
(1958) 10 BOM CK 0011
In the Bombay High Court
Case No : A.F.O. D. No. 294 of 1958

Sudhir Laxman Hendre

APPELLANT

Vs

Shripat Amrit Dange and Others

RESPONDENT

Date of Decision : 11-10-1958

Acts Referred:

Representation of the People Act, 1951 — Section 100(1), 123, 123(1), 123(3), 123(4)

Citation : AIR 1960 Bom 249 : (1959) 61 BOMLR 500

Hon'ble Judges : Patel, J;Gohale, J

Bench : Division Bench

Advocate : S.W. Dhabe, for the Appellant; A.S.R. Chari and V.D. Mengde, L.R. Cari, V.K. Pai P.P. Tajane and N.M. Kamble, for the Respondent

Judgement

Gokhale, J.

(After stating the fact and some evidence His Lordship proceeded): In connection with the order of the Elction Commisioner ordering a repoll confined to one polling station, the argument of Mr. Dhabe is that such an action is not warranted by the provisions of the Representation of the People Act. According to Mr Dhabe, in view of the defect that was brought tot henotice of the polling officer as well as the Returning Officer and to The Election Commission the entire electin to the Parlimentary seats in the constituency should have been set aside nd a fresh election held. Under S. 57 of the Act, provision is made for the adjournment of poll at an election in certain emergencies. It is not disputed that S. 57 would not apply to the fact of this case. Section 58 provides for a fresh poll being taken and it runs as follows:

"(1) If at any election, any ballto box used at a polling statin or at a place fixed for ht epoll is unlawfully taken out of the custody of the presiding officer or at a place fixed for the poll is unlawfully takenout of the custody of the presiding officer or thereturning officer,or is in any way tampered with,or is accidentallyor intentionall;y destroyed, lost or damaged,and the returning officer is satisfied that in consequence thereof theresultof thepoll at that polling station or place

cannot be ascertained, he shall-

- (a) declare the polling at that polling station or place to be void;
- (b) report the matter forthwith to the Election Commission and to the appropriate authority;
- (c) with the previous approval of the Election Commission, appoint a day, and fix the hours for taking a fresh poll at the polling station or place; and
- (d) notify the day so appointed and the hours so fixed by him in such manner as the Election Commission may direct.

(2) The provisions of the Act and of any rules or orders made there under shall apply to every such fresh poll as they apply to the original poll. It cannot be denied that the failure of the polling Officer to keep the ballot boxes of the petitioner at the polling station would not be in terms covered by this section. It is only when a ballot of any candidate is unlawfully taken out of the custody of the presiding officer or is in any way tampered with or is accidentally or intentionally destroyed or lost or damaged and the returning officer is satisfied that in consequence thereof the result of the poll at that polling station cannot be ascertained, then a fresh poll may be taken under S. 58 after declaring the polling at that polling station to be void and with the previous approval of the Election Commission. But it does seem that even where there is a more serious interference with the ballot box of a candidate a fresh poll can be ordered only for that particular polling station where the ballot box is found to have been tampered with or destroyed. The Election Tribunal was of the view that the principle of this section could be applied in the present case where an account of the wrong information given to the polling officer the ballot boxes in the names of the two candidates were not kept till 11.30 a. m. at the polling booth and, therefore, the order of the Election Commission would be justified on the principles of equity, fair play and natural justice. There is undoubtedly a good deal to be said in favour of this view. Mr. Chari, learned Counsel appearing on behalf of the respondents, also relied on Art. 324(1) of the Constitution in support of the action of the Election Commission. Under the article.

"the superintendence, direction and control of the preparation of the electoral roll for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the office of President and Vice-president held under this Constitution, including the appointment of election tribunals for the decision of doubts and dispute arising out of or in connection with elections to Parliament and to the Legislatures of States shall be vested in a Commission (referred to in this Constitution as the Election Commission)".

Undoubtedly under this Article the Constitution has created an Election Commission for the superintendence, direction and control and conduct of all elections to Parliament and the State Legislatures. But the Election Commission must act within the terms of the statute which Parliament may enact under Art.

327 of the Constitution making provision with respect to all matters relating to elections. Under Art. 329(b), "no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by orature". The Representation of the People Act, 1951, having been enacted by Parliament, the powers of the Election Commission must be exercised in accordance with the provisions of this Act and it does seem that the Act itself does not confer on the Election Commission any power to adjourn a poll or to take fresh poll beyond what is provided under Ss. 57 and 58 of the Act.

(2) But even assuming that S. 58 does not in terms provide for a fresh election at a polling station, under circumstances which have arisen in the present case, the only section which empowers an Election Tribunal to declare an election to be void is S. 100 of the Act and Mr. Dhabe has, therefore, argued that what has happened amounts to a corrupt practice which must invalidate the election.

(3) Now, S. 100(1), in so far as it is material, provides as follows:

"(1) Subject to the provisions of sub-s. (2), if the Tribunal is of opinion -

X X X X 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

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 -

X X X X X (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."

In the present case we are not concerned with the provisions of sub-s. (2) of S. 100. It is clear that there is a distinction between the provisions of clause (b) and clause (d)(ii) of sub-s. (1) of S. 100. If it is proved that a corrupt practice has been committed by a returned candidate or the election agent or by any other person with the consent of a returned candidate or his election agent, then the Tribunal has to declare the election of the returned candidate to be void. But if the responsibility of corrupt practice is not on the candidate or his election agent or any person acting with the consent of such candidate or his election agent, but the corrupt practice has been committed in the interests of a returned candidate by a person other than the persons mentioned in clause (b) of sub-s. (1) of S.

100, then it must be shown that the result of the election in so far as it concerns the returned candidate has been materially affected before the Tribunal is empowered to declare the election to be void. It may be observed that the law in England regarding irregularities in election is somewhat similar. Volume 14, paragraph 261 at page 150, it is stated as follows:

"An election ought not to be held void by reason of transgressions of the law committed without any corrupt motive by the returning officer or his subordinates in the conduct of the election if the tribunal is satisfied that the election was really and substance conducted under the existing election law, and that the result of the election was not and could not have been affected by those transgressions. If, on the other hand, the transgressions of the law by the officials being admitted, the tribunal sees that the effect of the transgressions was such that the election was not really conducted under the existing election law, or it is open to reasonable doubt whether those transgressions may not have affected the result and it is uncertain whether the candidate who has been returned has really been elected by the majority of persons voting in accordance with the majority of persons voting in accordance with the law in force relating to elections, the tribunal is then bound to declare the election void." *Islington, West Division, Case (1901), [1901] 1 O.M. and H. 120*, at p. 125.

In the above case, it appears that at certain polling stations the polling continued even after 8 p. m. which was the closing hour, and a number of votes were recorded after this hour in the ballot box and a number of ballot papers came to be supplied after this hour; and Mr. Justice Kennedy, after stating his views of the law as quoted above observed that

"this is the view of the law which has generally been recognised, and acted upon, by the tribunal which have to deal with election matters."

(4) According to Mr. Dhabe, the polling agents of the successful candidates were responsible for making a false statement of fact to the polling officer that the petitioner and Mr. Parulekar had withdrawn from candidature. That would be therefore, a corrupt practice within the meaning of S. 123(4) of the Act. And Mr. Dhabe says that the evidence establishes that the polling agents of the successful candidates were present at the polling station and were responsible for the information given to Mr. Bharucha. It is contended further that at that polling station the polling agents of Messrs. Hendre and Parulekar were not present and only the agents of other candidates were present and according to Mr. Bharucha, the polling agent had given him the information that both Messrs. Hendre and Parulekar had withdrawn and on that information he had not kept the ballot boxes of these two candidates in the polling compartment. Now, there are several difficulties in the way of accepting this content of Mr. Dhabe. In the first instance, Exhibit P. 34, the report of Mr. Bharucha, shows that the majority of the polling agents gave him this information. In this evidence the Tribunal, he said that the polling agents there gave him to understand that the two candidates had withdrawn. If the polling agents of Messrs. Hendre and Parulekar

were not there, the polling agents of the Congress candidates as well as those of Messrs Dange and Maney would be there and, according to the Hendre's letters both the Returning Officer as well as the Election Commission written on the polling agents of both the Congress as well as the Samyukta Maharashtra Samiti candidates had given the wrong information to the presiding officer. As already stated. Mr. Maney's evidence shows, and there is no dispute on this point, that on that very day election were also held for the State Legislative Assembly and there were polling agents of candidates standing for that Assembly and that election was held at the same polling station. It cannot, therefore, be said with certainty that the polling of successful candidates Messrs. Dange and Maney were responsible for giving this false information to Mr. Bharucha, nor is there any evidence whatever on the record to show that this was done with the consent of the petitioner has also stated in his evidence that owing to the illness of his son he had not been able properly to divide the supervisory work of polling stations amongst his workers and it was difficult for him even to co-operate with his workers who were scattered over a wide area and who also believed that he had withdrawn. Mr. Dhabe has drawn our attention to the provisions of S. 46 of the Act under which polling agents or his election agent and to Rule 13 of the Representation of the People (Conduct of Elections and Election Petitions), Rules, 1956, published in the Manual of Election Law, second edition, and Form 10 in connection with the appointment of polling agent and Mr. Dhabe contends that as soon as polling agent is appointed all his actions must be presumed to be binding on the returned candidate. We are not prepared to accept his argument. As I have already pointed out, when a corrupt practice is committed by a returned candidate or his election agent, then the question of consent does not arise, but if it is committed by "any other person" which expression would include a polling agent then it must be shown that the corrupt practice has been committed with the consent of the returned candidate or his election agent. There is no reliable evidence on the record to show that the polling agent of Messrs. Dange and Maney were responsible for giving this false information to Mr. Bharucha and there is no evidence also to show that this was done with the consent of either the returned candidates or their election agents and therefore, in our opinion, this would not amount to any corrupt practice under S. 100(1)(b) of the Act.

(5) Even assuming that the matter falls under S. 100(1)(d)(ii), inasmuch as false information was given to Mr. Charucha in the interests of returned candidate by a person other than the candidate or his election agent or person acting with the consent of such candidate or election agent, then it has to be proved that the election in so far as it concerns the returned candidate has been materially affected, before the Tribunal has frankly conceded that the view of the Tribunal that the defect in the election at this polling station could not have materially affected the result of the election of the returned candidate cannot be challenged, because, as has been already indicated, each polling station was meant to record votes of about 100 voters and even assuming the fall the votes in this polling station were cast in favour of the candidates other than the returned candidates

or in favour of Mr. Hendre alone, it would not have materially affected the result of the election.

(6) Mr. Dhabe has also alternatively contended that the defect pointed out, viz., the absence of the ballot boxes of the petitioner and of Mr. Parulekar at the polling booth in question till 11-30 a. m. would amount to improper reception or refusal or rejection of S. 100(1)(d)(iii) of the Act and would also amount to non-compliance with the provisions of the Act and the rules and orders made under the Act and would thus come under S. 100(1)(d)(iv). But that again would be of no assistance to the petitioner because even in that case it must be shown that the result of the election in so far as it concerns the election of the returned candidates, has been materially affected.

(7) That takes me to the principal and the sound objection to the validity of the election urged on behalf of the petitioner. This objection may be summarised as follows: It is argued on behalf of the petitioner that a false propaganda was carried on on behalf of the respondents Nos. 1 and 2, the returned candidates, and by their agent Mr. P. K. Atre in his newspaper "Maratha" and false statements were made against the petitioner: (1) that the petitioner was a bogus candidate and was really set up by Mr. Y. B. Chavan, Chief Minister, and Mr. S. K. Patil, President of the Bombay Provincial Congress Committee; (2) that the candidature of the petitioner was financed by the Democratic Research Service which itself was dependent on American money; and (3) that the petitioner was on friendly terms with Mr. Y. B. Chavan before he became Chief Minister but he left him because he failed to get contracts from Mr. Chavan and he, therefore, parted company from him; but when the elections came he again stood up as a candidate supported and sponsored by Mr. Chavan. It is stated that not only were such false statements published but the candidates and their agent knew them to be false and the statements were in relation to the petitioner's personal character and conduct or at any rate in relation to his candidature and were reasonably calculated to prejudice the prospects of the petitioner's election and therefore, the successful candidates were responsible for a corrupt practice which would invalidate the election as a whole.

(8) Before I go to the statements to which our attention was drawn in this connection, it is necessary to refer to the relevant provisions of both Ss. 123 and 100 of the Act. Section 123(4), so far as material, provides as follows:

"The following shall be deemed to be corrupt practices for the purpose of this Act :

X X X X X (4) The publication by a candidate or his agent or by other person, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, or retirement from contest, or withdrawal, a statement reasonably calculated to prejudice the prospects of that candidate's election."

Now in order to bring the case within the ambit of this provision, the petitioner

must prove firstly, that there has been a publication by a candidate or his agent or by any other person of a statement of fact, secondly, the statement of fact must be false; thirdly, the publisher must either believe it to be false or must not believe it to be true; fourthly, the statement must be in relation to the personal character or conduct of the candidate or in relation to his candidature, withdrawal or retirement reasonably calculated to prejudice the prospects of the candidate's election. Now, it cannot be disputed that the onus to prove that a corrupt practice has been committed by a candidate or his agent lies on the person seeking to set aside the election on that ground. What is open to objection is a false statement of fact, and such a statement must be with reference to the personal character or conduct of the candidature. In what has come to be known as the North Louth Case, reported in (1901) 6 OM H. 103, it was observed by Gibson J. (page 163):

"As a politician for his public conduct may be criticised, held up to obloquy; for that the statute gives no redress; but when the man beneath the politician has his honour, veracity and purity assailed, he is entitled to demand that his constituents shall not be poisoned against him by false statements containing such unfounded imputations."

In the Sunderland case, reported in (1896) 5 OMH. 53, a similar view was taken by Mr. Baron Pollock, who, observed at p. 62 that any false statement, whether charging dishonesty or merely bringing a man into contempt, if it affects, or is calculated to affect, the election, comes within the election statute and in such a case the Court has nothing whatever to do with the question which arises in cases of libel as to whether there was malice. And the two illustrations which he has given show how statements about which may be regarded as perfectly innocent acts in England, which may be ascribed to candidates at the time of the election may come within the mischief of the election statute. He observes (page 62):

"Supposing any gentleman in a county constituency was to say of his adversary that he had shot a fox, and he said it for the purpose of working upon the minds of the constituency during an election, that would certainly come within the meaning of the Act. Again, if any person in a constituency, where one of the Members was a temperance man, were to say that he had seen him drinking a glass of sherry - a perfectly innocent act - that would also bring him within the Act." But then it is further stated that a great difficulty arises when the question has to be considered as to what is a statement of fact and Mr. Baron Pollock stated:

"A mere argumentative statement of the conduct of a public man, although it may be in respect of his private life, is not always, and in many cases certainly would not be, a false statement of fact."

In another case known as the Cockermouth Division Case, reported in the same volume I. e. (1910) 5 OM H. 155. this is what Mr. Justice Darling stated (p. 159-160):

"Now it must be noted that what the Act forbids is this: You shall not make or publish any false statement of fact in relation to the personal character or conduct of such candidate; if you do, it is an illegal practice. It is not an offence to say something which may be severe about another person, nor which may be unjustifiable, nor which may be derogatory, unless it amounts to a false statement of fact in relation to the personal character or conduct of such candidate; and I think the Act says that there is a great distinction to be drawn between a false statement of fact, which affects the personal character or conduct of the candidate and a false statement of fact which deals with the political position or reputation or action of the candidate. If that were not kept in mind this statute would simply have prohibited at election times all sorts of criticism, which was not strictly true, relating to the political behaviour and opinion of the candidate."

These remarks of Mr. Justice Darling were made in connection with the publication of a placard by the Respondent in that case which was alleged to have infringed the provisions of the Corrupt and Illegal Practices Prevention Act, 1895. In *Ellis v. The National Union of Conservative and Constitutional Associations, Middleton and Southall* (1900) 44 Sol. Jo. 750, Justice Buckley was interpreting the expression false statement of fact under the same Act, which conferred on the Court the power to restrain certain defamatory statements, and the learned Judge observed:

"The language of the statute is false statement of fact" and that language must be used in contrast to a false statement of opinion. The language is not merely a "false statement" but a "false statement of fact". Secondly the statement must be in relation to the personal character or conduct of the candidate. It must, therefore, be a false statement of fact bearing on a candidate's character or conduct."

In that case, the Court was considering the question of restraining the publication of a poster in which the words "Radical Traitors" were used and Mr. Justice Buckley held that the wording of the poster constituted a statement of opinion rather than one of fact. In *Cayley v. Edmunds, Bryon and Marshalls*. (1895) 11 Tr 537, a charge that the candidate "Hypocritically feeling in his conscience that he was doing wrong for the purpose of making large profits for himself, locked his workmen for a certain length of time, and then, some time afterwards, he found that his conscience reproved him, and resolved he would strave them no longer," was held to be a statement within the mischief of the statute. In *Davies v. Ward*, referred to in Halsbury, a statement that a candidate would not pay his hotel bill or debts was placed on the same footing. See Halsbury's Laws of England, third edition, Volume 14, page 227 Note (a) which quoted these instances. See also *Parliamentary Elections* by Schofield, second edition, pages 435 to 438.

(9) It is clear from these decisions that in order to come within the ambit of the term "corrupt practice" under S. 123(4) of the Act, there must be a false statement of fact by a candidate or his agent which is made in relation to the personal character or conduct of any other candidate. Adverse criticism, however

severe, however severe, however undignified or ill-mannered, however regrettable it might be in the interest of purity and decency of public life, in relation to the political views, position reputation or action of candidate would not bring it within the mischief of the statute. The Court in such matters cannot judge these statements in the light of their decency or desirability in so far as they are political statements not calculated to attack the personal characters or conduct of any rival candidate. Further, what is objectionable is a false statement of fact and not a false statement of opinion, however unfounded or however unjustified. It is only when the person beneath the politician is sought to be assailed and his honour, integrity and veracity is challenged and such a statement is false that it could be said that a false statement of fact about his personal character and conduct has been made: and once it is established that such a statement was made the question whether there was malice or not is immaterial or not is immaterial. In ascertaining the true nature of the statement made, the Court will have to take into consideration all the surrounding circumstances including the occasion when it was made, the person publishing it or making it, the audience or readers to whom it is addressed, as also the precautions or care taken by the publisher to verify the truth or otherwise of the statement challenged. It is in the light of these principles that we have to examine the statements which have been objected to by the petitioner as having been made by Mr. Atre in his paper the "Maratha" on behalf of respondents Nos. 1 and 2.

(10) Taking these statements chronologically, our attention was invited to Exhibit P-2, which is a letter appearing in the Maratha of 2-2-1957. That letter is signed by one Smt. Vijaya Vinayak Parpatte of Dadar. In that letter, which is headed "S. K. Patil's Schemes (designs)", a portion of three lines was objected to by the petitioner. That portion which is exhibited as B-1 in Exhibit P-2 reads thus: "One man had come to inform that he was standing as independent candidate for Lok Sabha from Bombay City Central Constituency. This man's candidature is also Patil-Sponsored." With reference to this statement, it is to be observed in the first instance that there is no direct reference to the petitioner at all and it has to be remembered that Mr. Hendre was not the only independent candidate in that constituency, but Mr. Paurelkar also was an independent candidate. Besides, it is in a letter written by a reader of the paper and Mr. Atre for the view expressed by a reader, I shall deal with this point a little later.

(11) The next statement in Exhibit P-3 appearing in the Maratha dated 3-2-1957 headed "Traitor's Front - Front of the people trying to cause split in the Samyukta Maharashtra Samity and that statement seems to be from the columns in the Maratha containing comments on current events entitled "Sword and shield" "Dhal Talwar" and the passage objected to is: "Really this united front of (blessings) of S. K. Patil". According to Mr. Dhabe, the sting in this passage is not in the description of the three independent candidates having a united front but in the description of these candidates being suggested as having been set up by Mr. K. Patil. But this statement also would be in the nature of political criticism.

(12) Then I come to Exhibit P-1 which is a letter appearing in the Maratha dated 14-2-1957 and signed by one Sudhir Chavan, Bombay . The letter is given the title " History of Hendre"s candidature" and the following passages including the one marked A-3 from that letter are relied upon.

"Hendre was the right hand man of Yeshwantrao Chavan in the movement of 1942, was the well-wished and sympathiser of Yeshwantrao and used to help the latter whne underground ith more means and shlterIn 1951 Yeshwantrao started fo rhis oath-taking ceremony after he became Minister with the cocoanut and garlands and felicitations from Hendre. After the oath-taking ceremony, Hendre gave Yeshwantrao a big dinner rao after the latter became a Minster. Therefore Hendre left the friendship, house and name of Yeshwantrao.

The elections came. The election front of S. M. Samiti came into being. Lists of candidate started gettingready. Hendre started efforts that Samiti should nominate him from anywhere in Bombay or elsewhere he wanted a seat to contest; When no seat was vacant he showed his willingness to contest against Jedhe. But after he came to know that S. M. Samiti was not willing to support him as its candidate he became disappointed (dissatisfied)".

X X X X X Mr. Dhabe naturally laid emphasis on the wording contained in the portion marked A-3 Exhibit P-1. He contends that thought the writer want to give the history of his client"s candidature, in reality there is a veiled attack against his personal character and conduct, and stress is laid particularly on the passage A-3 where there is an incontracts from Mr. Yeshwantrao Chavan alter he to his friendship and parted company from Mr. Chavan. The question is whether the letter read as a whole is an attack on the political views and reputation of the candidate or is an attack on his personal character and conduct.

(13) The petitioner has denied in his evidence the insinuations made in this letter. His evidence indicates that he came to Bombay in the beginning of 1945 and was interested in the business of Amortex Agency, Private Ltd., where his wife also was a director. That company was registered in April or May 1953. Before that, he was the accredited yarn purchaser of Bhiwandi Sari Manufacturers" Association In 1946 he stated an Import and Export Company called Sudhir and Co., and in the middle of 1946 the head established one silk mill called Lokmanya Silk Mills. It appears thatan insolvency petition was filed in 1949 against him and he was adjudicatd an insolvent in May 1949 and was discharged rom insolvency in 1951. From 1951 to 1953 he ran the busines of Jagdish and Co., manufacturing surgical dressings on behalf of his wife. He admits that he had applied to the Samyukta Maharashtra Samit for a ticket in or about the first week of January 1957. Therefore, the statement in the letter (Exh. P-I) that Hende had first made efforts to get the support of the Samyukta Maharashtra Samiti is not unfounded. He admits to have met Mr. Yeshwantrao Chavan on some occasions but there is nothing in his crossexamination which would justify us in holding that he was trying to secure contracts with the help of Mr. Chavan when he become a Minister. Mr. P. K. Atre in his evidence before the Tribunal stated with

regard to this letter that it was written by one Sudhir Chavan, but he was not able to say where he lived and he stated that his address would have to be searched. He further stated that he verified the contents of that letter. He was unable to give the time and place of the reception to Mr. Chavan held by Shri Hendre in 1951, but even which reference to that he stated that he verified the information regarding the fact of reception. Then he further stated that he did not know if Mr. Chavan refused to give contracts to Mr. Hendre, nor was he able to give the date or time of the visit of the monther of Mr. Chavan to the house of Mr. Hendre. He stated that he could only state about the fact itself and he did not know this personally and he could not give the names of the persons who gave the information to him. He also did not know personally if Mr. Y. B. Chavan set the ptitioner as a candidate or gave him help.

(14) Cosidering the circumstances under which this letter came to be published and the nature and the suggestions contained in the statement to which objection is taken, we are not prepared to hold that this letter contains merely statements of opinion or facts which Mr. Atre could be said to have believed to be true. A reference to Mr. Hendre no geting any contracts from Yeshwantrao Chavan when he become a Minister, does not, in our opinion, constitue merely a statement of fact about the political reputation of the petitioner, but in our view, it is also an attack on the personal character of the petitioner. There are other statements in that letter which do not seem to be objectionable from that point of view.

(15) Then the next statement to which objection is taken is Exhibit P-5, which appears in the Maratha dated 7-3-1957 also in the same columns containing comments on current events and there it is indicated that "Dr. Naravane"s lion of the Legislative Assembly will pounce upon the lion of Hendre, independent candidate for Lok Sabha, as the letter lion is intended to mislead the voters" This statement, in our opinion, would not amount to any criticism on the personal charcter of the petitioner.

(16) Then we are referred to a statement (Exhibit P-31) made by Mr. Dange, respondent No.1, which appeared in the Maratha dated 16-3-1957. It is true that this letter appeared after 11-3-1957 when the voting at all the polling sations had taken place. But the objection of the petitioner to this statement is that it was made before 21-3-1957 when a fresh poll was to take place in the Tardeo Polling Station. That statement undoubtedly contains a fling at the Election Commissin which may not be fair or proper. But the objection of the petitioner is to the suggestion of Mr. Dange that Mr. Chavan and his followers were trying to get an application filed through Mr. Hendre in order to get the election set aside. That, in our view, would not be a statement which would come within the mischief of S. 123(4) of the Act.

(17) Then the last statement to which our attention was initied is Exhibit P-5 appearing in the Maratha dated 20-3-1957, which suggested that Mr. Hendre, advised by Mr. Yeshwantrao Chavan and the Democratic Research Service - an

institution financed by American money, was standing for Lok Sabha from the Bombay Central Constituency against Mr. Dange. This statement also is purely a political statement.

(18) These are the only statements on which Mr. Dhane relied in support of his contention that false propaganda intended to lower the personal character of the petitioner was made the successful candidates. I have already indicated our view that so far as the letter written by Sudhir Chavan (Exhibit P-1) appearing in the Maratha of 4-2-1957 goes, the reference to Mr. Hendre seeking contracts from Mr. Chavan, after he became a Minister, and his failure to get them does appear to be an attack on the personal character of the petitioner and the statement would, therefore, come within the mischief of S. 123(4). As regards the other statements, the grievance of the petitioner is that he has been described as having been set up by Mr. Chavan and Mr. S. K. Patil and that his candidature is supported by the American Democratic Research Service, but these statements would not, in our opinion, be open to similar objection.

(19) Now, Mr. Chari on behalf of the respondents contended that we must make a distinction between editorial or semi-editorial comments contained in the Maratha and comments made by readers of the Maratha, whose letters are published by the editor. We are not prepared to accept this argument. If letters are published in newspaper containing statements which are derogatory to persons mentioned in those letters, we do not think that the editor can escape responsibility for what is contained in those letters. It may be that the letters might contain the views of the readers and if it is made clear, as is generally done, that the views expressed in the readers letters are not necessarily the views of the paper, then no doubt such letters may stand on somewhat different footing. But if the letters contain statements of facts which are false, then we do not think it could be said that the editor would not be responsible for what is stated in those letters. Mr. Atre in fact in his evidence has stated that he took precautions to verify the facts contained in the letters and he stated that when letters are sent to his paper for publication, the facts are verified but not the opinions which are of the writer of the letters himself. Referring to the letter (Exhibit P-2) published in his paper, he stated that he himself and his reporters verified the information, though he was unable to give the names of his reporters, but stated that he himself collected some information. He further stated that he had a strong suspicion that Mr. S. K. Patil gave financial assistance to Mr. Hendre, though he was unable to say when Mr. S. K. Patil gave money to Mr. Hendre, before whom at what time and on what date. He also stated that when he was in the Congress he had done congress propaganda in 1945 in company with Mr. S. K. Patil and he personally knew that Mr. Patil finance the sabotaging of opposition candidates. He further stated that he had seen Mr. Hendre in the company of Mr. S.K. Patil at least twice, when he dined in his company in the Chetana Hotel in Bombay and secondly when the petitioner emerged out of the Congress House, Bombay, in company with Mr. S. K. Patil, and that he was justified from this in inferring that Mr. Hendre was hand in glove

with Mr. Patil. As I already stated, the petitioner denied that he was set up either by Mr. Patil or by Mr. Chavan. Mr. S.K. Patil categorically denied that he had set up Mr. Hendre as a candidate for the Bombay City Central Parliamentary Constituency and asserted that he had never seen him before the election and did not in fact know the existence of Mr. Hendre. The other independent candidate Dr. Desai, who subsequently withdrew also denied that he was set up as a candidate by Mr. Patil. It has to be mentioned that though the petitioner, Dr. Desai and Dr. Birje had a sort of understanding in these elections, the latter two having stood for seats to the State Legislative Assembly, Dr. Desai and Dr. Birje withdrew from the contest and the allegation against these candidates was that they were set up by Mr. Patil. But, as already stated, Dr. Desai denied that his candidature was sponsored by Mr. Patil. Mr. Dange stated in his evidence that he did not believe that Mr. Hendre was put up by Mr. S.K. Patil or Mr. Y. B. Chavan, though he admitted that in his speeches at meetings he expressed his apprehensions that the independent candidates would split up votes and thereby indirectly help the Congress and he made a general appeal that all candidates opposed to the Samiti should withdraw. Mr. Lalji Pendse, the election agent of Mr. Dange, admitted that he did not issue any statement repudiating the propaganda in the Maratha alleging that Mr. Hendre was put up by Mr. Patil and Mr. Chavan; and this gains partial support from the evidence of witness Mr. Wable, who was examined on behalf of the petitioner. Mr. Wable stated that he was the editor of the weekly paper "Shivaner" and at a meeting at Shivaji Park on 9-3-1957 Mr. Dange had said that independent candidates like Sri Hendre should withdraw from the contest and if they did not withdraw, it was well known what would happen next. Mr. Dange further said that Mr. Hendre was not an independent candidate and was set up by the Samyukta Maharashtra. But that itself shows that Mr. Dange never alleged in his speeches that Mr. Hendre was either sponsored or financed by Patil or Mr. Chavan. The evidence however shows that the statement that Mr. Hendre was sponsored by Mr. Patil or Mr. Chavan was a false statement. There is no reliable evidence to indicate that the petitioner received any financial support from the Democratic Research Service alleged to be financed by American money. In his evidence, however, Mr. Hendre admitted that he knew that there was an organisation of the name of Democratic Research Service and it has been brought out in his cross-examination that he had an admiration for the economic system of America. In our opinion, that would not justify any inference that the petitioner's candidature was financed by the Democratic Research Service or that this service itself was financed by American money.

(20) But even taking these statements to be false statements it does appear that Mr. Atre tried to verify some of the statements contained in the letters published by him and believed that those statements were true. It cannot, therefore, be said that these false statements of fact were known to be false to Mr. Atre or that he did not believe them to be true. Apart from that, in our judgment, describing a candidate as really not independent but as being supported by other parties or prominent persons of other parties would not amount to an attack on his

personal character. It is true that Mr. Hendre described himself as an independent candidate. It is also true that according to him, he sympathised with the cause of Samyukta Maharashtra and disagreed with the Congress on several political matters. But even then, if a belief was entertained by his opponents that he was set up by the Congress, that, in our opinion, would not amount to making an attack on his personal character or conduct. Mr. Dhabe contended that describing a candidate as other than what he was standing for would really be an attack on his honesty of character. In this connection he relied on *Syed Hifazat Ali v. Mohamad Asghar, I Doabia's Indian Election Cases*, 276 where a candidate set up by the Muslim League was depicted to be in league with the Congress, which was alleged to have paid him Rs. 10,000/- and it was further alleged that he had promised to sign the Congress pledge after his success. That case stands on a different footing because the allegation in that case was that not only was the candidate in league with a rival body but a traitor to the body which had adopted him as a candidate.

(21) It is further contended that these statements, though they may not amount to an attack on the personal character of Mr. Hendre, would certainly be false statements made in relation to Mr. Hendre's candidature. Mr. Dhabe argued that the expression "in relation to the candidature" in S. 123(4) of the Act is an expression with a wide connotation and cannot be given the restricted meaning attributed to it by the Election Tribunal, viz., the bundle of rights and qualifications which entitle a person to stand as a candidate in a particular constituency as well as the factum of his being a candidate. Under S. 79(b) of the Act, a "candidate" is defined as "a person who has been or claims to have been duly nominated as a candidate at any election and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate." The first limb of this definition undoubtedly seems to refer to the qualifications of a person for being nominated as a candidate in any constituency and to that fact of his so nominated. The second part provides that persons will be deemed to get the status of a candidate with effect from the time he begins to hold out as a prospective candidate. But Mr. Dhabe's argument in effect amounts to this, that any false statement of fact made about a person, after he announced his candidature, must come within the ambit of the expression "in relation to the candidature". But that interpretation would not fit in with the subsequent terms used in S. 123(4) which refer to the withdrawal or retirement from contest of any candidate. According to the Concise Oxford Dictionary, "candidature" means "standing for election, being candidate". Speaking for myself, in view of the use of the subsequent expression "withdrawal, or retirement from contest, of any candidate", in S. 123(4) of the Act, the term "candidature" must have reference to his qualifications for being nominated as a candidate in a constituency and to his being so nominated in fact. But since we have held that Mr. Atre did not believe these statements of facts to be false, it is not necessary for us to go further into this question.

(21a) That takes me to the question whether the statement contained in the

letter (Exhibit P-1) by one Sudhir Chavan, published in the Maratha of 14-2-1957, a portion of which we have held to be an attack on the personal character of Mr. Hendre, should justify us in holding that it is a false statement made by Mr. Atre as the agent of the successful candidates. In the connection, Mr. Dhabe strongly relies on Explanation (1) to S. 123 of the Act, which says that the expression "agent" in the section "includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate. Mr. Dhabe contends that the term "agent" in S. 123 cannot be interpreted in the sense it has under the law of Contract and that under the law applied to elections it must be held to have a wider connotation. According to him, no authorisation or declaration in writing is necessary and the fact of agency will be established by circumstances arising out of the general features of the case, the conduct and connection with the parties, and the subsequent recognition of the acts of the supposed agent or at least an absence of disavowal of such acts, and that the doctrine of agency is carried by election law much farther than in Civil and Criminal cases. He drew our attention to the observations of Grave J. in Boston Borough case, (1874) 2 O'M and H. 161 at p. 167 quoted in Frazer's the Law of Parliamentary Elections 3rd edition, page 73, which states as follows:

"With regard to Election Law, the matter goes a great deal further because a number of persons are employed for the purpose of promoting an election who are not only not authorised to do corrupt acts but who are expressly enjoined to abstain from doing so. Nevertheless, the law says that if a man chooses to accord a number of People to go about canvassing for him, to issue placards, to form a committee for his election, and to do things of the sort, he must, to use a colloquial expression take the bad with the good. He cannot avail himself of these people's acts for the purpose of promoting his election and then turn his back or sit quietly by, and let them corrupt the constituency.

He also relied on Hammond's observation in his book, "The Indian Candidature and Returning Officer, at page 57 to the following effect:

In the ordinary sense of the word a man cannot easily make another his agent without having his eyes fully open to what he is doing. but he may create an agent in the election sense of the word without being conscious of what is being done and in fact, in such a manner that when the person is ultimately decided to be his agent nobody is more astonished than himself.

(22) Mr. Dhabe further argued that in case this principle is accepted, then it must necessarily be held that newspapers which make special propaganda for the election of a particular candidate could, in certain circumstances, be treated as the candidates agents for purposes of election law and in this connection reliance was placed on the following observation of Blackburn J. quoted in Rogers on Elections (P.391)

It is not necessary, in order to prove agency, to show that the person was

actually appointed by the candidate. it is sufficient to show the conduct or connection of the parties, the recognition by the candidate of the acts of the person alleged to be an agent, or the absence of any disavowal of such acts. The various acts proved to establish agency may each, taken singly be insufficient and yet taken as a whole, may be held to prove agency conclusively. Where the agency cannot be distinctly proved, it may be inferred or implied from the acts of the candidate and from other facts and circumstances.

Every instance in which it is shown that either with the knowledge of the candidate or of his appointed agents a person acts at all in furthering the election for him, or in trying to do so, is some evidence to show that he is an agent. and if a person assumes to act for a candidate and the latter accepts his services. he makes such person his agent. To establish agency, therefore it may be unnecessary to show that the election agent himself knew of and accepted services voluntarily tendered knowledge and acceptance by other persons in control of the election may be sufficient.

(23) These passages and the observations of English Judges on the legal aspect of agency in elections would appear to support Mr. Dhabe's contention. Reference may also be made to Schofield's Parliamentary Elections. Second edition. pages 201 to 205 where after quoting numerous passages from decisions in election cases, it is observed that though the law of agency as applied to election petitions has been differently expressed by different learned Judges. all agree that the relation is not the common law one of principal and agent but the candidate may be responsible for the acts of one acting on his behalf, though such acts are beyond the scope of the authority given, or indeed in violation of express injunction (p. 205) In our opinion, this would represent the correct legal position regarding agency in elections.

(24) Mr. Dhabe says that there is ample evidence on the record to establish that Mr. P. K. Atre was an agent, so far as election propaganda was concerned, of both the candidates Messrs. Dange and Manay, who stood on the Samyukta Maharashtra ticket. It is not disputed that Mr. Dange was the Chairman of the Samyukta Maharashtra Election Samiti and Mr. Atre was a member of that Election Samiti. The Samiti consisted of various political parties of Maharashtra and the Communist Party was one such constituent party of which Mr. Dange is a member. There is also no dispute that Mr. Manay was a member of the Scheduled Castes Federation, now known as the Republican Party, and stood for a reserved seat on behalf of that party in the same constituency. Mr. Atre admits that the Samiti had no single political symbol, as it is a joint front of different political parties. The Samyukta Maharashtra Samiti had given badges to its workers and volunteers. there was no particular propaganda in favour of a particular candidate. There was general propaganda. Such of the workers who were carrying on active work were wearing the badges of the Samiti. It was also admitted by Mr. Dange that he and Mr. Atre jointly addressed some election meetings. He stated that when his candidature was accepted by the

Parliamentary Board of the Samyukta Maharashtra Samiti Mr. Atre was not present.. He explained that there were two types of members of the Board - regular membrs and invitees and Mr.Atre was only an invitee member. He also admitted that one Vinayak Bhave was a member of the Communist Party and at the time of the election he was doing voluntary service in the office of the Maratha newspaper. He also stated that the Samyukta Maharashtra Samiti had nothing to do with the Maratha which was Mr. Atre's proprietary concern. Mr. Atre also stated in his evidence that the Maratha was the sole proprietary concern, but he admitted that propaganda was carried on in the Maratha on behalf of the Samyukta Maharashtra Samiti and that he was carrying on propaganda in favour of Messrs. Dange and Manay. It would appear from Mr. Dange's evidence that the Samyukta Maharashtra Samiti as such had no official organ of its own. In his cross-examination Mr. Dange admitted that he contributed, in the beginning of January 1958, Rs. 3,000/- to the Maratha for purchasing a Rotary Machine, s his contribution to the Rotary Fund started by the Maratha. On this evidence, the Election Tribunal held that Mr. Atre was an agent of Messrs. Dange andManay so far as speaking at public meetngs was concerned but he was not an agent of Messrs. Dange and Manay so far as speaking at public meetings was concerned but he was not an agent with regard to propaganda that was carried on behalf of these two candidates in the columns of the Marata.

(25) The finding of the Election Tribunal that Mr. Atre could be regarded as an agent for the purpose of addressing meetings has not been challenged before because admittedly a political campaign by way of public meetings was being carried on behalf of the candidates who had obtained Samyukta Maharashtra Samiti tickets. The question is whether Mr. Atre could be also regarded as an agent of the two successful candidates when he carried on propaganda in his paper Maratha on behalf of the Samyukta Maharashtra Samiti candidates. It has been admitted by Mr. Lalji Pendse, the election agent of Mr.Dange, that there was a joint office of the Samyukta Maharashtra Samiti for propaganda on behalf of the Candidates. Mr. Atre, as we have already seen, he also stated that the propaganda was carried on in the Maratha which was his sole proprietary concern, on behalf of the Samyukta Maharashtra Samiti candidates and he was accordingly carrying on propaganda in favour of Messrs. Dange and Manay also. He was a member of the Samiti of which Mr. Dange was the chairman. Now, being a member of a candidate's election committee has been held to be strong evidence og agency. See Halsbury's Laws of England, third edition, Volume 14, page 171, para 304. In the case of elections, as we have already seen, the expression "agent" has to be given a wider interpretation and, in our judgment, therefore the Tribunal's view that Mr. Atre was not an agent of Messrs. Dange and Manay with regard to election propaganda is not correct. We must, therefore, hold that so far as Exhibit p-1, the letter by Sudhir Chavan, appearing in the Maratha of 14-2-1957 is concerned, there was a publication by an agent of the candidate and the portion A-3 objected to in that letter contains a false

statement in relation to the personal character of the petitioner Hendre. The evidence would also indicate that Mr. Atre could not have believed the statement to be true, and that statement was undoubtedly calculated to prejudice the prospects of the petitioner's election. We must, therefore, hold that so far as the portion A-3 in Exhibit P-L is concerned, there has been a corrupt practice within the meaning of S. 123(4) of the Act.

(26) That takes me to the question whether the election of the returned candidates has to be declared void under S. 100 of the Act. Mr. Dhabe's contention is that this statement in Exh. P-L would amount to a corrupt practice and would come within S. 100(1)(b) of the Act inasmuch as, according to him, it is committed by a person with the consent of the returned candidate or his election agent. In this connection, our attention was invited both by Mr. Dhabe as well as Mr. Chari to S. 100, before its amendment in 1956. Under the old S. 100(2)(b), the Tribunal had to arrive at a finding that the corrupt practice had been committed by a returned candidate or his agent or by any other person with the connivance of the returned candidate or his agent; so that under the section before its amendment, a corrupt practice committed by any agent would have come within the mischief of this section. If it was not committed by either the returned candidate or his agent but by any other person then, before it could affect the election it had to be with the connivance of the returned candidate or his agent and connivance undoubtedly means, in the context, the section has substituted for the expression agent the expression election agent so that a corrupt practice has to be committed by a returned candidate or his election agent and then no question of consent naturally arises. But if it is a corrupt practice, which has not been committed by a candidate or his election agent then before it affects the election it has to be proved that it has been committed by any other person with the consent of the returned candidate or his agent. At one stage Mr. Chari attempted to argue that the word consent must necessarily imply express consent but he had to concede that consent may be express as well as implied. Since Mr. Atre was not the election agent of respondent Nos. 1 and 2 the question whether he was an agent for the purpose of propaganda is not really relevant for the purpose of this section. Before Mr. Dhabe's case can take advantage of S. 100(a)(b) he will have to prove that Mr. Atre, in publishing the impugned statement in Exhibit P.I. had either the implied or express consent of Messrs Mr. Dhabe contends that we must look to the circumstances under which this publication was made. It is undoubtedly true that the Maratha was carrying on a campaign in favor of all the candidates set up by the Samyuka Maharashtra Samiti, But the question is whether all these candidates will be bound by any statement that appeared in the Maratha. Just as Mr. Atre would be an agent for the returned candidates in respect of the propaganda carried on in the Maratha in their favor set up by the Samyuka Maharashtra Samiti. In an election of this type, the newspaper is bound to publish statements and appeals and everything that may be published in the newspaper would not bind the candidate, unless it is proved that there was either implied or express consent of either the candidate

or his election agent. Mr. Dahbe argued that though undoubtedly the onus in such cases is on the person challenging the election, the court may have regard to all the circumstances in which the propaganda on behalf of the successful candidate is carried on. In support of his argument Mr. Dhabe relied on an observation of the Supreme Court in *Jagan Nath Vs. Jaswant Singh and Others*, where it was observed that it is always to be borne in mind that though the election of a successful candidate is not to be lightly interfered with, one of the essentials of that law is also to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices. Though this observation has been made in connection with a different set of circumstances, the principle underlying this observation has to be accepted in deciding election cases. In this connection Mr. Chari relied on Wharton's Law Lexicon, as being an act of reason accompanied with deliberation, the mind weighing as in a balance the good or evil on either side. Consent supposes three things physical power, a mental power and a free and serious use of them. Reference may also be made in this connection to a passage from Halsbury's Laws of England, third edition, Volume 14, Page 170 Paragraph 301, which is to the following effect:

""mere non-interference on the part of the candidate with persons who, feeling interested in the success of the candidate, may act in support of his canvass is not sufficient to saddle the candidate with any unlawful acts of theirs of which the candidate and his election agent are ignorant *Taunton Case*, (1874) 3 O'M and H. 66 at p. 74.

(27) There is nothing on the record of this case which would indicate that either the returned candidates Messrs. Dange and Manay or their election agents had knowledge about this letter (Exhibit P-1) appearing in the Maratha of 14-2-1956, No question or suggestion seems to have been put either to Mr. Dange or Mr. Manay or Mr. Lalji Pendse, Mr. Dange's election agent on this point. We may also observe that with regard to some of the other statements also, about which grievance was made but which we have held to be not false statements of fact affecting the personal character or conduct of the petitioner there is no evidence to show that either of the returned candidates or their election agents had knowledge about these statements. If that be so, it cannot be held that the statement in Exhibit P-1 has been made with the consent, express or implied, of respondents Nos. 1 and 2 or their election agents. Giving our most anxious consideration to this question, we must hold that even this statement would not fall within S. 110(1)(b) of the Act.

(28) Mr. Dhabe has not relied on S. 100(1)(b) of the Act and he has frankly stated that there is no evidence that this corrupt practice even though it may have been committed in the interests of the returned candidate, would have materially affected the result of the election in so far as it concerned the returned candidates.

(29) That takes me to the third and fourth points which have been urged before

u by Mr. Dhabe He has relied on three exhibits, viz., as Exhibit P-53 for the purpose of his argument that the election is vitiated by corrupt practice on account of undue influence and also on account of a systematic appeal being made by the respondents to Mr. Dhabe would fail within the ambit of S. 123(2) and (3) of the Act. I will take both these points together because reliance is placed on these same three exhibits regarding these points. In this connection, our attention is drawn to Exhibit P-48 which is a statement which appeared in the Maratha, dated 6-3-1957 over the signature of Mr. Dange as the president of the Samyuka Maharashtra Samiti. The statement reads thus: Brother workers, in the name of Maharashtra and 105 martyrs do not go out on 11th without giving votes and do not betray Samyukata Maharashtra. We fail to see how it would amount to undue influence. The appeal is addressed to the workers and it cannot, therefore, be obviously said that it is an appeal to any particular community. This appeal is published in the Maratha just before the date of the election which was 11th March and the same was declared to be a holiday. the workers were therefore, enjoined not to go out without recording their votes. Mr. Dhabe says that his statement refers to the duty of the workers in the name of Maharashtra and 105 martyrs to give their votes on the 11th. We do not think on that ground it would either amount to any threat or injury of any kind or social ostracism and ex-communication or expulsion from caste or community or of the electors being threatened that they would be objects of divine displeasure or spiritual censure as Mr. Dhabe tried to suggest relying on the provisions of S. 123(2) Proviso (a)(i) and (ii) of the Act. Nor can this appeal be regarded as an appeal to voters to vote on grounds of community or religion.

(30) Then our attention is invited to Exhibit P.26, which is an issue of the Maratha dated 11-3-1957. Objection is taken to several passages in this issue. There is, first of all the appeal to ""Lions of Maharashtra, make the Congress, bullocks bolt warriors of Maharashtra, give us your blessings. Then there is also an appeal to the following effect. Worship the Shivashakti power of Shivaji of Maharashtra with the bel (leaves) of your votes. Then there I an appeal headed Vow of the Maratha with a picture below which are the words Where is the black stone of the great bilingual. I reduce it to power by the hammer of votes. Then on the third page of the issue, photographs of person who were killed in the Bombay firing are published and on the top of the page there is a heading Marathas of Bombay take revenge of this devilish murder. Below these photographs are the words. The Congress ballot box is besmeared with the blood of the martyrs. On the fourth page of the issue there is a picture of a hand with the congress ballot box on the palm and on the top of the picture are the words: Have you seen this ballot box of the congress and the bottom are the words It is smeared with the blood of the Marathas. The tribunal was disposed to take the view that all these were political statements, however strange the words used therein. and we are not disposed to take a different view of either the statements or the pictures published in this issue.

(31) Exhibit P-27, which is the same as P-53 is a poster issued admittedly by the

communist party on the same date, i.e, 11-3-1957 and on the top of this poster there are words expressing salutation to the immortal martyrs who sacrificed their lives in the cause of Samyukta Maharashtra and Mahagujarat and at the bottom there is an appeal that the sacrifice of these martyrs should be remembered and the voters should make the Samyukta Maharashtra Samiti Successful. That also in our opinion, is in substance a political appeal to the voters. Mr. Dhabe contended that both exhibit P-26 and exh. P-27 contain ghastly pictures and were bound to revive the memory of firings in Bombay and would, therefore, amount of undue influence or a direct or indirect interference with the electors right to freely exercise their power to vote. It cannot be denied that these pictures were meant to be an appeal to the sentiments of the voters, but we are not prepared on that account to say that the publication of these pictures in the issue of the maratha or the publication of the poster on the voting day amounted to undue influence which constituted any direct or indirect interference with the electors right to freely exercise their power to voice.

(32) Alternatively Mr. Dhabe contended that the reference to the Marathas of Bombay in Exhibit P-26 was an appeal to the voters to vote in favour of the Samiti candidates on grounds of community. Mr. Dhabe said that it might either be an appeal to the Maratha community as such or an appeal to the Marathi speaking citizens of Bombay. But even then, according to Mr. Dhabe, it would come within the mischief of S. 123 of the Act. He further argued that we should not, in considering this appeal, construe the term community in the popular sense of that term, and in this connection he relied on the case of Yeshvantarao Balwantrao Chavan Vs. K.T. Mangalmurti and Another, where a Division Bench of this court construed the expression all the contesting candidates in S. 82(A) of the Act as meaning not merely those candidates who contested at the election and the court rejected the meaning of the expression contesting candidate who retired from the contest as not being a contesting candidate in the popular acceptance of the term. That was undoubtedly a case on different facts. In construing the word community in S. 123(3) We must no doubt give the word its natural meaning if it can bring out the real intention of the Legislature. In this connection. Mr. Chari referred us to a passage from Maxwell on the Interpretation of Statutes, 10th edition, pages 19 and 20, Mr. Chari contended that we must construe the term community bearing in mind the rule in Heydon's case which required consideration of the law as it stood when the statute to cure that mischief or defect. In this case. there is not amendment in the wording of S. 123(3) prior to which is the same as the wording of the old S. 123(5) prior to the amendment of the Act in 1956. Before the said amendment this kind of corrupt practice was classed as a minor corrupt practice was classed as major corrupt practice as distinguished from major corrupt practices included in S. 123 of the old Act. That distinction between major and minor corrupt practices was done away by the amendment of the Act in 1956. Mr. Chari contends that we ought not to construe the term community so as to include therein community of persons speaking a common language According to him what parliament intended was

the avoidance of rousing of communal or religious passions to influence voting at elections and that he contends, must be understood in the sense it was always understood in this country so far. Now, the Representation of the People act was passed in 1951 and it was amended in 1956 and Mr. Dhabe's argument in reply to Mr. Charis's contention is that in 1956 circumstances had considerably changed on account of the re organisation of States and the agitation which ensued in connection with it, and he contends that the term community would also, therefore, apply to a linguistic community and reliance is placed on the principle of construction which allows the extension of the language of a statute to new circumstances. In this connection reference may usefully be made to a passage from Mawell on the Interpretation of Statutes, 10th edition at page 79:

"Except in some cases where the principle of excessively strict construction has been applied the language of a statute is generally extended to new things, which were not known and could not have been contemplated by the legislature when it was passed. This occurs when the Act deals with a genus, and the thing which afterwards comes into existence is a species of it.

There is some force in what Mr. Dhabe has contended. Now in sub-s (3) of S. 123 of the Act. What is regarded as objectionable is a systematic appeal to the voters to vote or refrain from voting on the ground of caste race community or religion. In our judgment the term community cannot in the context be confined to a religion community only.

(33) If we were to construe the appeal in the Maratha of 11-3-1957 as an appeal to the Maratha as a caste, then undoubtedly it would fall within the mischief of this section. But it cannot be so interpreted. The Maratha itself is a newspaper which is obviously intended to be read by the Marathi speaking and Marathi knowing persons and Mr. Atre has admitted that the average circulation of his daily paper in January, February and March 1957 was about 40,000 copies per day. The pictures published in that paper as well as in the posters issued by the communist party contain pictures of Gujarat victims of police firing who appear to be described as being residents of Ahmedabad. The pictures of other victims also are not confined to persons belonging to the Maratha caste or community. Exhibit. P.27 the poster issued by the communist Party appealed for the unification of Maharashtra and Mahagujarat. It is not disputed that candidates standing on the Samyukta Maharashtra Samiti ticket and non Marathi languages. In these circumstances, we are not prepared to hold that either these appeals were intended to be addressed to the caste or community of Marathas or intended to vote on the ground of their being a separable community. It is possible to construe these appeals as calling on the voters to vote in favor of the political principle of formation of separate states of Maharashtra and Mahagujarat by voicing it though undoubtedly they were intended to make an intense emotional appeal to the voters. We agree, therefore, with the finding of the Election Tribunal that these publications cannot fall within the mischief of sub-s (3) of S. 123 of the Act.

(34) Besides, it has to be remembered that Exhibit P-26 as well as the poster Exhibit, P-27 were issued on the election day that is to say, on 11-3-1957, and we agree with the view of the Election Tribunal that these two publications on the election day would not amount a systematic appeal contemplated under S. 123(3) of the Act. We are not prepared to accede to Mr. Dhabe's argument that because of the publication of the pictures both in Exhibit P-26 and Exhibit P-27 on the election day, we should hold that there was a ground of community. The expression systematic would involve an element of planning of method, of some continuity or persistence and admittedly Exhibits P-6 and P-27 or P-53 were published on the day of the election only. The argument therefore, that the publication of these Exhibits constituted either undue influence or a systematic appeal to the voters to vote on the ground of community must consequently fail.

(35) That takes me to the next argument of Mr. Dhabe that, the present election has been vitiated by a corrupt practice falling within S. 123(1) of the act, and Mr. Dhabe says that Mr. Awati the candidate who stood on the Ram Rajya parishad ticket, was induced to retire from the contest by reason of reward offered to him by publication of his photograph in the Maratha dated 12-3-1957. That issue of the Maratha is Exhibit P-30. It may be mentioned that in the trial court it was also alleged by the petitioner that Mr. Awati was offered a bribe of Rs.1800/- by one Vinayak Bhave or somebody else on behalf of the Samyukta Maharashtra Samiti. Mr. Awati denied that allegation and stated that the statement that he got Rs. 1800/- from Vinayak Bhave or anybody else was false. He characterised it as a creation of the petitioner's brain. He further stated that he had told the Ram Raja parishad that he could not afford to incur the expenses of election and as the parishad was not giving him the necessary aid he would retire; and that was the sole reason of his retiring from the contest. The Tribunal therefore, rejected the allegation of the petitioner that there was corrupt practice on the part of the successful candidates in inducing Mr. Awati to retire from the contest by giving him Rs. 1800/- MR.Dhabe has very properly not pursued that allegation in this court. But he contends that the publication of Mr. Awati's photograph on the day after the election giving him a prominent place and showing that he had supported the Samiti candidate, amounted to gratification as defined in the explanation to S. 123(1). Below the photograph appearing in the Maratha it was stated that Mr. Awati who had withdrawn his candidature was the first to give his vote to the Samiti candidate, and Mr. Awati who was to be seen in the photograph at the polling station at Shivaji Mandir at Dadar. Mr. Awati in his evidence stated that the representatives of the "Maratha" had not come to him to take his photograph and nobody had asked him to attend to give their votes but he did not pose for his photo for any photographer. He did not disclose to anybody for whom he was voting or for whom he voted because it was a secret poll. Then he explained that as there was only one woman voter, who was ahead of him to go inside for voting. and as the number of that voter could not be traced, he was given the ballot paper first. Mr. Atre in his evidence also stated that he did not know for whom Mr. Awati voted that he was not present when he voted and that

the photographer of the Maratha took this photo as those were his standing orders. He explained that it was stated in Exhibit P-30 that Shri and Smt. Awati voted for the Samiti candidate because his correspondent told him that they had in their hands Samiti cards. We do not think that the publication of this photograph amounts to any reward or gratification to Mr. Awati at all. The Explanation to sub-s. (1) of S. 123 of the Act refers to all forms of entertainment and all forms of employment for reward, It is really difficult to appreciate the argument that the publication of Mr. Awati photo on the next day after the election would amount to a corrupt practice within the meaning of the Explanation to S. 123(1) of the Act.

Patel, J.

(36) (* * * * *) So far as the question of agency is concerned. it must be mentioned that the word has not been defined anywhere in the Act, though it has been freely used in S. 123 S. 100 at one place and S. 98 as well for the purpose of S. 123 explanation No.1. is appended to that section which says In this section the expression agent includes an election agent a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate This is an inclusive definition and not an exhaustive one and the question whether or not. Mr. Atre was the agent of the returned candidates must therefore be determined with reference to the use of the word agent as understood in the law of elections all these days.

(37) I may refer to a passage from the judgment of Mr. Justice Willes in Blackburn Case (1869) 1 O.M and H. 198 at P. 202 which is as follows.

"Nothing can be clearer than this law; it has existed for a very considerable period; I believe certainly from as early as the time when James I came to the throne. Some 265 years ago, the general principle was laid down upon the first and only occasion upon which the jurisdiction of the House of Commons over parliamentary elections was seriously questioned and upon which occasion was seriously questioned and upon which occasion it was confirmed (Goodwin's case (1604) 2 St. Tr. 91), and is enacted and settled as the law by the Corrupt Practices Prevention Act, 1854 S. 36 which to my mind does no more than lay down in very distinct terms that which has always been the understood law of parliament, or rather the common law of the land with respect to the election of members of parliament that is to say, that no matter how well the member may have conducted himself in the election no matter how clear his character may be from any imputation of corrupt practice in the matter. Yet, if an authorised agent of his, a person who has been set in motion by him to conduct the election or canvass voters on his behalf, is in the course of his agency guilty of corrupt practices, an election obtained under such circumstances cannot be maintained. As it has been expressed from early time, no person can win and wear a prize upon whose behalf the contest has not been legitimately and fairly carried on or, as it was expressed in Goodwin's case, (1604) 2 S Tr. 91 non coronabitur qui non legitime certaverit, which is only so much in Latin showing

the antiquity of the principle I have already expressed in English and whether it be the person who contends in respect of any unfair play of his own, whether it be the owner of a horse in respect of the foul ridig of his jockey whether it be the owner of a yacht in respect of the fault of this steersman, or the hoisitng of an additional sail against the rules of the race by one of the seamen or whether it be a candidate in a parliamentary contest in repect of his agent. in every one of these cases, whether it has been the principle who has been fuilty of illegality or whether the illegality has been committed by his agent only, even without his authority or against his will provided it be done in his agency. and for the supposed benefit of his principla, such principla must bear the brunt and cannot hold the compromised him, and woul in a matter of this description have also betrayed the public who have a right that a just election shall be had.

Without multiplying reference to case law it may be stated that Tribunals in England have followed the principle of what is stated about without attempting of lay down a definite and precise definition of the word Agency in election matters for the possible reason that is some other case that particular definition might be evaded, although what came to substantially the same thing. might have taken place (grove J in the Wakefield case election (Petitions Vol. 2 O Malley and Hardcastle p.102).

(38) Our own Act has not given a precise definition of the word Agent and has left it to the Tribunal deciding an election case to determine in what relation a particular person canvassing for the votes for the candidate stands to him and from that to determine whether or not he was the agent of that candidate.

(39) The question then is whether the action of Mr. P.K. Atre in so far as the publication of the letter by even a correspondent which came within the ambit of S. 123(4) could be brought within S. 100 for declaring the result of the election void. If we turn to S. 123 which defines corrupt practices in every component part of the section we find the use of the words by a candidate or his agent or by any othe person and those words appear not in subs (1) but in every other sub-section of that section coming however to s. 100 it is a somewhat different matter. So far as relevant for the immediate purpose it is as follows:

"100 (1) Subject to the provisions of sub s (2) if the Tribunal is of opinion.

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

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

(ii) by any corrupt practice committed in the interest of the returned candidate by a person other than that candidate or his eletion agent or aperson acting with the consent of such candidate or election agnet.

(2) If in the opinion of theTribunal, a retured candidate has been fuilty 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 order 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.

(40) Clause (1)(b) is intended to be directed to any corrupt practice committed by the candidates or election agent who has been defined in the Act whatever be the nature of the corrupt practice. However if the corrupt practice is by some one other than those two then consent must be proved. Sub clause (2) cannot be a proviso to this clause for the obvious reason that though an agent may fall within the words any person other than a candidate or his election agent as found in sub clause (1) to come within the proviso it must be established that the corrupt practice was committed without consent a contradiction in terms. Moreover on fundamental principles acts of agents cannot have been intended to be treated so leniently for it would be in a rare case that consent of the candidate could be established. It would appear that sub-cl (2) is meant to be a proviso to some provisions could be enable the tribunal to declare the election of a returned candidate void on the ground of a corrupt practice by an agent. But such a provision is absent from this section. If Mr. Atre's action falls within sub (1) even though he is an agent then for the reason stated by my learned brother and with which I agree, consent of the returned candidate or their election agent not having been established the election cannot be held to be void.

(41) Is it then possible to bring this particular action of Mr. Atre within any other provision of the section? The only one under which it could possibly be brought is sub-s (1) (d) of S. 100 This provision in relation to the words or a person acting with the consent of such candidate or election agent is capable of being read in two ways (1) by any corrupt practice committed in the interest of the returned candidate by a person other than a person acting with the consent of such candidate or election agent and (2) by any corrupt practice committed by a person acting with the consent of such candidate or election agent. It seems this sub clause (d) is directed to something or the other done or omitted to be done by some one other than a candidate or his agent. It is therefore that result

of the election is materially affected required before the election could be set aside. This is obvious for in elections it is common experience of some persons and act in furthering his election. The provision is meant for canvassers like them. As an illustration in the very case it has appeared that in a chawl some person put up a board and at other places some persons refused to allow the canvassers to even enter the chawl. I would therefore read the provision in the first meaning suggested by men. If it is read in this sense then Mr. Atres' conduct will not be covered by it since he is not some one other than a person acting with the consent of such candidate or election agent.

(42) It is possible to assign the second meaning to the section for the purpose reference must be made to the provisions of sub (2) of S. 100 which I have stated before. It must be remembered that this part must be read as a qualification to sub-s (1) which undoubtedly it is as it gives jurisdiction to the Tribunal to decide that the election of the returned candidate is not void if it is satisfied about certain matters in relation to the corrupt practices of an agent of a candidate. The result of applying it to sub clause (d) would be that if the corrupt practice is committed by some one falling within the words person acting with the consent of the candidate must be set aside if it materially affected the result of the election. But if the corrupt practice is by an agent a person who is more than person acting with the consent of the candidate or his election agent then the further facts if established the election of the returned candidate is not void, a result obviously not intended. The provisions of this sub section are wholly unsuited for being applied as a proviso to this method of reading that sub clause. It is therefore impossible to this conclusion is strengthened by the very working of the sub-s (2) which refers specifically to a corrupt practice by an agent for which earlier sub section.

(43) The discussion above would show that it is a case of omission an unfortunate result which would not be lightly created. It is no doubt possible to get over this difficulty and to bring out the real intention of the act by reading the word his agent instead of the words his election agent, in clause (ii) of S. 100(1) and that is no doubt open to a court construing statute (see Maxwell, 10th Edn. page 229)

"This may be done by departing from the rules of grammar by giving an unusual meaning to particular words by altering their collocation, or by rejecting them altogether under the influence no doubt of an irresistible conviction that the legislature could not possibly have intended what its words signify and that the modifications thus made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear I must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law except in a case of necessity, or the absolute intractability of the language used.

I would have been tempted to do it in the case under discussion but for the fact that in the Bill agent while in the Act as passed the words are its election agent.

It would therefore appear that what was done was done with some purpose which has however left a gap in the legislation. It is not for the court to remedy that gap. There is therefore apparently no provision under S. 100 under which the action of Mr. P. K. Atre can be assuming that the second meaning can be assigned to the provisions that it is not proved that the result of the election has been materially affected the election therefore cannot be declared void.

(44) As to the other ground urged by Mr. Dhabe my learned brother has dealt with them in great detail and I agree with his conclusions and give nothing further to add. I therefore agree with the final order that is proposed by my learned brother.

(45) K.C./K.S.B.

(46) Appeal dismissed.