 543 Simpukur Lane, Matiabruz. She also claims to be a voter duly entered in the electoral Rolls of the said constituency. She is a muslim lady and states that she is a "Purdanasin" woman and it is against her religion to be photographed at all. With regard to this petition, I might mention that the original petition was neither signed nor verified by the lady concerned, but this having been pointed out at the hearing, a supplementary affidavit has been filed by her adopting the statement made in the original petition. In the first petition, the petitioner, after stating that he was a citizen of India, and a voter in the said constituency, whose name appears in the electoral roll, mentions that recently a circular and/or order has been issued on behalf of the respondents or any of them whereby the petitioner and/or all other voters were required to be [photographed before they could exercise their right of franchise. The relevant copies of the circular and/or order are annexed to the petition and marked with the letter "A". It is necessary here to mention that there are five respondents in each of, these applications. The first respondent is the Chief Electoral Officer, who has his office at Writers' Buildings Calcutta. The second respondent is "The Union of India" through the Secretary, Election Commission, New Delhi. The third respondent is the Election Commission of India, New Delhi. The fourth respondent is the Deputy Chief Electoral Officer and Deputy Secretary (ex-officio) Government of West Bengal, Home Department (Constitution and Elections, Writers'. Buildings, Calcutta. Annexure "A" to the petition is a letter addressed by the respondent No. 4 to the Secretary, Communist Party of India, West Bengal, enclosing two documents, one purporting to be a notice issued by the Electoral" Registration Officer, Calcutta, without date, and the other being a copy of the press-note issued by the respondent No. 1 dated the 14th March 1960, The first document states that it was notified for information of those voters of the said constituency who could not be contacted during the house-to-house visits by the photographers that a number of centres will remain open from March ,16, to March 31st, 1960 where they could get themselves photographed on production of evidence of identity. There are altogether 14 centres mentioned. The second document is a press note issued by the Chief Electoral Officer dated 14-3-60 which states that in spite of repeated attempts by photographers a considerable number of voters of the said constituency could not be contacted at their place of residence and as such still remain to be photographed. With a view to offering these voters their last chance, arrangements had been made to open centres where, upon production of evidence of identity, their photographs will be taken. It was also pointed out that if they did not get themselves photographed, they would forfeit their right to vote in the bye-election. Then there is an enumeration of the centres, which are altogether 14 in number. These are the documents which are challenged in all these three applications. I shall presently deal with the question as to whether there are at all effective applications, that is to say whether any relief can be granted on the strength oi a challenge thrown against, these two orders only it they can be called orders at all. I shall now come to the grounds made out in these three applications. In the first application, there are three grounds stated,

after mentioning Article 326 of the Constitution. The first ground made is that there is no provision in the Constitution and/or Article 326, whereby there could be any restriction on the right to exercise the franchise, when the name of the voter appears in the electoral roll. The second ground is that, from the very nature of the regulations and the action taken thereunder, it was evident that the same was being done with a purpose which is beyond the ambit of the Constitution and/or the Representation of the People Act. The third ground taken is that from the very nature of the facts of the case, it would be evident that the alleged regulation (relating to photography) was impossible of performance. In the second application made by the Hindu lady, as well as in the third application made by the Muslim lady, two identical grounds have been taken. The first is that the right to vote of the petitioners could not be restrained by an act of the respondents, except in terms of Article 326 or the Constitution. Secondly, that, the procedure of being photographed in connection with election was not in force anywhere in India, meaning thereby anywhere else, and that the procedure adopted was ultra vires of the Constitution. On these grounds the petitioners in all these three applications pray that the impending bye-election be stayed, and for an injunction restraining the respondents from taking any steps to complete the same. It is necessary at this stage to recapitulate the legal rights that are claimed and the provisions of law that have been relied upon. The subject of election appears in Part XV of the Constitution, Article 324 creates an Election Commission, which is entrusted with the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislatures of States. Article 825 lays down that there shall be one general electoral roll for every territorial constituency for election to either House of Parliament and no person shall be ineligible for inclusion in any such roll on grounds only of religion, race, caste, or sex. Article 326 relates to the method of election to the House of the People, and to the Legislative Assemblies of the States, which are to be based on adult suffrage and every citizen of India who is not less than twenty one years of age shall be entitled to vote unless disqualified under the constitution or any law made by the appropriate Legislature, on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice. Article 327 lays down that subject to the provision of the Constitution, Parliament may from time to time, by law, make provisions with respect to all matters relating to, or in connection with, elections to either House of Parliament, including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses. Article 329 is very important and creates a constitutional bar to interference by courts in certain election matters. It lays down that notwithstanding anything in the Constitution, the validity of any law relating to the delimitation of constituencies or the allotment of seats, made or purporting to be made under Article 327 or Article 328 shall not be called in question in any court. Consequently, this article is of the greatest importance to us in this case. It lays down that no election to either House of Parliament shall be called in question except by an election petition presented to such authority,

and in such manner, as may be provided for, by or under any law made by the appropriate Legislature. Pursuant to the power given under Article 327, two statutes have been enacted by Parliament, the first of which is the Representation of People Act, 1950 (being Central Act, 43 of 1950). This Act deals with the question of delimitation of constituencies, qualification of voters, preparation of electoral rolls and matters connected therewith. Section 28 of this Act, confers rule making powers upon the Central Government. Sub-Section (3) lays down that all rules made under this Act shall, as soon as may be after they are made, be laid for not less than thirty days before both Houses of Parliament, and shall be subject to such modifications as Parliament may make. Next, we have the Representation of the People Act, 1951 (being Central Act, 43 of 1951). This is an Act which provides for the conduct of elections, inter alia to the Houses of Parliament, qualifications and disqualifications for membership, corrupt practices and other offences, and for adjudication of doubts and disputes arising out of such an election. Section 61 of this Act deals with certain, special procedure laid down for preventing impersonation of electors. The relevant part thereof runs as follows :

"With a view to preventing impersonation of electors, provision may be made by rules made under this Act,--

(b) for the production before the presiding officer or a polling officer of a polling station by every such elector as aforesaid of his identity card before the delivery of a ballot paper or ballot papers to him, if under rules made in that behalf under the Representation of the People Act, 1950 (43 of 1950), electors of the constituency in which the polling station is situated have been supplied with identity cards, with or without their respective photographs attached thereto;"

2. Rules have been framed in exercise of powers given u/s 28 of Act, 43 of 1950 known as the Representation of the People (Preparation of Electoral Rolls) Rules 1956. The relevant rule is Rule 27-A, the operative part whereof runs as follows ;

"27-A. Identity cards for electors in notified constituencies in municipal areas.--

(1) The Election Commission may, with a view to preventing impersonation of electors and facilitating their identification at the time of poll, by notification in the Official Gazette of the State, direct that the provision of this rule shall apply to any such constituency, in municipal areas as may be specified in the notification.

(2) The Electoral Registration Officer for such notified constituency shall, as soon as may be, alter the issue of the notification under Sub-rule (1), arrange for the issue to every elector of an identity card prepared in accordance with the provisions of" this rule.

(3) The identity card shall:

(a) be prepared in duplicate;

(b)

(c) have affixed to it a photograph of the elector which shall be taken at the expense of the Government;

(d)

provided that if the elector refuses or evades to have his photograph taken or cannot be found at his residence by the official photographer in spite of repeated attempts, no such identity card shall be prepared for the elector and a note of such refusal or evasion or that the elector could not be found at his residence in spite of repeated attempts shall be made in the copy of the electoral roll maintained by the Electoral Registration Officer.

(4) One copy of the identity card prepared under sub-rule (3) shall be retained by the Electoral Registration Officer and the other copy shall be delivered to the elector to be kept by him for production at the time of poll."

3. What happened thereafter is as follows: On 8th June, 1959, the Election Commission issued Notification No. 3/91/58 made under Rule 27-A of the Representation of the People (Preparation of Electoral Rolls) Rules, 1956 which was published in an extra-ordinary number of the Calcutta Gazette dated 11-6-59. By this Notification, the Election Commission declared that the provisions of the said rules would apply to certain Assembly Constituencies which correspond to the Calcutta South-West Parliamentary Constituency. This constituency consists of Chowringhee, Alipore, Kalighat, Ekbalpur, Fort, Garden Reach and Behala. On the 17th June, [1959 a press note was issued through the Director of Publicity, West Bengal, informing the general public that photographers would make a house-to-house visit during specified hours, for photographing the voters in the said constituency, commencing from 21-6-1959, Advertisements were issued in the leading newspapers requesting all electors in the said constituency to get themselves photographed for the purpose of obtaining identity cards. This was followed by a radio talk, in which the Chief Electoral Officer, West Bengal, summarised the salient points of the scheme for the benefit Of the intending voters. During the first round of photography, it was found that a substantial number of electors had left their respective premises against which their names and addresses were included in the electoral roll, and a similar number of new people had, come in, whose names were excluded. In view of this position, the Election Commission decided that a special revision under Sec; 21(3) of the Act, 1950 should be undertaken. A press note was accordingly issued on 6-8-1959 informing the electors that the special revision would- begin on 7-8-1959. This was followed by various press notes from time to time. The printing of the revised electoral roll was completed by the end of October, 1959. Thereafter, photography commenced again from 3-11-59. Several press notes were thereafter issued in respect of different part of the constituency, as the work proceeded, upto the middle of January, 1960. From 20th January, 1960 the photographers again went round the constituencies. From the 16th March, 1960 two centres were opened in each of the seven assembly constituencies, for taking photographs of electors who could not be

contacted by the photographers at their places of residence. By a press note, those who had not yet taken their photographs were invited to attend various centres and to get themselves photographed for the purpose of obtaining identity cards, which would enable them to vote at the ensuing bye-election. Centres were kept open upto 31st March, 1960 and thereafter the period was extended upto April 10, 1960 and yet another extension upto April 17, 1960 was announced. On the 17th April, 1960 another notice was issued by the Electoral Registration Officer, Calcutta and advertised in all the newspapers of Calcutta, giving further opportunity to the voters to get themselves photographed in the E. R. O.'s office even after the 17th April, 1960. These announcements were publicised widely through the press, publicity vans, radio announcements, posters, cinema slides and leaflets. The exact position to-day has been frankly stated by the learned Advocate General, who upon information said that the total number of voters in the electoral roll in the constituency is three lakhs and forty one thousand, of whom, two lakhs fifteen thousand have been photographed upto date.

4. These being the facts, I now come back to the grounds made in the petitions. It will be clear by now that the right of franchise has been created by the Constitution. The Constitution, while creating the bare right, has also provided that the regulation of the election shall be done by laws made by Parliament from time to time. Such laws have been made, and under the rule making powers granted by one such statute, rules have been made by the Central Government, and the actions that have been taken by the respondents or any of them, including the two notices or orders which have been, impugned in the three applications, have been made in pursuance of the powers granted under the provisions of the Act and the rules. In the petitions, a bare reference is made to Article 326, but the provisions of the Representation of the People Act 1950 or 1951 or of the rules made thereunder have not been challenged. The first point that has been taken on behalf of the respondents is that upon the petitions as framed, no relief can be granted. In my opinion, there is a great deal of substance in this preliminary objection. Without declaring the provisions of the Act and the rules to be ultra vires it is difficult to see how an order or orders made under or by virtue of such Act or rules can be set aside and/or quashed. Besides, the petitioners have not even challenged all the press notes or orders relevant on the subject, but have confined themselves to only two. These two when the "orders as they have been called, do not by themselves prescribe the power of taking photographs or the liability to be photographed as a prerequisite to the exercise of the right of franchise. They only dealt with a particular emergent situation which had arises from the negligence of the voters to get themselves photographed in good time before the election. Quashing or setting aside these two so-called "orders", which, are really press notes or departmental circulars cannot advance the matter in any way, and no effective remedy or relief can be granted to the petitioners by doing so. To that extent, the petitions are wholly defective and do not enable the court to grant effective relief, even if it

was minded to do so. However, before going into the matter further, it is necessary to consider certain other preliminary objections that have been taken. The second objection is on the ground of jurisdiction. It is stated that the authority under whose orders and guidance the election is taking place, is the third respondent namely the Election Commission of India, which has its offices situate at New Delhi outside the jurisdiction of this Court. Similarly, the respondent No. 2 is beyond my jurisdiction. The position of the Election Commission in this respect has now been authoritatively considered by the Supreme Court in the case of Election Commission, India Vs. Saka Venkata Subba Rao and, . It has been held there, that the Election Commission, which is an itinerant body, had its headquarters at New Delhi, and the High! Court of Madras had no jurisdiction to pass orders against it. The position of the Election Commission has been so firmly determined, that Mr. Acharyya appearing on behalf of the petitioners did not maintain that I could make any orders against the respondent No. 3. He has said however, that it would be quite sufficient for his purposes in all the three cases, if orders are made on the respondent No. 1, namely the Chief Electoral Officer, who has his office at Writers' Buildings at Calcutta. He has cited the authority of a Supreme Court decision Thangal A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another, . That case dealt with the Income Tax Investigation Commission. It is unnecessary to go into the detailed facts of the case except stating that the real complaint there was against the action of the "Authorised official" under that Act, who gave notice that he would make certain investigations into the affairs of the assesses, for a certain number of years. This "Authorised official" had his office situate within the jurisdiction of the High Court concerned. It was held by the Supreme Court that the High Court had the power to make an order, because the complaint was against the action of the "Authorised official", who resided within jurisdiction, and if this "Authorised official" did any act not authorised by law or violative of the fundamental rights of the petitioner then he would be amenable to the jurisdiction of the High Court concerned. In my opinion, there is very little analogy between the facts of A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another, and that of these cases. Here, it is not the action of the respondent No. 1 alone which is challenged, nor can effective relief be obtained by throwing such a challenge. There are statutes and statutory rules framed, and notifications issued by the Election Commission or others, in exercise of powers granted thereunder. Unless these provisions are challenged, which cannot be done in the absence of the Union of India or the Election Commission, no effective relief can be granted, because the respondent No. 1 who is an official subordinate to the Election Commission, cannot do anything contrary to the statutory provisions or the directions of the Election Commission. It would be unthinkable to make such orders in the absence of the Election Commission, and to direct the respondent No. 1, to do or forbear from doing something which he is bound to do under the law or under the direction of the Election Commission. In my opinion, although I have jurisdiction against the respondent No. 1, it is not at all sufficient, in the facts and circumstances of these cases, to give any

effective relief, even if I came to the conclusion that it was sufficient to deal with the two so-called "Orders", on the meagre grounds alleged in the petitions.

5. The next preliminary objection which has been advanced is equally formidable, namely Article 329 of the Constitution. As I have stated above Article 329, which appears in the Constitution itself, lays down a bar to interference by the court in an election of this description. Clause (b) lays down that no election to either House of Parliament can be called in question except by an election petition presented to such authority, or in such manner, as may be provided for, by or under any law made by the appropriate Legislature. Here again, the law is completely covered by a Supreme Court decision, *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, . That case related to an election to the Legislative Assembly of the State of Madras. The appellant, who was a candidate for election to the Legislative Assembly of the State of Madras, and whose nomination paper was rejected by the Returning Officer, applied to the High Court of Madras under Article 226, for a writ of certiorari quashing the order of the Returning Officer, who rejected his nomination paper, and to direct the Returning Officer to include his name in the list of valid nomination papers published. It was held that the petitioner was not entitled to this remedy, and that Article 329 operated as a bar. The law in such matters has been summarised by Fazl Ali, J, and might be shortly stated as follows: The right to vote or stand as a candidate for election is not a civil right, but is a creature of statute or special law, and must be subject to the limitations imposed by it. Strictly speaking, it is the sole right of the Legislature to examine and determine all matters relating to the election of its own members, and if the legislature takes it out of its own hands and vests it in a special tribunal, an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it. Having regard to the important functions which legislatures have to perform in democratic countries, it has always been recognised to be a matter of first importance that the election should be completed as early as possible, according to the time scheduled for the purpose, and all controversial matters and all disputes arising out of such election should be postponed till the election is over, so that the election proceeding may not be unduly retarded or protracted. In conformity with these principles, it followed that if irregularities were committed while election was in progress, they should be brought up before such tribunal by means of an election petition or by such method or means as is provided by statute for that purpose, and should not be made a subject of dispute before any other court, while the election was in progress.

6. Mr. Acharyya argued that the facts in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, could be distinguished because there, the question related to the rejection of nomination papers. That however cannot be compared to the facts of the present cases, namely, the taking of photographs in order to complete the identity cards, to be issued in contemplation of an impending election. In my opinion, this distinction is without a difference. What is

an "election" for the purposes of applying this principle has been stated by Fazl Ali, J. He has pointed out that the word "election" could be used in two senses. One was in the narrow sense, which means the final selection of a candidate, which may embrace the result of the poll or the return of an unopposed candidate when there is no poll, and that there is also the wide sense, which connotes the entire process culminating in a candidate being declared elected. It embraces the whole procedure whereby an elected member is returned, whether or not it would be found necessary to take a poll. The learned Judge holds that the word "election" has been used in Part XV of the Constitution in this wide sense, that is to say, to connote the entire procedure to be gone through, to return a candidate to the Legislature. The use of the expression "conduct of the election" in Article, 324 specifically points to the wide meaning, and that meaning could also be read consistently into the other provisions which occur in Part XV, including Article 329(b). The learned Judge cites Halsbury's Laws of England, and comes to the conclusion that the word "election" can be, and has been, appropriately used with reference to the entire process which consists of several stages, and embraces many steps, some of which may have an important bearing on the result of the process. In this case, the election, or to be more accurate, the bye-election, has started sometime ago. When the election was directed to take place and the electoral roll was drawn up or revised for the purpose of such an election, and in contemplation of the fixation of a date, the election had begun in the wider sense referred to by Fazl Ali, J. The steps that are now being taken for the purpose of obtaining photographs for the identity cards is a part of the proceedings relating to the election. As such, the provisions of Article 329(b) apply to it. In my opinion, therefore, relying on the authority of *Pounuswami's case*, (supra) it must be held, that Article 329 is a bar to the maintainability of these applications and that until and unless the election is completed and until and unless the remedies under the Act and the Rules are exhausted, such applications cannot be entertained in this jurisdiction. It is only when the election has ended and such proceedings have been taken, that the petitioners could possibly go to the appropriate Court for the remedy of their grievances.

7. The next preliminary objection which has been taken is that there has been "no demand for justice, prior to the taking out of these Rules in these several applications. This preliminary point; has not been very much pressed by the respondents, and indeed, I do not think that there is much substance in it. It is a well known proposition that a prior demand for justice need not be made where it would be utterly futile to do so. In this particular case, the statute is there, and there are statutory rules, which the respondents are bound to obey. Until and unless these are declared to be ultra vires, it is not possible for the officials administering the election to grant any relief. As is obvious, the pre-condition to the granting of relief in these cases would be the declaration of certain statutory provisions and statutory rules to be bad. Therefore, a mere demand for justice would have been entirely futile.

8. These preliminary objections, and by findings thereon, are quite sufficient to dispose of these cases. Since, however, the merits have been discussed and dealt with by the learned Counsels appearing for the parties, I will briefly advert to them. It will be observed that one of the applicants is a Hindu male, the second is a Hindu female and the third is a moslem lady. So far as the Hindu male is concerned, the matter merely rests on the challenge of the two so-called orders, as being contradictory to the rights of franchise conferred by the Constitution. With regard to the two ladies, a special plea is advanced, namely, that they are "Purdanasin" ladies and the taking of photographs is against their religion. So far as the petitioner in the first-named application is concerned, it is very difficult to appreciate the point taken. It is true that Article 326 of the Constitution gives the right of franchise, but as pointed out above, the Article merely grants the bare right of franchise, whereas Article 827 lays down that Parliament may, from time to time, by law, make provisions for regulating the right of franchise so created. The Parliament has made such laws and therefore these laws must regulate the exercise of the right of franchise. It is then said that by the making "of rules, the Central Government has really destroyed the, constitutional right to franchise given by law as also the rights given under the Act. It must not be forgotten that the rule making power under which the rules have been framed, itself lays down that the rules when framed must be placed before Parliament, and can only become effective when sanctioned by it. It is a well known principle that in such a case, the rules when sanctioned or approved have the same force as the statute. The position therefore is" that there is a right of franchise and the incidences relating to its exercise have been laid down by law, namely, the Representation of the People Acts, 1950 and 1931 and the Rules made thereunder, which also have the force of a statute, If, that is so, I fail to see how such a statute or statutory rule could be challenged, even assuming that the provisions thereof are contrary to the religious practices of any particular community. Even assuming that Article 25 has any application to the case, it is obvious that I cannot go into the matter because Article 25 has not been invoked in these applications and no ground has been made in any of these petitions in support thereof. Article 25 guarantees the right to profess and practice religion freely. But there is no guarantee to preserve any particular form of its exercise, All that is said in these applications is that the power granted under Article 326 cannot be cut down. This, in my opinion, is a misconception of the law. Assuming, however, that it was possible to assail the law on the ground that it was contrary to any religious practice as followed by any particular community, let us see what materials there are before me for that purpose. At the best, if any such principle exists, it must be shown that the particular action which is impugned has totally destroyed the rights of franchise created by statute.

9. So far as the Hindu lady is concerned, there is a bare statement that she is a "Purdanasin" lady and that it is against her religion to be photographed. No authority whatsoever has been placed before me to show that there is any religious injunction against the photographing of a Hindu lady. Students of

history will find that the system of purdah is alien to our soil, and never existed during the period of the Hindu civilisation. During the most illustrious periods of our history, women were as free as men, and indeed, as far back as in the Vedic times, we find that they freely associated themselves with our religious classics, viz., the Vedas, in which many of the mantras have been composed by females. In our epics also, we do not find the prevalence of the system of purdah. Purdah actually came into existence during and after the Muslim invasion of India and was the result of expediency and not religion. I am unable to hold that the petitioner in C. R. No. 970 of 1960 has made out a ground that her religion prevents her from being photographed for the purpose of voting at the election. It may be, although this has not been mentioned in the petition, that amongst very orthodox families, women are not readily photographed in public. That, however, is not an inexorable social practice and in modern days it is neither widespread nor popular. If one looks into my newspaper, any day, or any magazine, it would be quite plain that the prejudice, which might - have existed in archaic times, can be said to be practically at the vanishing point, and most rightly so, because in these days, with advancing progress it is not possible to cling to, mediaeval practices, and ways of thinking.

10. I now come to the case of the moslem lady. It is said" that, amongst moslems, the taking of photographs and especially of purdanasin Jadies is contrary to religious injunctions. The learned Advocate General has taken me through the Holy Quran, which is indisputably the basis of such injunctions. It is pointed out that there is no provision in the Quran which specifically enjoins Purdah, or prevents the taking of photographs under circumstances as prevail at present. The learned Advocate General has referred me to the text of the Holy Quran as is to be found in the annotation by Maulvi Muhammad Ali, Second Edition, at page 701. The text as well as the annotation clearly show that there is no express injunction about keeping the Purdah. Moderation in social intercourse of the two sexes is advocated, and it has been laid down that women should cast down their looks and not display their ornaments in public. The annotators hold that there is no absolute injunction against-the covering of the face or the hands. This is all that is to be found in the Holy Quran. Reliance is next placed on a treatise called "Alhadis" by Mishkatul-Masabih which is stated to contain the teachings of the prophet. In Book I of the 1938 Edition, page 648, it is said that Abu Talhah reported that the Prophet had said that the angels do not enter a house in which there are dogs and pictures. This is followed by reports of other divines who said that the angel Gabriel refused to go into tents where there are pictures or dogs. Reference was made before me also to the treatises on Muhammadan Law by Tyabji, 1940 Edition. There again, we find that there is no absolute injunction upon a moslem lady to practise the Purdah; At the time of marriage, she could enter into contracts regulating her liberties and the husband had a right, subject to such contract to prevent her from being exposed to the view of outsiders. Looking into the authorities, I find that Lord Shaw dealt with this aspect of the question in the case Mohabbat Ali Khan v. Md. Ibrahim Khan,

56 IA 201 : (AIR 1929 PC 135). In that case, the question was as to the legitimacy of a child of a muslim, and whether the mother was a concubine or a wife. One of the points taken was that this particular lady, being the mother of the child, did not observe the Purdah, whereas the other wives of the father did. Lord Shaw said as follows:

"But it is no part of the law of India that to have lived and to remain behind the purdah is a necessary part of a lady's legal marriage or a conclusive evidential fact."

Actually, when citing , this case, Mr. Tyabji says that the time was coming when the relation between the Purdah and respectability will be reversed. From a consideration of these texts, and the decisions, it appears to me that there is no absolute injunction amongst "the moslems that women should be in Purdah, nor is there any provision laying down the degree to which it should be observed. What have been laid down are questions of prudence and general deportment. The matter therefore rests, not on religion, but on social practice. Such a social practice would have infinite variations. The extremely orthodox may give to it a texture, which to the less orthodox would seem repellent. It would be impossible to administer the Jaw by treating it as subject to these infinite variations in social practice. With regard to representations or the taking or making of pictures, it seems to be firmly established that amongst moslems there is tan absolute injunction against any picture or representation of the prophet, of which we must take judicial notice. But there does" not seem to be any equally cogent evidence on either a religious injunction or immutable social practice with regard to others. All that has been indicated to the faithful is that the prophet did not like pictures. The conservative or the orthodox may construe it as affecting all kinds of representations, whether in the form of art or mechanical reproduction. This is not however likely to be followed by all and sundry. In fact, we find that it is not so followed. .

11. The learned Solicitor-General has pointed out that it is not usual to find that members of the moslem religion absolutely forbid pictures or photographs, since these are daily published in the Press and in the Journals. For example, he points out that recently we have seen photographs being printed in newspapers of His Majesty the Shah of Iran and his queen. He also points out that the use of photographs for the purpose of identity is a practice which is widespread. Amongst the members of the military and the Police, it is the universal practice to have identity cards, with the photographs of the members concerned. It has never been alleged that moslem soldiers or members of the police are to be exempted from this, liability. The learned Solicitor-General further points out that in pass-ports for going out to foreign countries it is essential to have a photograph, and there is no material to show that moslems as a whole have been exempted from having their photographs affixed to pass ports. A particular passport was shown to me at the hearing, of a muslim lady, in which the photograph had been omitted with the, indorsement "Purdanasin." The learned

Solicitor-General points out that this is under a special regulation whereby a wife travelling with her husband, if purdanasin, is exempted from affixing her photograph, provided that her husband's photograph is properly affixed in a passport, which has been duly issued to him. There is no material before me to show the exact circumstances under which this particular passport was issued, it having been produced suddenly at the hearing. In my opinion, this particular pass-port proves nothing.

12. The learned Solicitor-General firmly relied on the fact that Haj Pilgrims, whose religious favour cannot be questioned, have to have their photographs" affixed on their passports and have never come up to Court to object against the same stating that it was an inviolable injunction of their religion, that no such photograph should be taken. In my opinion there is not sufficient evidence before me to show that the taking of photographs would be a matter which would be so violative of the religious injunctions operative upon the, petitioner in C.R. No. 971 of 1960, that the proposal, to have a photograph affixed to her identity card, would entirely be destructive of her right of franchise. In any event, to establish such a fact conclusively, it would be necessary to take further evidence, which cannot be conveniently done in this jurisdiction.

13. The next point that is advanced is that the right of franchise is affected because by following the particular procedure outlined above, only a portion of the electorate could be photographed, and that a large portion of the electorate could not get themselves photographed and that therefore it cannot be said that the results would be representative. In other words, it is said that if a large body of the electorates are unable, with due diligence, and in spite of their best efforts, to take part in the election, then in that case it is not an election at all, because the object of an election is to choose persons who have the confidence of the electorate, meaning thereby that every person who is entitled to exercise his franchise should be able to do so freely and without hindrance. It is argued that it is with this end in view that all rules and regulations relating to elections are framed, and great care is taken to have a clean election free from corrupt practices. There is no doubt that, considered as a principle, it is unexceptionable that the object of an election is to find out the real representatives of the people, and that no person who is entitled to exercise his franchise should be hindered from doing so. What materials are however before me to show that this principle has not been observed. It is with this purpose that I have set out above the various steps that have been taken by the authorities for ensuring that all voters should be able to have themselves photographed, and to take part in the election. There cannot be two opinions on the question that there has been in the past, widespread impersonations and corrupt practices and that the best way of preventing such corrupt practices is to have photographs affixed on identity cards of each voter, so that there can be no doubt as to whether the person casting his or her vote is the person entitled to exercise the franchise. Even this system may not be perfect, but it is the best that human ingenuity could contrive. Mr. Acharyya showed me a number of photographs in which it is evident that the

same man had been photographed twice, and one photograph itself showed that the serial number of the voter has been wrongly set out in the identity card. These may be defective photographs, and may be the result of either accidents or deliberate design. As I said, no system can be absolutely perfect, but the system of providing identity cards with photographs has always been considered to be the best method by which to ensure identification at the time of election. This kind of identity card is now in widespread use in the western countries. People there have their social-service cards or social-security cards, and nobody appears to think that it is a disrespectable thing to possess one. "The learned Solicitor General has rightly pointed out that the authorities are doing their best to administer the system. It however, the electorate has not sufficient civic sense and not only does not assist the authorities but does everything to hinder their actions, then there is nothing that can be done. Every opportunity was given to the electorate to have themselves photographed. It is being done at Governmental expense and the photographers have attempted to go from house to house to enable photographs to be taken. I do not see what more concessions could be provided. In spite of the greatest diligence on the" part, of the authorities, a number of electors could not be contacted, Therefore, the Only proper thing, was to publicise the fact that centres have been opened and people who have not been photographed, should come and get themselves photographed before it was too late. It was their duty to comply with such directions.

14. Mr. Acharyya strongly argued before me that it was highly inconvenient for people to travel, from one place to a distant place to get themselves photographed, and particularly during office hours. In such matters, inconvenience can never be a test. If we have to lay down any effective procedure for the due fulfilment of the gigantic task that the Election Commission has to face, some inconvenience or other must happen to somebody, under any given circumstance. The question is as to whether the authorities have done their best, and whether they have provided the necessary facilities. If they have done so, they have performed their task, and if members of the electorate allow a slight inconvenience to be sufficient to deprive them of their right of franchise, they deserve to lose it. The learned Solicitor General has also pointed out, end in my opinion correctly, that if the fact turns out to be that the authorities are in reality to blame, and a large bulk of the electorate is left out, and is unable to furnish their photographs because of the laches of the authorities, and thus lose their right of franchise, then, in that event, the proper course will be to challenge the election after the election is over, and after the bar imposed under Article 329 is no longer operative. If it could be shown then-that a large hulk of the electorate has been deliberately left out, or that the circumstances introduced made it impossible "for them to exercise their franchise, then doubtlessly relief would be given. Before me however, there is not a single material to show that anybody has in reality been inconvenienced. Nobody has come forward to say that he had made his best attempts but could not be photographed or that he

had gone to the centres but that the authorities had refused to photograph him. All" these matters have been introduced in argued and appear to me to be imaginary or at least devoid of proof.

15. For these reasons, I hold that in none of these applications any grounds have been made out for interference by this Court, at the present moment, and that these applications are misconceived and must be dismissed.

16. The Rules are accordingly discharged. Interim orders, if any, are vacated. There will be no order as to costs.