
(1958) 05 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 9 of 1958

Sheopatsingh

APPELLANT

Vs

Narishchandra

RESPONDENT

Date of Decision : 07-05-1958

Acts Referred:

Contract Act, 1872 — Section 13
Rajasthan Tenancy Act, 1955 — Section 5(36)
Representation of the People Act, 1951 — Section 100(1), 100(2), 123(1), 123(7), 124(4)

Citation : AIR 1958 Raj 324

Hon'ble Judges : K.N. Wanchoo, C.J.; Jagat Narayan, J

Bench : Division Bench

Advocate : B.P. Beri, for the Appellant; Mukat Behari Lal Bhargava, for the Respondent

Final Decision : Dismissed

Judgement

Jagat Narayan, J.—This is an appeal u/s 116A of the Representation of the People Act No. 43 of 1951 (hereinafter called the "Act") by Shri Sheopatsingh against the decision of the Election Tribunal at Ganganagar declaring his election to the Rajasthan Legislative Assembly to be void on a petition u/s 81 of the Act by Shri Harish Chandra.

2. The election for the membership of the Rajasthan Legislative Assembly from Hanumangarh Constituency was held in the month of February and March 1957. Shri Sheopatsingh and Shri Ramchandra contested the election. Shri Sheopatsingh polled 18,530 votes and Shri Ramchandra got 17,136 votes. Shri Sheopatsingh was accordingly declared elected by the Returning Officer on 18-3-1957. Polling took place on alternate days commencing from 25-2-57 and ending on 11-3-57. 4th February, 1957 was last date for withdrawing the nomination papers.

3. The petition was filed by Shri Harish Chandra who is an elector in the

Hanumanrarh Constituency. The election of the successful candidate was called in question on the allegation that he committed a large number of corrupt practices. All the allegations contained in the petition were denied by the appellant. The allegations with regard to the bribing of voters and undue influence made in the petition were found to be vague and were deleted. Issues were framed with regard to the following corrupt practices.

- (1) Bribery to Moti Ram Sethi candidate -- Issue No. 2.
- (2) Incurring or authorising of expenditure in contravention of Section 77. Issue No. 8.
- (3) Obtaining assistance from Government servants -- Issue No. 4.
- (4) Transport of voters by mechanically propelled vehicles -- Issue No. 5.
- (5) Publication of false and defamatory statements -- Issue No. 6.

4. The Tribunal recorded a finding in favour of the appellant on issue No. 2, but it decided the remaining 4 issues in favour of the petitioner. As a result of these findings it allowed the election petition with costs, declared the election of the appellant void and disqualified him for a period of six years for voting at any election u/s 141 of the Act. Against this decision the present appeal has been filed. It is urged that the findings of the Tribunal are erroneous.

5. In para 3(a) of the petition it was alleged that the appellant secured the withdrawal of Shri Motiram Sethi who had also filed his nomination paper to contest this election by paying a bribe of Rs. 3,000/-. Shri Motiram Sethi withdrew his nomination paper on 4-2-57 the last date for withdrawal. The Tribunal found that this allegation had not been proved & this finding was not challenged before us. Issues were framed on 14-8-57 and the evidence for the petitioner was recorded from 13-9-57 to 18-11-57. When the petitioner closed his evidence the appellant moved an application on 18-11-57 that Shri Motiram Sethi was a necessary party u/s 82(b) of the Act as an allegation of corrupt practice had been made against him and the petition was liable to be dismissed u/s 90(3).

The Tribunal held that only the giving of a bribe was a corrupt practice u/s 123 of the Act and not the taking of it and as such no allegation of corrupt practice had been made in the petition against Shri Motiram Sethi. On behalf of the appellant it is argued that the decision of the Tribunal on the point is erroneous.

6. Bribery to a candidate is defined u/s 123(1)(a) as follows:

"123. Corrupt practices.-- The following shall be deemed to be corrupt practices for the purposes of this Act:-

- (1) Bribery, that is to say, any gift, offer Or promise by a candidate or his agent or by any other person, of any gratification to any person whomsoever, with the object directly or indirectly of inducing-

(a) a person to stand or not to stand as, or to withdraw from being, a candidate, or to retire from contest, at an election";

7. The question as to whether the taking of a bribe on the part of a candidate amounted to a corrupt practice under the Act came up for consideration before a Division Bench of this Court at Jaipur in *Durga Prasad v. Mukat Behari Lal*, Civil Misc. Appeal No. 102 of 1957 (A). It was held that it did not. It was pointed out that in the Representation of the People Act, 1951, before amendment there were two classes of corrupt practices --major (Section 123) and minor (Section 124). With respect to bribery the making of a gift, offer or promise of any gratification was described as a major corrupt practice while the receipt of, or agreement to receive, any gratification was a minor corrupt practice.

After the amendment the making of a gift, offer or promise of any gratification is a corrupt practice, but the receipt of, or agreement to receive, any gratification is no longer a corrupt practice. The same view was taken in *Adityan v. Kandaswami*, AIR 1958 Mad 171 (B).

8. We accordingly hold that the allegation contained in para 3 (a) of the petition did not amount to an allegation of corrupt practice against Shri Motiram Sethi. He was therefore not a necessary party u/s 82(b) of the Act and the petition was not liable to be dismissed u/s 90 (3) of the Act.

9. Let us now turn to the four issues found against the appellant. Issue No. 8 was framed by the Tribunal in the following words :

"Has the respondent spent in the election an amount higher than the prescribed limit i.e., more than Rs. 6,000/- and has he deliberately omitted to show the items of the expenditure mentioned in para 3 "g"" 1 to 8 of the petition and has thus submitted a false return of expenses.""

10. The relevant corrupt practice has been defined in Section 123(6) thus :

"the incurring or authorising of expenditure in contravention of Section 77"

Section 77 reads as follows :

"77 (1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof, both dates inclusive.

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed."

10a. The maximum amount of election expenses which may be incurred by a candidate for a single member constituency in Rajasthan is laid down in Schedule III to the Representation of the People (Conduct of Elections and Election

Petitions) Rules, 1956, as Rs. 6,000/-.

11. In para 3 (g) of the petition it was asserted that the petitioner had deliberately omitted to show a number of items of expenditure, which he had actually incurred, in his return of election expenses. The following are the items on which evidence was produced at the trial of the election petition and which were referred to before us during the course of the arguments :

(1) Rs. 1,500/-. Price of petrol, mobil oil, powerine, high speed diesel oil purchased from firm Parasram Subhkaran of Sangria between 5-2-57 and 11-3-57. In the return the following two items were shown as payment for purchase of petrol etc., from this firm by the appellant.

(i) Purchase of petrol, mobil oil etc. Rs. 1661-3-9 & (ii) Purchase of high speed diesel oil and powerine.

Rs. 414-6-9

(2) Rs. 200/-. Price of powerine and high speed diesel oil from Begraj Agarwal, Sadulshahar purchased between 5-2-57 and 11-3-57.

(3) Rs. 1500/-. Price of petrol, diesel oil powerine mobil oil etc., purchased from Chimanlal Mahendra Pratap of Hanumangarh. In his return the appellant has shown only the following items of payment to this firm :

Purchase of petrol and mobil oil etc. Rs. 220-8-0 The petitioner alleged that the appellant had no credit account with the above firm and the receipt for Rs. 220/8/- which he had filed was a fictitious one, no transaction of the nature entered therein having taken place.

(4) This item is given in the petition in the following words :

"That the respondent has not shown in his return of expenditure any account for procuring of the vehicles the details whereof are given in Schedule E. These vehicles were extensively used by the respondent for election propaganda and transporting voters from and to the polling stations."

The petitioner produced evidence at the trial to prove that jeep No. RJK-1303 was hired by the appellant during the election for 39 days at Rs. 50/-per day and a sum of Rs. 1950/- was paid as hire for it. Evidence was also led to prove that he used some of the other mechanically propelled vehicles mentioned in Schedule E for election purposes and it was contended that it should be presumed that they were obtained on hire and reasonable hire for these vehicles should be added to the election expenses. In his return of expenses the appellant has shown the following items in this connection":

(i) Reasonable hire for jeep No. RJK 849 from 9-2-57 to 11-3-57 at Rs. 12/- per day. ... Rs. 360/- (ii) Reasonable hire for David Brown's Tractor from 11-2-57 to 11-3-57 at Rs. 10/- per day. ... Rs. 290/-

(iii) Reasonable hire for jeep No. RJK-835 from 5-2-57 to 11-3-57 at Rs. 10/-

per day. ... Rs. 408/-

(iv) Reasonable hire for jeep No. RJK 1790 from 24-2-57 to 11-3-57 at Rs. 12/- per day. ... Rs. 180/-

12. We shall first deal with the question whether the election expenses of the appellant exceeded the limit of Rs. 6,000/-, The petitioner examined one Gauri Shankar P. W. 29 who is the manager of the joint Hindu family firm Parasram Subhakaran, which is owned by him and his two younger brothers Parasram and Subhakaran. He produced the Kachi Rokar, Pacci Rokar and the stock-book of the firm. His attendance and the production of these account books were secured with some difficulty. He was served for 13-9-57 but he did not turn up.

A warrant was issued for 19-9-57. He appeared on that date but did not bring the Kachchi Rokar. He stated that by mistake he had omitted to bring it. He was directed to produce it on the next day but he did not produce it. He alleged that he had sent for it but that the man who brought it from Sangria had not met him. He ultimately produced it on 21-9-57. It contains the following entry of 21-2-57 :

"Ch. Ramrikh Dingarh wale ke nam Petrol drum 6, gallon 40, Tumhari Dukan Upar Rhejyo gallon 240

.....

Powerine Drum 1, gallon 48, High Speed Diesel Drum 1, gallon 48, Mazduri-/6/-."

The upper portion of the entry is in the hand of Gaurishankar and the lower portion is in the hand of Parasram. Against the entire entry in the margin the words "Pachho Ayo" (returned) are noted in the hand of Gaurishankar. This entire entry does not find place in the Pacci Rokar.

13-21. (Their Lordships considered the evidence and continued as under):

Whatever it consumes, it cannot be said that no supplies at all were needed by Ramrikh between 5-2-57 and 18-3-57. Now if Gaurishankar had remained at his shop all the time during this period and had personal knowledge of all the entries made in the Kachchi Rokar relating to Ramrikh's Khata as he claimed to have at one stage then he would have had knowledge as to whether the six drums of petrol entered in the Kachchi Rokar on 21-2-57, were returned or not. On behalf of the petitioner, it was argued that Gaurishankar was hostile to him and was under the influence of the appellant.

He does not appear to have been completely under the influence of either party. In any case we cannot read in his statement more than what he says. If Gaurishankar was not willing to give all the necessary evidence to prove the case of the petitioner then it was for the petitioner to have produced some other evidence to prove his case. The verdict of the electorate can only be set aside on clear proof of the allegations made against the successful candidate. In this connection, we would like to refer to the observations of their Lordships of the

Supreme Court in Vashit Narain Sharma Vs. Dev Chandra and Others,

"The question is one of fact and has to be proved by positive evidence. If the petitioner is unable to produce evidence in a case such as the present, the only inescapable conclusion to which the Tribunal can come is that the burden is not discharged and that the election must stand. Such result may operate harshly upon the petitioner seeking to set aside the election. But neither the Tribunal nor this Court is concerned with the inconvenience resulting from the operation of the law. How this state of things can be remedied is a matter entirely for the Legislature to consider."

22. In connection with the entry of 240 gallons, the learned Counsel for the petitioner drew our attention to certain circumstances. One is that Ramrikh was not examined to prove the return of 240 gallons of petrol. The burden lies on the petitioner to prove that the petrol was not returned for according to the entiles in the Kachchi and Pakki Rokars, it was returned.

Another circumstance pointed out is that according to the return of expenses, jeep No. 835 was in service from 5-2-1957 to 11-3-1957 and jeep No. 849 from 2-9-1957 to 2-11-1957, but that the account book of the firm shows that these jeeps took supplies only on two dates each from the firm and that they must have been fed from the stock of 240 gallons stored at the shop of Ramrikh. One witness Rampratap, P. W. 36 was examined on behalf of the petitioner.

He stated that petrol etc., belonging to Sheopatsingh was kept at Ramrikh's shop and he used to take diesel oil sometimes from Ramrikh's shop and sometimes from Parasram's shop. He said that petrol, diesel oil etc. , belonging to Sheopatsingh were kept at Ramrikh's shop. He claimed to be the driver of tractor No. 1318 (Ferguson) of one Surajaram which he alleged had been borrowed by the appellant for the election. When he came to give evidence, he was not in the service of Surajaram. There is no evidence to corroborate the fact that he was ever in the service of Surajaram.

There is no mention of Surajaram's tractor or of this witness in the account books of the firm Parasram Subhkaran. He also stated that he took voters in the tractor from different villages to the polling stations during the election. Such witnesses can easily be hired. We are not impressed by the evidence of this witness and are unable to rely on it. We, therefore, find that it has not been proved that any vehicle employed by the appellant for election purposes drew any supply of petrol or petroleum products from the shop of Ramrikh.

From the circumstance that jeeps Nos. 835 and 849 drew supplies from the firm only on two dates, we are unable to infer that they must have drawn supplies from the shop of Ramrikh. Having fully considered all the evidence and circumstances on record, we are unable to hold that 240 gallons of petrol was purchased by Sheopatsingh from the firm on 21-2-1957 and was utilised by him for election purposes without showing it in his accounts.

23. We are accordingly of the opinion that the allegation made in para 3(g)(1) of the petition has not been proved.

24. Next we come to the allegation that petroleum products worth Rs. 200/- were purchased from Meghraj Agarwal of Sadulsahar. The Tribunal did not hold that this allegation has been proved, but the learned counsel for the petitioner referred to the evidence produced on the point Satyanarain P. W. 28, the proprietor of the shop was examined. He stated from memory that certain cash vouchers related to purchases made in cash by one Deepchand for his jeep and tractor. He said, however, that the jeep and tractor remained with Deepchand throughout the period of election, It is, therefore; not proved that any supplies were purchased by the appellant from this shop for election purposes.

25. Next we come to the allegation that supplies worth Rs. 1500/- were purchased from Messrs. Chimanlal Mahendra Pratap of Hanumangarh and that the voucher for Rs. 220/8/- from this firm filed by the appellants is fictitious. Chimanlal P. W. 1, the proprietor of the firm, was examined. He stated that the appellant had no credit account with him and that the transactions shown in voucher for Rs. 220/8/- did not take place. We accept this evidence. But there is no proof that Sheopatsingh made cash purchases from this firm amounting to Rs, 1500/-.

26. Next we come to the allegation made in para 3 (g)(8) of the petition. The main allegation under this item, which was believed by the Tribunal, is that jeep No. 1303 belonging to Deepchand was hired by the appellant at Rs. 50/- per day and a sum of Rs. 1950/- was paid as hire for it The case of the appellant on this point was that he neither used jeep No. 1303 nor used any jeep driven by Atmaram P. W. 18. Deepchand was examined in defence by the appellant as D. W. 17. He stated that he did not own jeep No. 1303 and that he did not ever engage P. W. 18 Atmaram as a driver.

When Krishna Beharilal P. W. 22 appeared in the witness-box with the register of Registration of Vehicles, neither party asked him as to who was the owner of jeep No. 1303. Deepchand is admittedly a friend of the appellant. He was his polling agent. The story given by Atmaram was that his master Deepchand directed him to proclaim himself to be the owner of the jeep and to let it on hire to Sheopatsingh for election purposes as he was afraid that if he did not do so, he would have to lend his jeep gratuitously to the appellant. Under this direction Atmaram is alleged to have hired this jeep to the appellant at Rs. 50/- per day. Jeep No. RJK-1303 heads the lists of vehicles given in Schedule E but the name of the owner has not been shown against it.

It is shown against most of the vehicles in the lists. The appellant was likely to know whether or not his friend Deepchand had a jeep. The story of Atmaram that he had been authorised by Deepchand to proclaim himself as the owner of it therefore appears to be rather thin. In view of the above facts, we are not prepared to hold that Deepchand has been proved to be the owner of jeep No. RJK-1303. But the fact that Atmaram driver or jeep No. 1303 or both figure in

nine entries in the Kachchi Rokar pertaining to the Khata of Ramrikh during the material period and the absence of a reasonable explanation from the appellant lead: us to hold that this jeep was in the possession of Atmaram and was used by the appellant for election purposes.

These entries commence from 11-2-1957 and end on 9-3-1957. All these entries have been earmarked as relating to Sheopatsingh in the Pakki Rokar. An attempt was made by the learned counsel for the appellant to argue that Atmaram shown in the books might refer to Atmaram, Chairman of the District Board. This argument cannot be put forward as Sheopatsingh stated specifically that he did not use the jeep of Atmaram Chairman.

We, therefore, hold that it has been proved that the appellant used jeep No. 1303 which was in the possession of Atmaram driver P. W. 18 for election purposes. It was argued on behalf of the appellant that the hire at the rate of Rs. 50/- per day is excessive and that a reasonable hire for a jeep is. Rs. 12/- per day as was mentioned by him in his return of expenses to which no objection was taken by the petitioner in his petition. Atmaram was not cross-examined on the point of the rate being excessive. Nor was there any evidence led on behalf of the appellant on this point.

This rate was accepted by the Tribunal and we see no reason to differ from it. Atma Ram stated that he received a sum of Rs. 1200/- from the appellant as hire for this vehicle. This allegation has been accepted by the Tribunal and we see no reason to differ from it. But we are unable to hold that a sum of Rs. 750/- was paid to Deepchand as alleged by this witness. His statement on the point is hearsay. Moreover we are. not satisfied that Deepchand owned this jeep and so we are unable to hold that he received any payment for it. We are, therefore, of the opinion that only payment of Rs. 1200/-in respect of jeep No. 1303 to Atmaram has been proved.

27. Coming to the other vehicles, jeep N. 9990 belonging to Manniram Sihar of Chutala shown at Serial Number 4 in Schedule E drew supplies from Messrs. Parasram Subhkaran and either the number of the jeep or the name of the owner appears in some entries between 21-2-1957 and 11-3-1957 in the Khata of Ramrikh. We conclude from this entry that the appellant used this vehicle for election purposes as he has not given any satisfactory explanation as to why this entry appeared in his account. For the same reason, we hold that the following vehicles were used between the dates mentioned against them by the appellant for election purposes.

1. Prem Jaildar's Tractor on 15-2-57.
2. Prem Jaildar's jeep on 18-2-57.
3. Khialiram's tractor from 25-2-57 to 8-3-57.
4. Ramrikh's tractor on 6-3-57.

5. Tractor RJK 2E from 4-3-57 to 11-3-57.

6. Bhinya Ram's tractor on 19-2-57 and

7. Jeep No. 1807 on 19-2-57.

28. With regard to the above vehicles, there is no evidence to prove that they were obtained on hire by the appellant.

29. On behalf of the petitioner, it was argued that since the appellant denied having used these vehicles at all, it should be presumed that they were obtained on hire. In our opinion, no such presumption can be drawn in the absence of any evidence to show that these vehicles were usually plied for hire. We are of opinion that it was for the petitioner to show that in obtaining these vehicles, the appellant authorised any expenditure, that is to say that he incurred a pecuniary liability which could be enforced against him in a court of law. In order to prove this the petitioner was bound to prove that all the requirements of Section 70 of the Contract Act, which runs as follows; were fulfilled:

"Section 70. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously; and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or restore, the thing so done or delivered".

30. u/s 123 of the Motor Vehicles Act read with Section 42, it is an offence to ply a private vehicle for hire. There is no evidence on record to show that these vehicles could be let out for hire. Nor is there any evidence to show that they were taken from a firm dealing in the business of hiring vehicles. It was for the petitioner to prove, in the absence of direct evidence of hiring, that the owners, of the vehicles did not intend to lend them gratuitously to the appellant.

31. This brings us to the next point which is that assuming that a vehicle is lent gratuitously to a candidate is reasonable hire for the vehicle to be shown as election expenditure? In other words, is the reasonable hire of a vehicle lent gratuitously an expenditure which the candidate should be presumed to have incurred or authorised? To our mind, it is not. One incurs expenditure when one actually spends money. One authorises expenditure when one incurs a pecuniary liability.

In borrowing a vehicle, which the lender lends gratuitously, no pecuniary liability is incurred. On behalf of the petitioner, it was argued that if such a construction is adopted, candidates, who have friends and relations, would have unfair advantage over a poor rival. A similar argument was repelled by their Lordships of the Supreme Court in *Rananjaya Singh Vs. Baijnath Singh and Others*, in the following words :

"The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the sections of the Act and the rules made thereunder. If all that can be said of

these statutory provisions is that construed according to the ordinary, grammatical and natural meaning of their language, they work injustice by placing the poorer candidates at a disadvantage the appeal must be to Parliament and not to this Court".

32. The above observations are fully applicable to the facts of the present case. In the case before their Lordships, the father assisted the son in the matter of election and the persons, who were the employees of the father and were paid by him for working in his estate, assisted the son at the request of the father, which strictly speaking, they were not obliged to do. It was held that qua the candidate the persons were neither employed nor paid by him. So far as the candidate was concerned, they were mere volunteers whose employment did not bring him within the mischief of the definition in Section 123(7) of the Act which then stood as follows:

"The incurring or authorising by a candidate or his agent of expenditure, or the employment of any persons by a candidate or his agent in contravention of this Act or any rule made thereunder".

33. The pay of the servants of the father for the days on which they worked for the son assisting him in his election was not considered to be election expenditure. In the same way, there can be no question of reasonable hire of vehicles given on loan gratuitously to a candidate by his friends or relatives to assist him in his election being considered to be election expenditure incurred or authorised by the candidate.

34. We would, however, like to make it clear that what has been said above is only applicable to cases where the friend or relative lending his vehicle or the assistance of his servants does not incur any additional expenditure in doing so. If, however, he does incur additional expenditure different considerations will arise. For example if a friend gets posters printed at his expense for a candidate, he incurs expenditure within the knowledge of the candidate and with his consent. The candidate will thus be authorising expenditure which he is bound to show in his return of expenses.

In lending a vehicle which the friend already has, he incurs no expenditure. If, however, a friend buys a vehicle in order that he may be able to lend it for use during election, he would be incurring an expenditure which the candidate will be deemed to have authorised.

35. The reasonable hire of the above vehicles cannot, therefore, be added to the election expenditure of the appellant. The appellant himself has shown a sum of Rs. 1238/- in his return of expenses as reasonable hire for vehicles borrowed gratuitously from his friends and relatives. This amount has been wrongly shown as election expenditure and in working-out the total amount of expenditure incurred or authorised by him, this sum must be deducted.

36. Deducting Rs. 1238/-, from the sum shown by the appellant in his return of

expenses and adding Rs. 1200/-, the total expenditure, which he is proved to have incurred, comes to Rs. 4190/6/6. This being less than Rs. 6,000/-, Sub-section (3) of Section 77 of the Act was not contravened.

37. The Tribunal found that the appellant also contravened Sub-section (1) of Section 77 inasmuch as he did not maintain a separate and correct account of the expenditure incurred or authorised by him in connection with the election between the date of publication of the notification calling the election, and the date of declaration of the result thereof. In this connection, some observations have been made in the judgment of the Tribunal with which we are unable to agree. All that the law requires is that the account should be maintained in accordance with the rules 131 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956 which runs as follows:

"Rule 131. Particulars of account of election expenses -- (1) The account of election expenses to be kept by a candidate or his election agent u/s 77 shall contain the following particulars in respect of each item of expenditure from day to day, namely:

- (a) the date on which the expenditure was incurred or authorised;
- (b) the nature of the expenditure (as for example, travelling, postage or printing and the like);
- (c) the amount of the expenditure-
 - (i) the amount paid;
 - (ii) the amount outstanding;
- (d) the date of payment;
- (e) the name and address of the payee;
- (f) the serial number of vouchers, in case of amount paid;
- (g) the serial number of bills, if any, in cases of amount outstanding;
- (h) the name and address of the person to whom the amount outstanding is payable.

(2) A voucher shall be obtained for every item of expenditure unless from the nature of the case, such as postage, travel by rail and the like, it is not practicable to obtain a voucher.

(3) All vouchers shall be lodged along with the account of election expenses, arranged according to the date of payment and serially numbered by the candidate or his election agent and such serial numbers shall be entered in the account under item (f) of Sub-rule (1).

(4) It shall not be necessary to give the particulars mentioned in item (e) of Sub-rule (1) in regard to items of expenditure for which vouchers have not been

obtained under Sub-rule (2)".

All that the rules require is the maintenance of one account book in which the particulars mentioned above should be noted. So far as vouchers are concerned, the reference is only to vouchers received from dealers. In the same way bills refer to the bills received from persons who have supplied goods or rendered some service on credit. There is no direction for keeping a separate cash book. Nor is there any direction for maintaining any order book or receipt book or voucher book. The appellant stated that he maintained a true account of his election expenditure in a diary.

This diary, however, did not contain particulars of the expenditure, which was authorised, that is, for which liability had been incurred and some amount was outstanding. This account was, therefore, not in accordance with Rule 131. The appellant stated that the diary was with him. No allegation with regard to the non-maintenance of a separate account was made in the petition. The appellant was, therefore, not bound to produce the diary before the Tribunal. If the Tribunal thought that its production was necessary, it should have ordered the appellant to produce it and he would have done so.

38. The Tribunal held that a contravention of Sub-sections (1) and (2) of Section 77 of the Act amounts to a corrupt practice. This finding has been challenged on behalf of the appellant before us. The learned counsel for the petitioner tried to support it.

39. u/s 123(6), it is only the incurring or authorising of expenditure in contravention of Section 77 of the Act which amounts to a corrupt practice. The non-maintenance of true accounts has not been laid down as a corrupt practice. An entry is made in the account book only after an expenditure is incurred or authorised. The corrupt practice consists of incurring or authorising of expenditure in contravention of Section 77.

Only Sub-section (3) of Section 77 deals with the incurring or authorising of expenditure, for it lays down that the total amount of the said expenditure shall not exceed such amount as may be prescribed. It is only when the total expenditure exceeds this amount that it can be said that it has been incurred or authorised in contravention of Section 77.

40. Section 124(4) of the Act prior to its amendment by Act No. 27 of 1956 provided that the making of any return which was false in any material particular would be a minor corrupt practice. That provision has since been deleted.

41. We are accordingly of the opinion that a contravention of Sub-sections (1) and (2) of Section 77 of the Act is no longer a corrupt practice. Nor is the submission of a false return of expenses a corrupt practice any longer.

42. Next we come to issue No. 4 which relates to obtaining assistance from some Government servants. Particulars were given in Schedule B in which six Government servants were named. The Tribunal held that only two out of them

viz., Ghanshyamdas, Reader, Bhakra Colonisation, Tehsil Sangaria with headquarters at Hanumangarh and Ramchander, Irrigation Patwari of Halka Kohla, Hanumangarh Tehsil came within the classes enumerated u/s 123(7) of the Act. On behalf of the petitioner it was not argued before us that any of the other officers mentioned in Schedule B also comes within that classification.

43. According to the finding of the Tribunal, they come under Clause (f) which is "Revenue Officers including village Accountants, such as Patwaries, Iekhapals, Talaties, Karnams and the like but excluding other village officers". On behalf of the appellant, it was argued that the term "Revenue Officers" should be taken to mean Revenue Officers as defined in the Rajasthan Tenancy Act since the term has not been defined in the Act. u/s 5(36) of the Tenancy Act, the term "Revenue Officer" means any officer employed in the business of revenue and rent or in maintaining revenue records. Under this Tenancy Act, "revenue" means land revenue.

Now the Representation of the People Act, 1951 is an all India Act and we see no reason to give a restricted meaning to the word "revenue" as used in this Act and confine it to land revenue. We are of the opinion that this word has been used in a wider sense and the term "Revenue Officer" should be taken to mean any officer employed in the business of any sort of revenue by the Union or the States. This definition will thus include non-gazetted officers of all the departments dealing with Union or State revenue.

All the gazetted officers of the Government come under Clause (a) to whatever department they may belong. The term "revenue officer" will thus include such officers of the Income Tax, Sales Tax and Irrigation Department as well as the Land Revenue Department, who are employed in the business of revenue. The term "officer" has also been used in a wider sense and means an office-holder. Every office-holder of a Revenue Department, who has any connection with the assessment or collection of revenue or with the maintenance of revenue records will thus come within Clause (f) of Section 123(7) of the Act.

44. Ghanshyamdass is the Reader of the Colonisation Tehsildar whose duty it is to allot Government lands to tenants and to fix rent on them. This rent is revenue to the state. Ghanshyamdass is thus employed in the business of revenue and is a Revenue Officer within the meaning of the Act. In the same way, Ramchander, who is an Irrigation Patwari and whose duty it is to maintain records with the help of which irrigation dues are collected is a Revenue Officer.

45. Next we come to the question whether it is proved that the appellant obtained or procured any assistance from these two Government servants. The Tribunal held that he did obtain such assistance as was alleged by the petitioner in his petition. On behalf of the appellant, it is contended that the evidence of the witnesses relied upon by the Tribunal is wholly partial and unreliable. The contention on behalf of the petitioner is that it is reliable.

46. In order that evidence may be appreciated in proper perspective, it is

necessary to state that the petitioner is the first cousin of Shri Ramchander who was a Congress candidate and who was Minister for Public Works in the Government of Rajasthan at the time of the election. Shri Sheopatsingh stood as an independent candidate. Sheopatsingh was also formerly a member of the Congress Party but he resigned from it shortly before the election in order to oppose Ramchander. Shri Naraindas, father of Ghanshyamdass Reader and Shri Brij Prakash, his brother, are both lawyers and both of them supported the candidature of the appellant against Shri Ramchander.

The father of Ramchander Patwari was also a supporter of the appellant. The case of the appellant is that neither of these two Government servants gave him any assistance but that Shri Ramchander, defeated candidate, got them suspended in order to put pressure on their relatives so that they may refrain from assisting the appellant.

47-56. (Their Lordships then discussed the evidence and concluded that it was not proved that the two Revenue officers rendered any help to the candidate in the election. The judgment continues as follows):

57. Next we come to the allegation regarding transport of voters by mechanically propelled vehicles (Issue No. 5). The allegation about it is contained in para 3(d) of the petition in the following words:

"That the respondent committed corrupt practice by procuring and using mechanical vehicles for the transport of voters to and from the polling stations details whereof are given in Schedule C appended to this petition."

58. In Schedule C, eleven instances were cited. With regard to instance No. 1 the objection of the appellant was that the particulars given were not sufficient inasmuch as the names of persons hiring or procuring the vehicles, the sums paid and the names of the voters carried were not mentioned. This objection was upheld by the Tribunal and instance No. 1 was accordingly deleted by its order 3-9-57. The argument, which appears to have appealed to the Tribunal on this point, was that the names of the agents, who were alleged to have committed the corrupt practice in question, had not been mentioned and so it was lacking in necessary particulars. This objection was not taken in the written statement. We are of the opinion that in the circumstances the Tribunal should not have deleted instance No. 1 shown in Schedule C without giving an opportunity to the petitioner to name his agents. Evidence was led to prove the remaining 10 instances cited in Schedule C. The Tribunal discussed only three of these instances in its judgment and held that instance No. 2 had been proved without any doubt. The appellant challenged this finding. On behalf of the petitioner, it is argued before us that all the ten instances have been proved satisfactorily. We proceed to deal with them one by one.

59-60. (Their Lordships examined the evidence and continued as follows):

We thus find that seven instances out of the 11 the particulars of which were

given in Schedule C have been proved. They relate to 1-3-57, 3-3-57, 5-3-57, 7-3-57 and 9-3-57 and 7 different polling stations. There is no direct evidence to show that the vehicles used were procured by the appellant himself except in one instance relating to Bholawali Polling Station where jeeps Nos. 835 and 849 were used. These jeeps were admittedly procured by the appellant himself.

Most of the vehicles used in the other instances belonged to persons who worked for the appellant during this election. Balwantsingh and Birbaldass out of them were his polling agents who acted as such with the express consent of the appellant. Others like Ramdutt and Chunnilal were his canvassors who must be taken to have acted as agents in connection with the election with the implied consent of the candidate. The corrupt practice in question is defined in Section 123(5) of the Act as follows :

"Section 123(5). The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person, for the conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided u/s 25 or a place fixed under Sub-section (1) of Section 29 for the poll :

"Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power :

Provided further that the use of any public transport vehicle or vessel or any tram, car or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

Explanation : In this clause, the expression "Vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise."

61. As has been mentioned above, two of the vehicles, namely, jeeps Nos. 835 and 849 were procured by the appellant himself. Some others were procured by his agents. The remaining vehicles were procured by other persons. The question which arises for consideration is whether it can be said in the circumstances of the present case that the corrupt practice in question has been committed by the returned candidate or by any person with the consent of the returned candidate as required u/s 100(1)(b) of the Act. The relevant part of Section 100 as it stands now runs as follows :

"Section 100. Grounds for declaring the election to be void : (1) Subject to the provisions of Sub-section (2), if the Tribunal is of opinion

(a) XX XX XX XX X (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

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

(i) by the improper acceptance of any nomination, or

(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, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the Tribunal shall declare the election of the returned candidate to be void.

(2) If in the opinion of the Tribunal, returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice, but the Tribunal is satisfied :

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent of the candidate or his election agent;

(b) that all such corrupt practices were of a trivial and limited character or took the form of customary hospitality which did not affect the result of the election;

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then the Tribunal may decide that the election of the returned candidate is not void."

62. From the numerous instances in which voters were carried in mechanically propelled vehicles by the agents of the appellant some of whom were quite close to him, we are of the opinion that the appellant could not have been unaware of this transport of his voters by mechanically propelled vehicles and did nothing to stop it. We accordingly infer that they were so carried with his implied consent.

63. Consent is defined u/s 13 of the Contract Act in these words. Two or more persons are said to consent when they agree upon the same thing in the same sense. This consent need not always be express, that is indicated by words. It may also be implied, that is indicated otherwise than by words. Section 9 of the Contract Act lays down that in so far as the proposal or acceptance of any promise is made in words, the promise is said to be express.

In so far as such proposal or acceptance is made otherwise than in words, the

promise is said to be implied. Just as a proposal or acceptance can be express or implied, in the same way consent can be express or implied. Where the consent is implied, it is to be inferred from facts and circumstances. But whether it is express or implied, consent is only consent when two or more persons agree upon the same thing in the same sense.

64. In the Act as it stood before its amendment by Act No. 27 of 1956 instead of the word "consent," the word "connivance" was used. Connivance is also consent in the legal sense. "To consent" means, according to the Concise Oxford Dictionary, "to acquiesce" or "to agree." If a person consents to a tiling and the consent is indicated by words, we say that he agrees to the thing. If, on the other hand, the consent is indicated otherwise than by words, we say that he acquiesces in it.

The term "tacit consent" is sometimes used for consent indicated otherwise than in words. "Tacit" means unspoken or silent. To connive at a thing means to wink at it. The word "Connive" is only used in connection with a tiling which is unlawful or immoral which one ought to oppose. It implies knowledge and lack of opposition where there is a duty to oppose. It, therefore, means the same thing as tacit consent. The only difference is that the word "connivance" is used in connection with a thing which is unlawful or immoral which one ought to oppose.

The term "tacit consent" can, on the other hand, be used in connection with unlawful or immoral things as well as things which are not unlawful or immoral. Now tacit consent is also consent. We, are therefore of the opinion that connivance is also consent in the legal sense. It cannot accordingly be said that the word consent used in the Act after its amendment is in any way stronger than the word "connivance" used before its amendment. The term "consent" is a legal term and is of wider import as it includes both express and implied consent.

The legislature, therefore must have preferred to use it in place of the term "connivance" which did not fully express its intention, for surely it could not have been intended that the election would not be void if a corrupt practice was indulged in with the express consent of the candidate.

65. On behalf of the appellant, it was argued that even if the seven instances mentioned above are taken to have been proved, all that it would amount to would be proof of corrupt practice by an agent which no longer makes the election void u/s 100(1)(b) on account of the amendment of the Act, unless it is further shown that the result of the election has been materially affected as provided u/s 100(1)(d) of which there is no evidence.

It is true that an election cannot be held to be void merely upon the proof of a corrupt practice by an agent any longer. But from the numerous instances of corrupt practice by agents which have been proved in this case, we have inferred that voters were carried by mechanically propelled vehicles with the implied consent of the appellant. In view of this finding, the election of the appellant is void u/s 100(1)(b) of the Act.

66. On behalf of the petitioner, it was argued in the alternative that even under the law as it stands today the election of the candidate will be void on proof of a corrupt practice by an agent unless it is shown that the case falls under Sub-section (2) of Section 100. We are unable to accept this contention. The cases in which the election is void are enumerated in Sub-section (1) to Section 100. Sub-section (2) to Section 100 can only be regarded as a proviso to Clause (d) of Sub-section (1) and will Only be applicable to those cases where a corrupt practice of a trivial and limited character has materially affected the result of election.

For example, if votes polled by the successful and the defeated candidates differ only by 30 and it is held by the Tribunal that more than 30 voters of the successful candidate were transported by a mechanically propelled vehicle and further that they would not have voted for him if they had not been so carried and the other conditions of Sub-section (2) are fulfilled then the case would fall under Sub-section (2) and the election shall not be held to be void.

67. Lastly we come to the publication of a false and defamatory statement (Issue No. 6). The relevant allegation is contained in para 3 (e) of the petition in which it was alleged that the appellant got published a pamphlet under the signature of his agent Raghunathsingh alias Raghunath Rai, which both of them knew and believed to be false and at any rate did not believe to be true, relating to the personal character and conduct of Shri Ramchander, the defeated candidate.

It was alleged that the pamphlet was widely distributed by the appellant and his agents throughout the constituency and was reasonably calculated to prejudice the prospects of the defeated candidate. According to the finding of the Tribunal and the contentions of the petitioner, paras 1, 2 and 17 of the petition fall within the mischief of Sub-section (4) of Section 123 of the Act. Further the Tribunal held that although it was not proved that Sheopatsingh got the pamphlet printed, it was proved that he himself and his agents distributed it widely in the constituency.

The evidence of the witnesses has not been discussed in the judgment of the Tribunal. Only their names have been given and it has been mentioned that the allegations made in para 3 (e) of the petition are proved abundantly by their evidence. The first question for decision is whether the allegations contained in the above three paras fall within the mischief of Section 123(4) of the Act.

68. In para 1 it was alleged that a completely false accusation of murder was brought by Sardararam, uncle of the defeated candidate, at the instance of the defeated candidate against Ramchander Dharnia of Deengarh only because he did not vote for him at the last election. This paragraph undoubtedly contains a statement about the personal character of the defeated candidate which was reasonably calculated to prejudice his prospects at the election.

The case of the appellant with regard to this allegation was that it was true. He has failed to produce any evidence to show that there was any truth in it. On the contrary it is proved by the evidence of Ramchander P. W. 34, Harichander P. W.

35 and Ghanshyamdass Vakil P. W. 16 that the defeated candidate or his relative Sardararam had nothing to do whatsoever either with the bringing of the alleged accusation or with the subsequent prosecution of Ramchander Dharnia. Harishchander and Ghanshyamdass appeared in the case as lawyers for the prosecution.

They are lawyers and they must have been engaged by the son of the murdered man who, according to the evidence on record, did pairvi in the case against Ramchander Dharnia. Ramchander Dharnia was acquitted. The case against him might have been false. But the principal allegation against the defeated candidate made in para 1 was that the accusation was brought by his uncle at his instance and this allegation has been shown to be completely false. Sheopatsingh himself admitted in cross-examination that at the time of election he did not know whether Ramchander Dharnia was rightly prosecuted or wrongly prosecuted for the murder of Uda Naik.

69. The allegation contained in para 2 of the pamphlet was that the defeated candidate brought a false case against one Mohansingh of Sulingarh from which he extricated himself with great difficulty. It has come in evidence that the defeated candidate filed a complaint u/s 448, I. P. C. against Mohansingh who was convicted by the trial Court but on appeal he was acquitted by the Sessions Judge. Ramchandar, the defeated candidate, stated that the case was true.

He was allowed to give the contents of the judgment of the Sessions Judge orally. He should have filed a copy of the judgment and allowed the judgment to speak for itself. The oral statement of the witness about the contents of the judgment cannot be looked into. On the evidence on record, therefore, we hold that Sheopatsingh might have believed that Mohansingh had been falsely prosecuted.

70. The allegation contained in para 17 was that the defeated candidate could not bear to see the Sikh community even with the blind eye and whenever the representatives of the Sikh community stood for election he set up his henchmen to oppose them. The case of the appellant was that the allegation is true. He cited two instances. The election for the District Board, Hanumangarh was held shortly before this election. One Kartar Singh stood as a candidate. Jiwanram, uncle of the defeated candidate, opposed him.

The evidence shows that Jiwanram stood as a candidate on behalf of the Congress Party. Although it cannot be said that the defeated candidate set him up, it may be that he was able to procure the Congress ticket for his uncle as he was a Congress Minister at that time. The appellant did not himself give any evidence about any second instance in which the defeated candidate set up his man against a member of the Sikh community. His defence witness Dalipsingh was cross-examined by the petitioner.

In cross-examination he stated that the defeated candidate set up one Kripalsingh Sikh against him at the Panchayat election. This cannot be regarded

as a second instance as in this case a Sikh was set up against a Sikh, This does not support the allegation contained in para 17 that the defeated candidate could not see a Sikh even with the blind eye. There is no reservation for communities at Panchayat elections and the fact that the defeated candidate set up a Sikh to oppose a Sikh rather goes to show that he does not hate the Sikh as much as is made out in para 17 of the pamphlet.

The explanation offered by the defeated candidate for the first instance was that Hariram had really set up Jiwanram against Kartarsingh to alienate the sympathies of the Sikhs from him (Ramchander) in view of the coming Assembly elections with the real object of furthering the prospects of his own son whom he intended to set up in it. Even if this explanation is not true, the mere fact that Jiwanram's own uncle was set up against Kartarsingh does not prove that Shri Ramchander hates the Sikhs.

It was also argued on behalf of the appellant that para 17 contains an allegation of a political nature. We are unable to agree with this contention. To say that a congress-man hates people belonging to any particular community is to make a personal attack against him, even if it is against the congress creed. We accordingly hold that para 17 contained a false statement of fact in relation to the personal conduct of the defeated candidate. There can be no doubt that this statement was reasonably calculated to prejudice his prospects as the number of Sikh voters in the constituency was considerable.

71. The second question which we have to consider under this issue is whether it has been proved that the respondent got the pamphlet printed and whether he himself distributed it or got it distributed through his agents. The Tribunal held that there was no evidence to prove that the appellant got the pamphlet printed. This finding was not challenged before us.

So far as the question of distribution is concerned, it was contended on behalf of the appellant that we should not consider the evidence produced by the petitioner to prove that the appellant himself distributed the pamphlet as the issue which was framed by the Tribunal excluded the consideration of such evidence. The issue framed by the Tribunal on the point was in the following words:

"Did the respondent get published and widely circulated the enclosed pamphlet under the signature of his agent Raghunath Singh alias Raghunath Rai etc. If it is so, what is its effects on the election petition?"

72. On behalf of the appellant, it was argued that in view of the wording of the issue, it was not open to the petitioner to give evidence to prove that Sheopatsingh himself distributed the pamphlet. We are unable to accept this contention. The allegation made in para 3(e) of the petition was that Sheopat Singh as well as his agents distributed the pamphlet. Evidence was led by the petitioner to prove this allegation. The appellant had full opportunity of meeting the allegations which had been made in the petition and on which evidence had

been led.

We see no reason why the Tribunal should have shut out the allegation made in the petition that Sheopatsingh himself distributed the pamphlet at the time of framing issues. We are satisfied that the issue was wrongly drafted by mistake without any such intention. We have no reason to think that the appellant was in any way misled by the framing of the issue. Another objection taken on behalf of the appellant was that full particulars about the date, time and place of distribution of the pamphlet were not given in the petition. He took no objection about it in his written statement. It was held in *Bhagwandutt Shastri v. R.R. Gupta* 11 ELR 440 (SC) (E),

"Though the requirement of full particulars of corrupt practices is of paramount importance, where, notwithstanding the absence of particulars, the evidence of both sides is allowed to be given and taken, the petition cannot be dismissed for want of full particulars, inasmuch as the question in such a case is not one of absence of jurisdiction but as to whether there has been a material prejudice occasioned by the absence of particulars".

73. The appellant had a full opportunity of meeting the evidence produced against him by the respondent and we are not satisfied that he was materially prejudiced by the fact that full particulars had not been given in the petition regarding the date, time and place of distribution.

74. Coining now to the evidence of distribution, Sahjaram P. W. 11, Ghanshyamdass P. W. 16, Lalsingh P. W. 24, Bholasingh P. W. 26 and Harischander P. W. 35 were examined to prove that Sheopatsingh himself distributed the pamphlet. Sahjaram, Ghanshyamdass Vakil and Harischander are partisan witnesses whose evidence we are unable to accept in the present case without some independent corroboration. No such corroboration is forthcoming. Lalsingh P. W. 24 is a member of the Executive Committee of the Central Akali Dal.

The Dal had issued instructions to him to support the congress candidate. He canvassed for the defeated candidate amongst the Sikhs. Apart from that the witness is almost illiterate. He can only sign his name in Gurmukhi. He does not know Hindi at all. He says that he got the pamphlet read over to him but he did not remember its contents except para 17. We cannot, therefore, be sure whether the pamphlet of which Lalsingh spoke was the same which was mentioned in the petition.

He did not file a copy of the pamphlet which was handed over to him. His evidence also is therefore, useless. So far as Bholasingh P. W. 26 is concerned, he did not say that he saw Sheopatsingh distributing the pamphlet. He only saw Thanasingh distributing it. So far as Sheopatsingh is concerned, his allegation was that he orally did propaganda against the defeated candidate by saying that he could not see members of the Sikh community even with a blind eye. This allegation was not made in the petition and we are unable to consider it. We

therefore, hold that it has not been proved that the appellant distributed the pamphlet at any place.

75. Sahjuram P. W. 11, Ghanshyamdass Vakil, P. W. 16, Lal Singh P. W. 24, Bholasingh P. W. 26 and Havischander P. W. 35 further alleged that leaflets were distributed by some other persons also. Besides them, Rawatram P. W. 9 and Birakhdass P. W. 13 also stated that the pamphlet was distributed by some persons. We have already referred to the evidence of Lal Singh above. No value can be attached to it for reasons given above.

We have also held Sahjuram, Ghanshyamdass Vakil and Harischander petitioner to be partisan witnesses on whose evidence no reliance can be placed without some independent corroboration. Rawatram and Birakhdass also fall in this category as they are persons who worked for the defeated candidate in this election as well as in the election of 1952. This leaves only the evidence of Bholasingh who alleged that one Thanasingh distributed the pamphlet.

It has not been shown that Thanasingh was an agent of the appellant. In any case even if he had been proved to be an agent, from one stray instance of the distribution of the pamphlet, the consent of the petitioner cannot be inferred. We accordingly hold that the evidence of Bholasingh has no effect on the case as a corrupt practice by an agent is no longer sufficient to make the election void unless it is further shown that it materially affected the result of which there is no evidence in this case.

76. In view of our finding on issue No. 5, we hold the election of the appellant to be void. We accordingly confirm the decision of the Tribunal and dismiss the appeal.

77. In the circumstances, we direct the parties to bear their own costs of the appeal.